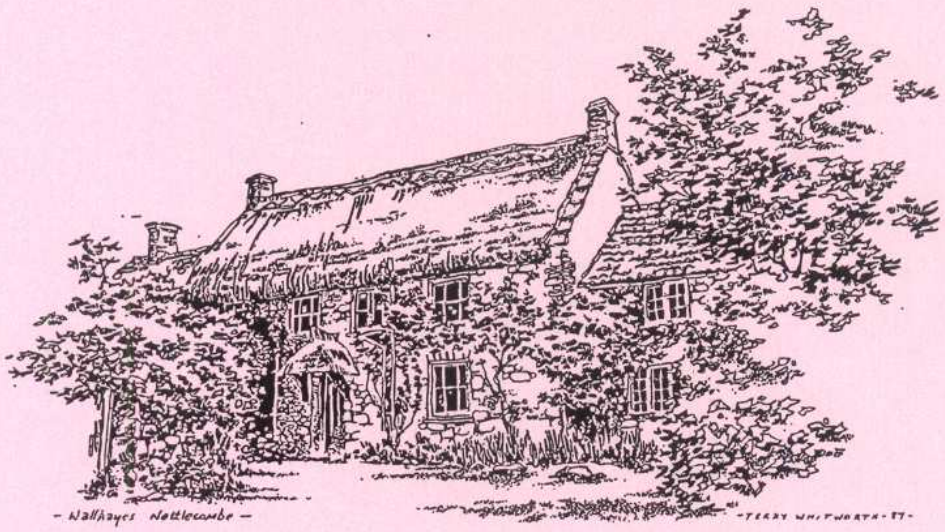
THE FRATERNITY

A Report of Malfeasance in Public Office



Richard Connaughton

This account of manoeuvring around the subject of Rights of Way might, on the face of it, appear to be much to do about nothing. That would be to ignore the alarming levels of activism directed against homeowners undeserving of militant attention. This Report reveals unacceptable levels of insidious abuse of office. What we are saying is that this unchallenged malfeasance has run its full distance: the time has arrived to say 'enough', to organise to defend positions and demand a Policy Review.

Why, within the bureaucracy, has truth been treated as an option? It is because the pretence of accountability is a sham. The Planning Inspectorate's Quality Assurance Department is a misnomer: there is neither quality nor assurance. The absence of effective enquiry, of curiosity, is almost total. It is axiomatic that a complaints system must be independent, not left in the hands of the colleagues of the subject of the complaint. The strategic Department of Special Casework has no apparent comprehension or understanding of the meaning of impartiality. Its entire *raison d'être* appears committed to the protection of reputations and home-team interests.

One positive result to arise from this Report is its potential for raising the Judiciary's awareness that evidence is being put before them upon which they could not and should not rely. The Inspectorate is fully aware that the Judiciary will take the view that their Inspectors are entitled to come to the conclusions that they do, even when it is evident they are acting as interested parties. There is also evidence that the Authority is employing tools such as the filibuster and high legal costs to see off the unwelcome opposition of ordinary citizens.

Article 6 of the 1998 Human Rights Act guarantees citizens – all citizens – the right to a fair, independent and impartial tribunal. Yet Secretary of State DEFRA who appoints Inspectors is now in the untenable position as both Policy Maker and Decision Taker. The Local Public Inquiry faced by this Report's author was illegal. Urgent steps need to be taken to legitimise the process because the accumulating bill for compensation and redress is enormous. By means of an administrative sleight of hand, New Labour replaced the Independent members on the Lord Chancellor's Panel with what are essentially interested parties from a pool of Officials from Countryside Access. A grim passage through zones of government draws towards a conclusion via Section 11 with the Crown Prosecution Service (CPS) and the serious allegation of a cat's cradle of deceit and negligence.

A PERSISTENT EVIL

Bad Law is one of the reasons bullying and intimidation are predominant features in today's Rights of Way administration. However, it is a secondary consideration to the problem of good Law being used badly.

The first major landmark instrument of Law of New Labour was The Human Rights Act 1998. Article 6(1) of that Act has it that "…..everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial Tribunal established by law". There are four key words: Tribunal, Independent, Impartial and Fair. A Public Inquiry is not a Tribunal.

Within a year, the Government compromised Article 6. In a surreptitious, migratory and unpublicised move, Independent Inspectors on the Lord Chancellor's Panel were discarded and replaced by former Rights of Way Officials. Of the 11 Inspectors who undertake Rights of Way Casework, 9 came from Rights of Way positions.

It is now Secretary of State DEFRA who appoints Inspectors to chair Rights of Way Public Inquiries. In becoming both Policy Maker and Decision Taker, her situation is untenable because it is *her* policy that is at issue. Inspectors must be Independent of other groups, not dependent upon, or subject to, their control. It is true that Bryan v. UK [1995] 21 EHRR 342 agreed that Inspectors act Independently but that referred to the old regime, before the process became politicised. The European Court believed that where the question of Independence became an issue, the issue could be resolved in the High Court, yet the High Court has no authority to hear cases afresh. It does not resolve the core problem of the unacceptable propinquity between Secretary of State DEFRA and her Inspectors. Rights of Way Inspectors cannot be considered Independent as required by law.

When Rights of Way officials are elevated out of their offices to assume the appointment of Inspector, there is no indication of a change of mindset away from their dedication to the cause of Countryside Access. They are not impartial: the law is routinely broken.

The word 'Fair' has featured prominently in recent manifestos yet in Rights of Way matters, the word is used rhetorically. That is equally the case when

Government talks piously of delegating power downwards to Local Authorities. A Council's executive is represented by the decision makers, the democratically elected members. They are supported by administrative officials, the advisers. In one case study arising from a wrongful designation, the desired solution was to divert the footpath. Eighty-five per cent of the Committee Members in District and Council voted to make the Order. The Officials were politically and doctrinally opposed. Although they are obliged to follow the Members' lead, they appear to derive, indeed encourage, support from local activists and sympathetic Organisations. In this situation, a solitary objection is sufficient to have the Order referred to a Local Public Inquiry.

Secretary of State DEFRA appointed as Inspector a former Rights of Way officer, a member of their professional association, The Institute for Public Rights of Way officers (IPROW). Dorset CID told the Planning Inspectorate that their representative "was identifiable with one side of the argument". This solitary individual set aside the wishes of the democratically elected members, supporting in effect their advisers whose advice the elected Members had considered to be unsupportable.

Whether at an Inquiry or in Court, flights of high hurdles are set along the way to deny Justice to those seeking to protect their homes. There is a cheats' charter in place to target and deprive homeowners of their rights. Usually, the victims are ordinary people, not stereotypical toffs. Four Principles have emerged as representing the *modus operandi* of those Rights of Way officials identified as playing a cruel game:

1. *The drawing-out of procedures and responses over time, with the aim of physically and mentally exhausting homeowners*. As bad an example of this is that faced by siblings Archie (84) and Ivy (78) Peppard in 1973 when they first encountered walkers passing through their farm. Thirty-seven years later, after calculated obstruction by Somerset County Council, and now in poor health, they are yet to witness the return of control of their property. Whereas those opposed to the Peppards have friends and resources available with which to have their way, their victims are invariably alone and vulnerable.

2. *The crucifixion of homeowners by the appalling costs arising from the defence of their homes.* The Mear family lives at Wood Farm, Waresley, near Sandy in Bedfordshire but within Cambridgeshire County Council's areas of responsibility. The Council intervened in a private access dispute between the Mear family and their near neighbours, the Leaches. Allegedly, the Council spent over £345,000 in support of the Leaches' case and consequently lifted the Mears' costs beyond £½m. The Judge said: "To some extent it can be said that Cambridgeshire County Council have been fighting the battle of the Leaches".

3. *The practice of identifying, steering and following one or more Champions or kindred spirits (frequently a close neighbour) towards a collective desired goal.* There is a case study from Maulden, Bedfordshire, in which there is evidence of intimidation and collusion. The homeowner who defended his home against the acquisitiveness of his tormentors lost £70,000 in expenses, including fines, suffered 20 years of heartbreak and collected a criminal record for his trouble. There is a worse case in Somerset whose County Council arranged indemnity against financial loss for their Champion. Nina Hirst, county solicitor, confirmed the arrangement with his solicitors, Zermansky and Partners of Leeds. "I emphasise here the necessity that this correspondence is kept confidential and that it is privileged". Cases such as this attract fellow travellers, the cash-rich with common interests. Allegedly, both the Ramblers' Association and the Open Spaces Society jointly handed over a total of £15,500 to this Champion, their means to their end.

4. *The absence of proper, functional monitoring machinery means officials operate in a climate of impunity where truth is all too often optional.* There is a Quality Assurance Department within the Planning Inspectorate, yet there is no discernible quality, nor the slightest assurance that colleagues will receive full and proper investigation of alleged misdeeds. The complaints process must be independent. There is no justification for the total protection of Inspectors from questions arising from what may be an unfathomable Decision, other than via a restricted Judicial Review. The High Court's attitude limits the concept of equality under the law insofar as it unreasonably insists that Inspectors are entitled to come to the decisions that they do. With

all courses blocked, the option of an appeal to the Ombudsman, Administrative or Political, might appear attractive, yet their terms of reference are so circumscribed as to render the Ombudsman course virtually useless. Unusually in these cases the burden of proof is on the defendant, not the prosecutor who has charge of the requisite documents. There have been reports of the misrepresentation of evidence, the hiding and losing of evidence, alteration of maps and documents, as well as other misdemeanours.

The former Secretary of State DEFRA agreed to meet a West Dorset Delegation to discuss serious concerns arising from Rights of Way administration within his area of responsibility. It is understood that the last minute cancellation of that promised meeting arose through an internal intervention. Evil such as is revealed here will continue to flourish for as long as good men are content to do nothing.

21 July 2010

CONTENTS

A Persistent Evil 2

Section

1. Introduction 7
2. Grass Roots 25
3. West Dorset District Council 45
4. Dorset County Council 51
5. Confirmation 62
6. The Local Public Inquiry 70
7. The Decision 89
8. The Law 109
9. Voodoo 128
10. Intervention 135
11. “No Case to Answer” 147
12. Full Circle 166

THE FRATERNITY

1

INTRODUCTION

When I was young, I recall reading Thomas Paine. Something he wrote remains in my mind today simply because it was a statement I regarded at the time to be implausible. "Government, even in its best state, is but a necessary evil; in its worst state, an intolerable one." I wrote an essay on the subject, drawing in what I remember to have been a remote biblical quotation which suggested that for evil to succeed, all that is required is for good men to do nothing.

From 1992 when I was no longer in the Army, I went off on information acquisition excursions into a number of failed or failing states: Iraq, Burundi, Rwanda, Bosnia, Kosovo and Sierra Leone among others, where I saw all the foregoing to be true. What came as an unexpected surprise was the extent to which Paine's idea also had applicability within our own Local and National governments. Throughout that decade I was concurrently an Honorary Research Fellow in Lancaster University Department of Politics' Centre for Defence and International Security Studies.

My career path into the Army reflected my over-whelming sense in life of the duty to do that which is right and to respect the law. I was answerable to the Crown and therefore, by implication, to the Government of the day. There had been good days and bad days. By the time 30 and more years had passed, the time had come to take refuge in retirement. The days of hesitation in responding to silent hour knocks on the door were over.

Living in a Dorset village is not quite the same as living on a military patch where the ethos is drawn from a common bond revolving around the Regiment. I use that word quite advisedly because 99 per cent of our Dorset neighbours are the salt of the earth, kindness epitomised. It was not long before we became aware that the unrepresentative one per cent and associates cared not at all for us, what we had or what we represented. From our domain, we saw the basest qualities of the human spirit, including the politics of envy and evidence of the Tall Poppy Syndrome. There was

raw malice – mud scraped off boots down the length of the drive and the notice to please close the gate to prevent the dog getting out into the livestock ignored.

An interest in anthropology is a useful tool in attempting to comprehend social relationships yet we had been unprepared for what was entirely unexpected within our new community. The power and influence these people wielded was out of all proportion to their numerical representation, a representation with ascending linkage through the District and County Councils, The Planning Inspectorate to DEFRA itself. It is a two way street, rather like a ladder with rungs allowing the passage of intentions both up and down from local to national government and vice versa. The fact remains, that the evil is state sponsored, maleficent, unkindly and injuriously disposed.

The stereotypical villain in matters of Rights of Way, (it is now somewhat compromisingly called Countryside Access) is more often than not painted to be some villainous landowner depriving walkers from hard working families of their birthright. In reality the reverse is more prevalent.

What exists out there can be described as a politicised Committee of Public Access represented in numbers throughout the country. Our local cadre had the aim of depriving us of our pre-existing right to live in a state of privacy and security. That initiative went back as far as 1997. With 175,000 miles of pathways under control with the exception of the 1,000 mile long coastal path, there were no longer significant challenges of significant paths to be claimed. For a group which records its victories to the nearest half mile, assaults upon homes, including those of the apparently privileged, proved absolutely compelling. It was into such an environment that we became involuntarily embroiled. The problem is that in the main, the people affected were not patricians but the ordinary homeowner or trustees of sorts living in agreeable listed buildings often set in pleasant gardens. To the latter falls the costs attendant upon the responsibility that comes with the upkeep of part of the nation's heritage.

A Countryside Rights Association had been formed to co-ordinate individual homeowners' interests but since the individuals were also invariably deeply engaged in protecting their homes from access claims, they found the pressure and intimidation too overwhelming. The Countryside Rights Association collapsed. It is evident however, that there are inkspots of resistance throughout the country. The National Freeholders

Protection Association (NFPA) founded in June 2002 by Welsh hill farmers is a case in point. NFPA has complained that Councils

- Have acted beyond their powers in recording rights of way which do not exist
- Have compiled Definitive Maps showing alleged Rights of Way which are misleading and incorrect
- Do not have the authority to apply Highway Law to private property and have no power to confiscate private land.

The tormentors, among whom were those who had measurably less than the tormented, draw their strength from absolute uncompromising control, facilitated through absolute reliance upon an inequality of arms. Having hijacked the regulatory system, they drew up a strategy embodying a plethora of protective safeguards as to make a mockery of the law. As and when each victim raised his or her head above the parapet in protest, they so often became subjected to summary execution. Execution is used advisedly. There have been suicides and premature stress-related deaths. What was happening to them in their own country fell beyond their comprehension. What nature of indictment is it that law abiding citizens can be tormented by something apparently as innocuous as the arrival of a letter from their County Council, possibly containing the details of the latest scam aimed at depriving them of rights or possessions? What troubled their minds so much was the inability to solicit either sympathy or assistance to the extent that minds were in a perpetual state of turmoil, unresting day or night. One needs to pause to contemplate the nature of person content to inflict this level of suffering upon other human beings. Our own journey of over a decade resembled the negotiation of a long, dark corridor with doors to the left and right, all locked to deny access.

During the course of our fighting our corner we have observed from our own experience four common principles of an appreciable number of Rights of Way officials' modus operandi:-

1. The drawing out of procedures and responses over time with the aim of physically and mentally exhausting homeowners. Supporters fade away, convinced that a dead horse is being flogged.

2. The crucifixion of homeowners by the appalling costs arising from the defence of their homes.

3. The practice of identifying, steering and following one or more Champions or kindred spirits (frequently a close neighbour) towards a collective, desired goal.

4. The absence of proper, functional monitoring machinery means officials operate in a climate of impunity where the truth is all too often optional. The casual indifference to truthfulness derived from a reassuring sense of impunity is the leitmotiv of this study.

A support network has developed almost by accident to provide assistance to families intent upon defending their homes yet more often than not, not having either funds or experience to do so. There is unhealthy, overweening confidence among the opposition that their opponents will be forced to capitulate due to the exhaustion both of spirit and funds. On occasions, families do succeed in defending their own homes and when they think it is all over, their tormentors have been known to return to the attack, fed by charitable funds or money liberated from ratepayers' coffers.

There are members of the community sufficiently incensed by this practice who come forward to offer support and assistance. In the south, there is Graham Plumbe in Hampshire, Marlene Masters in Somerset and Pongo Blanchard in Devon. I asked Pongo for his Christian name. He said 'Pongo'. Pongo was a typical former Royal Navy officer imbued in the best traditions of the country and an insistence at all times of doing that which is right. Once the word was out how we had been dealt with by the Government, he and Marlene came to our house to offer their help.

I spoke to Pongo in December 2009. He told me that he believed he would have to give up his Rights of Way advice service. He was absolutely mustard on the law but confessed the cut and thrust in Tribunals was stressing him considerably. He received no quarter from sharp Barristers.

On Sunday, 31 January 2010, Pongo went to a local church where he read the lesson of old Simeon meeting the Christ child, declaring "Lord now lettest thou thy

servant depart in peace, according to thy word". Within an hour or so, Pongo had died, aged 67.

There is a golden conflict principle that when assessing a potential adversary to attack, the attacker must first be assured that the chosen victim is incapable of striking more effectively than the belligerent. Whether that is emblematic of our family's situation remains to be seen. Picking up on our opening theme, what is certain is doing nothing is not an option.

This work is written in a narrative rather than in a formal style because it is important it is read. The story is built up incrementally in much the same way that eighteenth century authors wrote their novels. The intention that each Section should stand alone has resulted in some repetition.

Authenticity requires the naming of names. Those concerned have nothing to fear except the truth. I am certain that our opponent believed we would eventually roll over, succumb. We do not do that.

My own credentials for fighting our corner, not only for justice for ourselves but also for the many who have also suffered bullying and intimidation, are as follows:

- 1983 Elected Fellow of the Institute of Management. Know how Departments should function.
- 1989 Elected Fellow of the Chartered Institute of Transport. The Highway Act 1980 presents no mysteries.
- Read Law at Cambridge, albeit International Law as a component of a degree in International Relations.
- Hands-on legal experience as Squadron and Regimental Commander and President of General Courts Martial.
- Experienced in the analysis of Decision Making as member of the Directing Staff at Army Staff College Camberley and Australian Command and Staff College. Decision Making is a frequent component in my writing as evidenced by this quotation from a review of "A Brief History of Modern

Warfare" in the British Army Review: "For much of the value of this book lies in the analysis of the decision making."[1]

- Took premature voluntary retirement in 1992 whilst serving in the rank of Colonel as Head of British Army's Defence Studies.
- Author of a dozen books, principally politics and conflict that have taken me among other places to Manchuria, Manila, Borneo and French Polynesia. While this treatment is not that of a book, it is different in one other important respect in so far as I did not go looking for it; it found me.

Invariably, it is the weight and volume of facts which serve to close down a conspiracy theory. What we have here is different insofar it is the profundity of facts which prove that what we have here is no theory. Rare has been the necessity to rely upon circumstantial evidence. There is no limit to the length of the paper trails of the self assured, unprepared for the challenge and who, in our attempt to achieve dialogue, took refuge in their facility to send but not receive.

The breadth of this exposé, a modern day *J'accuse*, a victim's Tale, extends at the micro level from Parish pump chicanery through every intermediate step to the macro level embracing national Government. The honest observer is left intrigued, attempting to contemplate the circumstances under which Secretary of State DEFRA was persuaded to take a U-turn on his earlier decision to meet a concerned West Dorset Delegation intent upon explaining to him precisely what was going on in his Department of State. How, for example, was a Government officer able to persuade The Sunday Telegraph to remove an online article regarding the conduct of a colleague without having any evidence to support a claim of inaccuracy. Similarly, how was it that a Government legal representative was able to enter into dialogue with the Crown Prosecution Service, as a result of which and contrary to the available evidence their representative was deemed to have "no case to answer"?

There is nothing to be gained in upsetting the Judiciary. Writing as a person who, for over thirty years, has pursued an ethos of doing what was right and a commitment to the upholding of the law, there came the shocking realisation that the hallowed concept of equality under the law is myth.

[1] British Army Review No. 145 Autumn 2008 review of: Richard Connaughton, A Brief History of Modern Warfare (London and Philadelphia 2008).

What has been said over relatively few lines might appear unbelievable. What we will do now is set out three recent cases from Derbyshire to Dorset, followed by the account of this family's journey through the mangle.

In January 2009, Lord Chief Justice Judge described every man's home as a castle. His namesake, the Justs could not concur. They are committed farmers whose lives were turned upside down by "Just one bloody man".

The Justs

The Justs farm at Dale Abbey in the Erewash Valley, close to Nottingham and Derby. They are committed farmers and environmentalists and Mrs Just supported Blair's New Labour. They are an ordinary family who do not fit the stereotypical impression of farming Toffs. Their farm has been in the family for over one hundred years. A strong bond between the family and the land has built up over that period to the extent that farming is more than a business to them. They were the first farmers in their area to join The Countryside Stewardship Scheme which has developed over the years to the parties' mutual benefit. They have a positive attitude towards walkers and wildlife enthusiasts who exercise their rights in using the many footpaths which cross the Justs' land.

The source of their present difficulty lies in a 1997 initiative of the British Horse Society (BHS) which included a claim to create a bridleway where no Public Right of Way exists or has ever existed, namely through their front garden/yard. The local Ramblers group and Parish Council have voiced their opposition to the BHS proposal. The amount of stress engendered among homeowners cannot be imagined by those not involved who, in the main, do to no one what they would not want done to themselves. The effect upon farmer Charles Just has been enormous, having to fight others' aspirations to secure access to the most private areas within the family's home and, at the same time, run a business, bring up a family and be there for his wife Anne in her battle against cancer. The conditions for developing cancer could be affected by levels of stress in a person's emotional environment. 'Explain just how much this is affecting us', pleaded Anne Just. 'Charles's dad committed suicide because of this, not that it is something Charles would raise because he finds it all too upsetting. This bloody business was a large factor in his dad's depression.' The bullying, intimidation and torment – common features in this area – can and do kill.

It is difficult for those who have examined the facts to comprehend why the Justs should be in such a state of difficulty and despair. Derbyshire County Council has recommended that a BHS application be dismissed through lack of evidence. Similarly, a meeting of Derbyshire County Councillors rejected the application, as did the Licensing Regulatory and Appeals Committee. Unwilling to accept the fullest examination of the facts through local, democratic procedure, the petitioners insisted upon having their way. They achieved that aim by appealing directly to the Government Inspector in DEFRA's North East Offices (allegedly an ex Hertfordshire County Council Rights of Way officer), allegedly Peter Millman. That one, single, Government official ordered Derbyshire County Council to make an Order which they had consistently opposed. 'The Inspector in question', wrote Charles Just, 'had not walked the route, he admits to this in his statement, and has totally ignored the recommendations of our democratically elected Council.'

'As a result of the actions of this individual inspector, we find ourselves facing the prospect of a stressful and expensive Public Inquiry, having to employ legal representatives which we cannot afford, to fight a vociferous self-interested organization which has thousands of members, charitable funding and, it seems to us, the support of someone in the Government Office in the North East. It does seem to be a strange situation we find ourselves in, and it would be a sad irony if we were forced out of business and our home, by the actions of a government we helped to elect. Just one bloody man!'

The Peppards

Archie, 84 and Ivy Peppard, 78, are siblings, retired farmers who have lived all their lives in a rustic farmhouse built 160 years ago by their grandfather John. Turn Hill Farm sits in the secluded village of High Ham, near Langport, with views across the Somerset Levels.

Both Archie and Ivy are in deteriorating health, worn down to some extent by their battles in 1987, 1992, 1995 and 1997 to maintain privacy by keeping a gate to their farm closed. The problem goes back to 1959, after work had begun nationally in 1951 to record public rights of way upon new definitive maps. Tidying up loose ends included a wrongful practice known as linking – i.e. rather than leave paths ending in suspended animation, the authority extended the paths to meet the nearest highway.

The authority had no obligation to consult homeowners and hence no objection was registered. The presence of the new, extended footpath on the Turn Hill Farm private access road went undeclared for 14 years.

The first inkling the Peppards had of what Somerset County Council had done was in 1973 when walkers began to pass through their farm. This was their home, through which the Peppards knew walkers such as Ramblers had no legitimate right of passage. At first Archie stood his ground, confronting walkers, insisting they had no right of access. Following burglaries at his home (now easily accessed by the alleged public footpath) Archie erected a gate. This resulted in a claim that he had wilfully obstructed a public highway and the gate must be removed. Archie declined. On one occasion he was arrested. No fewer than three police cars came to take him away. To add insult to injury, on another occasion South Somerset magistrates ordered Archie to pay Somerset County Council £100 costs and gave him a twelve month conditional obstruction for this alleged wilful obstruction.

"We are determined to keep fighting it and we are not going away", said the almost deaf Archie. "We are just not going to give in", agreed Ivy Peppard. "The path goes right past our front door and you do not know who is around these days. I think we should know if it was a public footpath or not – it's just common sense." Then, in 2009, new evidence was discovered which would allow the injustice to be rectified through proper consideration. The Ordnance Survey Parish Survey Boundary Remarks Book, dated 24 April 1883, reveals the track in question to be annotated 'Accommodation Road', which means it cannot be considered ever to have been a public footpath.

In April 2009, a new application for a Definitive Map Modification Order was accordingly submitted to Somerset County Council. Mrs Marlene Masters held out no great hope for the Peppards. "It is more than frustrating and we know very well that all they are going to do is put it back on the shelf." What Mrs Masters foresaw therefore was the application of the First Principle. The drawing out of procedures and responses over time with the aim of physically and mentally exhausting homeowners. The imposed delay would mean that in a short period of time, the problem posed by Archie and Ivy Peppard would no longer exist.

The County Council insisted they had a system of awarding priorities to applications in accordance with their Rights of Way Improvement Plan 2006 – 2011 score card, "which does not provide an opportunity to take applications out of turn on the basis of fairness and consistency to all applicants across the County." The process had become constipated by Access applications. Forty-four applications had been scored, with a further 113 from a local Bridleway Association awaiting scoring. "This unequivocally demonstrates", said Mrs Masters, "that Archie and Ivy's application will never see the light of day – because of Somerset's policy, it must 'take its turn' behind all these, and unbelievably, any other future Applications submitted, and all because of an intransigent policy that where a person has already made an Application they must wait their turn."

"This is a huge miscarriage of justice and the County Council has the power to change it", said former County Councillor and current South Somerset District Councillor Henry Hobhouse. Many other Counties take applications according to their merit. Rather than leave the Peppards in limbo, the Council could say that it is disinclined to make the Order which would then allow the Peppards the right of appeal to the Secretary of State.

The political change within Somerset County Council has had no apparent effect or influence upon Rights of Way. The approach via the Secretary of State could see resolution within 6 weeks either by directing "the Council to make the Deletion Order requested or confirm that the application does not meet the required criteria. At that point the matter could be discussed in public, by the public and decided by an independent arbiter and not self serving public servants protecting their adopted position", said Andy Dunlop with 20 years' experience of Rights of Way Disputes. "As it is, by not putting it in front of the elected members for determination, the Council appears to confirm it is both a coward and a bully."

The more doggedly Somerset County Council's officers resisted requests to take action on the Peppards' behalf, the stronger became the determination of those wishing to see fair treatment for the Peppards. A legal opinion was sought. Leolin Price CBE QC replied, "The evidence is conclusively against there having been any such public use of the path or track as could have created any public right of way over it at the time of its appearance on the Definitive Map. The history thereafter is of manifest injustice to the Peppards and their case for deletion a case so formidable that further delay in

dealing with it is really disgraceful. Justice so delayed is justice denied; and an assumed administrative priority for newer applications cannot reasonably justify any further delay." The Peppard circumstances are discussed in further detail at Annexe B to Section 2.

The Pierces

Joseph and Ethel Pierce lived at 176 West Bay Road, Bridport. Both are elderly, in their 70s. The couple purchased their house in 1994. The solicitor's search, three letters in the deeds from the County Surveyor's office dated 1975, 1982 and 1986, and reference to the County Definitive Map, all indicated there to be no Right of Way across their garden. Then, to their consternation, four years later, neighbours discovered a 1935 diversion order showing a footpath running alongside 176 West Bay Road, despite it being blocked off by previous owners. A Hearing in 2003 adopted the established Rights of Way policy of 'once a highway, always a highway' – in this case a Footpath. And, despite strong mitigating factors, ordered the restoration of the footpath through the Pierces' garden. The Pierces accordingly applied for a diversion. West Dorset District Council heard the Pierce application without an officer recommendation and approved the diversion. The Pierces had two near neighbours as the source of their difficulties. These two principal objectors triggered the mandatory Local Public Inquiry. A principal objector asked the Land Registry to remove the Footpath from Mr and Mrs Pierce's Registered Title, something they were not prepared to do. A national pressure group, the Open Spaces Society backed the objectors, one of whom is a society member. He had gone to the Magistrates' Court for an Order to require Dorset County Council, as the Highway Authority, to deal with the obstructed footpath.

The Local Public Inquiry was held on 28 and 29 September 2005. The duly appointed Inspector agreed that the Pierces are the owners of the land crossed by the existing footpath. The objectors advanced a safety issue concern. The Pierces' solicitor insisted that the objectors' safety objection smacked of 'special pleading.' Nevertheless, the Inspector ruled the proposed diversion to be less convenient than the path it was proposed to replace. An objector pointed out that the existing path was 48 metres long and the diversion 132 metres long, proof therefore of being substantially less convenient. The Inspector noted that 'the diversion would constitute an increase of 2.75 times the distance.' That seems to be an unreasonable observation bearing in mind the relatively short distances involved.

A petition signed by 140 local people was produced in support of the Pierces' diversion only to be arbitrarily and unjustifiably discarded by the Inspector. 'No information has been provided as to how the signatures for the petition were collected, nor whether any of the signatories would use Footpath 22 if it was not obstructed or would use the proposed diversion.' These prerequisites relate to a form of Inquiry without the benefit of a format. If the Inspector considered these points to be significant, were they put to the Applicants or their representative? The Inspector noted that an unidentified objector had also signed the petition, which 'causes me to wonder how that could have occurred.' The possibilities are numerous. The Inspector then wondered whether those who signed the petition knew what they were signing or did they sign, as claimed by an objector, 'to fit in.' There is a statement and map appended to the petition: 'We, the undersigned wish to register our support for the diversion of FP 22, as shown on the enclosed map.' This is a clear and unambiguous statement. 'I do not feel able to give much weight to the petition' declared the Inspector.

The Inspector admitted giving some weight to the Ramblers' Association views in support of the order, yet neglects to say what they are. If considering whether a path is substantially less convenient to the public, it is highly relevant to acknowledge that Ramblers admitted they 'do not enjoy walking through people's gardens.' The Ramblers' admission to the Inspector (Mrs Eden) that their members did not enjoy going through peoples' homes should have featured prominently within the Decision document. This particular Inspector has shown in this and also the forthcoming Wallhayes case that she ignores inconvenient truth. In short, she is biased.

The Inspector concluded that the extra distance involved in going on a nearby path, Footpath 21, (the District Council said this was minimal) and sharing the proposed path with rare vehicular traffic, also minimal, 'mean, on balance of probability, that the proposed diversion would be substantially less convenient'. The evidence does not support such a conclusion.

The principal witness was unrepresented. Christopher White of Milne and Lyall found the favour afforded the objectors by the Inspector unreasonable. She treated them as her Champions. Joe Pierce wanted to know the reasons why the activist were determined to see a footpath running through his garden. His solicitor

Bridport news
Friday, November 4, 2005

Path will force us to sell home

Argument failed to sway inspector

A COUPLE's case to divert a footpath in their garden in West Bay Road was not a strong enough argument, ruled planning inspector Erica Eden.

She said sharing a footpath with vehicles and making it longer were sufficient reasons not to divert it.

Ms Eden was ruling on the footpath that runs through the garden of Mr and Mrs Joe Pierce at 176, West Bay Road – a footpath which was not on the definitive map when the couple bought their house in 1995 and which had already been blocked off by previous owners.

A planning inquiry in 2003 concluded that once a footpath always a footpath and it was added to the definitive map. It was then that Mr and Mrs Pierce applied to have the path diverted so it would not go through their garden.

Planning inspector Ms Eden agreed that it would be beneficial to Mr and Mrs Pierce for the footpath to be diverted. However as the diversion would take in a 3.5metre-wide stretch of private road used by vehicles and it was this, she said, that was a significant factor.

She said: "It seems to me that use by vehicles to the residential properties and the guest house establishment is not insignificant and although use for the (Melplash) agricultural show is for a relatively short period once a year the type of vehicles means that I do give it some account...

"I agree with the objectors that sharing a footpath with vehicles would increase the hazards for pedestrians. I am not sure that the suggestion of pedestrians waiting for cars to reverse deals with the point about children who have gone ahead of adults."

Ms Eden said she understood the footpath had aroused strong feelings locally with five properties along West Bay Road and there was a petition signed by more than 120 people in favour of the diversion.

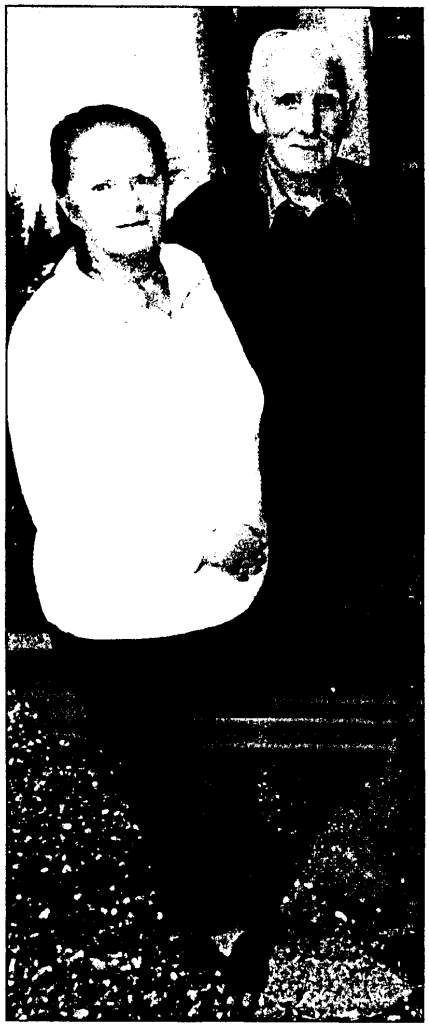
"No information has been provided as to how the signatures for the petition were collected, nor whether any of the signatories would use Footpath 22 if it was not obstructed or would use the proposed diversion.

"I note that an objector has signed the petition which causes me to wonder how that could have occurred. Did those signing understand what they were signing? Consequently, I do not feel able to give much weight to the petition."

Another reason not to grant the diversion, said Ms Eden was that it would increase the length of the footpath by 2.75 times the existing route.

The Courtices from 170 West Bay Road and the O'Driscolls of 182A West Bay Road challenged the county council's approval of the diversion which triggered the public inquiry last month. At the inquiry Vic Courtice said the diversion would cost him his privacy, security and safety and devalue his home.

Mr Courtice said he bought his house four years ago – but would not have done if there had been a footpath there.



HEARTBROKEN: West Bay Road residents Ethel and Joe Pierce outside their home where the footpath will run

Picture: JOHN GURD JG0331

Couple lose fight to prevent right of way

By RENE GERRYTS

AN elderly couple who have spent their life savings fighting a footpath battle, which has affected their health, lost their bid to move the path this week.

Pensioners Joe and Ethel Pierce say the four-year wrangle about a footpath running through their garden in West Bay Road has taken its toll and they are now thinking of selling up and moving away.

The couple bought their house in 1994 and solicitor's searches, the Dorset County Council definitive rights of way map and three letters in the deeds from Dorset County Council's surveyor dated 1975, 1982 and 1986 all said there were no rights of way across their property at 176, West Bay Road.

Then four years ago their nightmare began when some neighbours discovered a 1930s diversion ordering showing there was a footpath running beside the Pierces' home.

The Pierces have now been through two public inquires – one to establish whether there really was a footpath and one to try and divert the path.

Now that the legal wrangling is over the couple have spoken about their anguish through the long ordeal.

Mr Pierce said: "What's killed me most is that we have done nothing wrong. It is the council's fault not ours. We are in this situation through no fault of our own. There should be justice for people who find themselves in a situation like we have."

They bought their house in good faith, their solicitor acted in good faith believing there was no footpath, they said.

"We have had no legal aid, we have had no help with this. It's devalued my house by £10,000," said Mr Pierce. "We have had no holiday for four years.

"We are waiting for our solicitor's final bill. It is going to be enormous. We don't know if we can stay here.

"It has been four years of unhappiness. We were complete strangers to the area when we came and we were guided by our solicitor and surveyor.

"We are very ignorant to all the law – this is the first time I have seen a solicitor like this in my life."

Both said their health had been ruined.

Mrs Pierce said she has suffered a nervous breakdown and goes around crying all the time and her doctor has put her on tranquilisers.

"I have never been on them in my life before," she said.

Mr Pierce has written to the chief executive of Dorset County Council asking for justice but holds little hope.

"We would not have bought the house if we had known there was a footpath here," he said.

"They say they'll put gravel down on the path but it is going to cost us £1,000 to put the fence up and we will have to knock the shed down, cut down an apple and a pear tree and get rid of our plants."

They have already called in the estate agents to talk about selling up and are also anxiously waiting to hear if they have had costs awarded against them for the public inquiry.

put that question to the principal objector, allegedly only in residence for a small part of the year. She refused to answer. When he pressed her for an answer, the Inspector told him to back off. Shortly after the Decision Order was granted in favour of the objector, her house was put up for sale.

The way the decision had gone astounded the Pierces. Joe Pierce said: 'What's killed me most is that we have done nothing wrong. It is the Council's fault, not ours. We are in this situation through no fault of our own. There should be justice for people who find themselves in a situation like we have.' The Pierces have very little by way of assets that can be described as disposable income to pay for legal fees, but just sufficient to disqualify them from Public Funding. 'We are very ignorant of the law', said Mr Pierce 'this is the first time I have seen a solicitor like this in my life'. Both claimed their health had been ruined. They had not had a holiday for five years. Mr Pierce was admitted to hospital for an operation and his wife suffered a nervous breakdown.

Soon after Mrs Eden's Order Decision had been made, an Officer of the County Rights of Way Office called. According to the Pierces and despite the due process having not been exhausted, the man from County Hall told them that the date for the Footpath to be opened had been brought forward to 30 December 2005. Work accordingly undertaken by the Pierces cost them £928. They asked the man from the Council what would happen if the path was not ready in time. Allegedly the Rights of Way man said he would bring his own contractors and give them the bill. The police would be called. 'We should have refused and let the police take us away but we have this tradition of being on the right side of the law. Our sons are in the police and the last thing we wanted was to embarrass them', said Mr Pierce.

When the Rights of Way officer visited the Pierces, he is said to have told them that the new path should be 5 feet wide and that their solicitor had agreed. That was not the case. The original plans when the estate was laid out show that the occupants had access to their rear garden along the side of their house. They can no longer do this. Moreover, they had to forfeit a slice of their mature garden including the removal of fruit trees. All this work had been rushed through before the news that the Pierces' application for leave to make an application for judicial review had been granted by Mr Justice Collins in the High Court.

‘It is disappointing’, said Christopher White, ‘that an elderly couple whose home has literally been desecrated by an unsightly wooden fence that prevents them from getting around to the back of their house should be debarred from justice by the appalling cost of litigation nowadays and the fact that the only way in which an irrational decision by an Inspector can be challenged is by High Court proceedings in London’.

A Mr. W.G. Powrie FRICS sat through the Inquiry. He wrote a letter of complaint to The Planning Inspectorate criticising Eden’s Decision and her conclusions which he found “puzzling.” He concluded that “The cause of natural justice is not well served by this crass and illogical decision.” He relates how The Inspectorate took a long time to reply, claiming that the file had been mislaid. Nevertheless, the case had been reviewed by a compliance officer and was judged to have been correctly decided. Those who argue that the Decision process should be subject to confirmation by an Independent authority in order to overcome a suspicion of bias will find no comfort if the Confirming Authority is represented by the Inspector’s colleagues in The Planning Inspectorate.

Another neighbour John Bolton, wrote separately to the Editor of the Sunday Telegraph, his letter broadly similar to that of W.G. Powrie’s, concluding that Eden and those she had supported “destroyed the retirement dream of a decent, elderly couple who lost a lot of money and moved away, distraught.”

The Pierces’ solicitor announced his preparedness to work pro bono. However, it is normally the case that Barristers represent matters in the High Court and financial provision has to be made in the event that the Planning Inspectorate’s Order Decision be upheld. The Pierces could not afford the justice they so richly deserved. Their solicitor approached the County Council for support on the reasonable grounds that it had been their negligence which had given rise to the Pierces’ predicament. Jonathan Mair, Head of Legal and Democratic Services, is said to have declined.

In the Pierces’ case the concern that they could not afford justice became academic. Shortly after Joe Pierce was released from hospital following his operation, he and his wife were visited by Richard Connaughton. He discovered that the 5 years in which they had defended their home had wrought a terrible toll upon

their health, their savings, patience and stamina to keep going. They had been beaten into submission. 'In my heart', said Mr Pierce, 'I want to go on with it since we have done no wrong'.

It is unclear what aspect of the Pierces' appeal had impressed the then Mr Justice Collins. When their solicitor was asked to describe the main reason for the failure to have the Order made to divert the footpath out of the Pierces' garden, he said 'the bias of the Inspector'. The Inspector was Mrs Erica Eden.

Commenting upon the overturning of his Council's Orders on not one but two separate occasions by the singular Mrs Eden, the Chairman of West Dorset District Council said: "In all this there is something wrong. The evidence clearly shows this to be so, yet I find difficulty in getting those in authority to either listen or respond. Officers and officials are not inviolate and must be called to account, otherwise the course of justice is perverted, as, to my mind, it has been in the West Bay Road (Pierces) and Wallhayes (Best and Connaughton) cases."

Seemingly the exception to those around him with deaf ears, the Secretary of State DEFRA, The Right Honourable Hilary Benn MP agreed to meet a Delegation from West Dorset led by local MP, The Right Honourable Oliver Letwin MP and the Chairman of the District Council both keen to discover what was happening within his Department. Oliver Letwin sent Hilary Benn a synopsis, an agenda of malpractice for discussion at the proposed meeting set for 9 October 2008. On 7 October 2008, the meeting was postponed indefinitely. During that period, the synopsis was fleshed-out, representing an indictment of the management of Rights of Way. Dorset CID referred the events about to be set out to the Crown Prosecution Service (CPS) . It seemed that nothing could encourage DEFRA to reconsider their earlier agreement to listen to the concerns of Dorset's elected representatives.

Oliver Letwin did meet Hilary Benn for an early indication of progress with the proposed meeting with concerned people from his constituency. The Secretary of State admitted he knew of the CPS Inquiry but according to Oliver Letwin, had said "that he has personally reviewed the whole process and had looked at the record of past Inquiries conducted by Mrs Eden and that he did not see any compelling evidence of bias."

To what extent Mr Benn had found the time to do precisely as he described or had been content to take the strong advice of interested senior Civil Servants active in this area is of course unknown. One of his functionaries was found to be remarkably well briefed as to the exchanges between Mr Benn and Mr Letwin. "I know that the Secretary of State for Environment, Food and Rural Affairs suggested to your MP Oliver Letwin, that the best course of action for you now would be to make a fresh application for a diversion order." The best course of action is to take the essential remedial action to ensure that if such a step were to be taken, there would be a regime in place which conformed with the law of the land in so far as it guaranteed each citizen a clear established right to a fair, impartial and independent Inquiry. Until that is done, any further action towards making a fresh application for a diversion order would prove nugatory. A Secretary of State and his Department can never be better than the sum of the quality and dependability of the people who work there. If there is evidence of inadequacy, unreliability or untrustworthiness there is a process with which the situation may be rectified. If the Secretary of State habitually signs nonsense letters drafted by public servants undeserving of his trust then he becomes equally as culpable as they.

At the 2009 Labour Party Conference, Gordon Brown established fairness as the party's theme for the year. It reappeared as a concept in the Party's 2010 Election Manifesto. The antics within DEFRA and Dorset's Local Government could not be construed as having been fair. No one of sound or fair mind would agree that that which is about to be set out bottom up is in any way how the civilised behave.

A line exists between good and evil which requires a conscious effort to cross. He or she prepared to take that risk and yet be so incautious as to leave a clear, identifying trail has no grounds for complaint. The narrative style of this Report is deliberate. So much effort has been dedicated to its suppression. We want it read.

The author is aware that he switches freely from one tense to another. It is hoped that the short sections facilitate the reading of a long document covering events over a 12 year period.

What is about to be exposed may be thought to be exceptional. If we go back to 10 February 2010, to the case of MI5 and Whitehall's involvement in the Binyam Mohamed torture 'cover-up', it cannot escape attention that key aspects which apply

to the Foreign Office apply equally to DEFRA. Only the scenarios are different. Lord Neuberger, the Master of the Rolls, said that in the Binyam Mohamed case there had been such a 'culture of suppression' in the Security Service and the Foreign Office that the public and courts should 'distrust' any assurances that they respect human rights. He also accused MI5 officers of lying to Parliament about the agency's role in the torture of a former Guantanamo Bay detainee and said civil servants in the Foreign Office withheld information from the Foreign Secretary.

In the case of DEFRA and the Secretary of State, readers should note the similarities, the culture of suppression, the recommendation that the public and courts should distrust any assurances of respect for human rights, Officers' lying and civil servants withholding information from the Secretary of State.

2

GRASS ROOTS

Wallhayes is a Grade II Listed hamstone building circa 1620, formerly a Yeoman's two up- two down cottage with subsequent addition and situated in the Domesday hamlet of Nettlecombe in the Parish of Powerstock and Norton Poorton, West Dorset. Two lanes enter the hamlet ending in cul-de-sacs. The building fronts onto Castle Mill Lane.

Behind the house, looking southward, there is a 1¾ acre garden comprising a series of 'rooms', beginning west to east with a vegetable patch, lawn, orchard and a woodland strip, a refuge for deer, foxes, badgers and birds. Beyond the garden there is a large field also named Wallhayes, previously sub-divided into three smaller fields then under the ownership of Wallhayes which, with the adjoining Home Farm, was known as Nettlecombe Dairy.

The vegetable patch was the site of the cattle stalls. The cows accessed the fields to the south through the farm gate at B. A domestic, stand-alone path ran from the dairy at B along a hedgerow, since grubbed out, to A immediately to the west of Powerstock railway station. That path is clearly indicated on Ordnance Survey maps of the day running between A and B and no further. Early in the twentieth century, Wallhayes and Home Farm went their separate ways, the former becoming exclusively a private home under the ownership of the Sanctuary family.

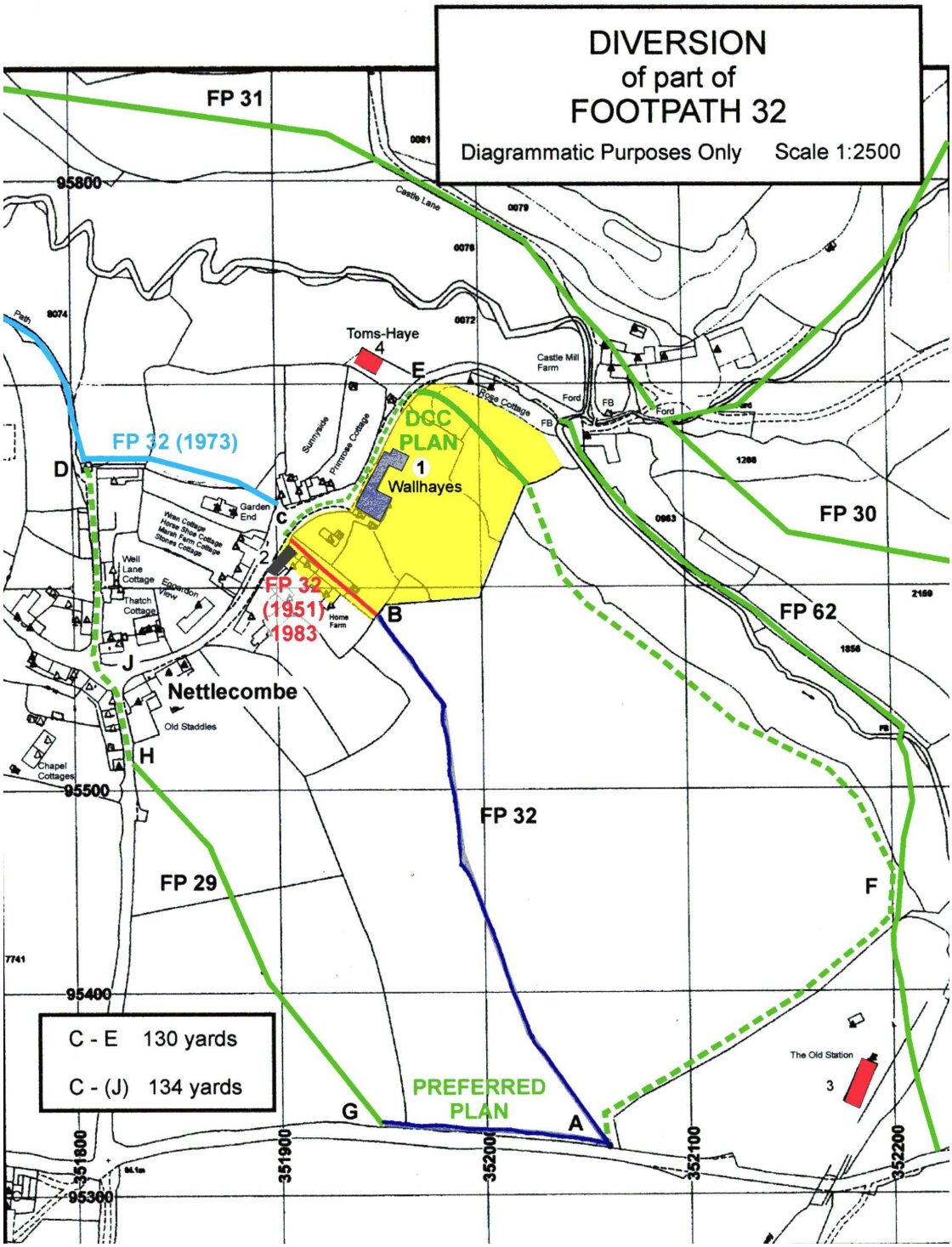
On the western boundary of the enclosed property runs an administrative building dedicated for a carriage, a stable, tack room, kennel and apple store. The front of this building has hard standing running down to what was then the tall, solid, northern gate on Castle Mill Lane. That gate was later replaced by a Dorset-style field gate. At the southern extremity of the end of the building, there is a garden path running down to the gate at B.[2]

For our purposes, the relevant period follows the Second World War with a Mrs. Sylvester Bradley in residence. On her death, my in-laws bought the house in 1961 when my father-in-law retired from the Royal Navy. His widow aged 91 still

[2] The use of designating letters has been restricted in the early sections due to complications arising from the tampering with the evidence.

lives at Wallhayes, ownership having been transferred to her daughter, my wife Georgina. This act of inheritance had an unexpectedly strong negative influence upon a number of opponents. They were unaware what the Trusteeship of a Listed Property involves in terms of cost and responsibility to the owners.

In 1949, an event occurred which in effect set a dormant bombshell under the place. A full description is essential in order to answer the obvious question arising –



why buy a house with a Right of Way passing through and then dare to complain? The National Parks and Access to the Countryside Act 1949 (the Act) came into force in December 1949. The Act required Parish Councils to assist County Councils by identifying public paths i.e. footpaths, bridleways and 'roads' used as public paths which could be 'reasonably alleged to subsist' in the Parish. Whilst there was no legal duty to prepare a Parish Survey Map, this was advised by way of guidance approved by the Ministry of Town and Country Planning.

To assist Parish Councils in their statutory duty to assist County Councils and in their non-statutory duty to prepare a Parish Survey Map, an advisory pamphlet was circulated to all Parish, District and County Councils. It was entitled "Survey and Maps of Public Rights of Way for the purposes of Part IV of the National Parks and Access to the Countryside Act 1949. Memorandum prepared by the Commons, Open Spaces and Footpaths Preservation Society in collaboration with the Ramblers Association; recommended by the County Councils Association and approved by the Ministry of Town and Country Planning" ("the 1950 Memorandum") dated January 1950." A number of Circulars followed the 1950 Memorandum to address matters arising. Circular 91 for example advised that where any path was in doubt it should be included rather than omitted.

The path ending as it did at B, 75 metres to the south of Castle Mill Lane, appears to have presented a challenge to the Parish Surveyor. His solution appears to have been to create useful links by extending the path northward on either side of Home Farm to meet Castle Mill Lane. There is no evidence of Dedication, expressed or presumed, the assumption, presumably, being that neither the landowner nor the homeowner would object. In 1958, Messrs. Humbert, Flint Rawlence and Squarey representing the landowner lodged the Estate's position that the Estate did mind. The westward extension, on their land, had never existed and it was accordingly deleted.

The surviving extension remained in place through Wallhayes despite none of the guiding factors in the 1950 Memorandum being applicable. Evidence taken from people in the village at the time show there to have been no pre-existing Right of Way through Wallhayes. There is conclusive evidence against use of the extended path through Wallhayes by the public and hence no corresponding right for its inclusion on the Definitive Map.

If there was an acknowledged way in existence prior to 1949 which was "repairable by the inhabitants at large" then, it could be defined as a highway. By the same definition, it is was not so repairable then it could not be described as a highway.

The exceptions under which a highway could be recognised other than above are:

- If the public at large can prove they have used a Way as of right without interruption for 20 years it can be recognised as a highway.
- If an authority has created or diverted a highway by order using due process and having compensated the owner.
- If the highway has been dedicated by the owner. It is essential that the exact dimensions and location are shown in the Survey. The onus of proof rests upon the authority responsible for the care and maintenance of the relevant document's meaning, the onus of proof rests with the Authority not the landowner or homeowner.

In the case of Wallhayes therefore, the furtive marking of lines on public maps and then, in the absence of any legal participation, holding them to be highways (that is, without proper and accurate Surveys and without any reliable evidence that the public at large has ever used the alleged highways – as was required by law), Councils have acted unlawfully because in so doing:

- A highway is effectively created on privately owned land.
- The Council is thus said to acquire a fee simple determinable of the surface of that land, and
- The owner of the original land is divested of his or her ownership and proprietary rights (without compensation). In the case of Wallhayes, Lady Frederica Colfox, sister of the owner of Mappercombe Manor, had never heard of a pre-existing Way through Wallhayes and "never heard of anyone using it as such. Mrs. Sylvester Bradley was a greatly respected and kindly lady of whom, in her old age unscrupulous people could have tried to take advantage. The indigenous village did not."

Wallhayes represents a case where an expropriation has occurred without the payment of compensation. Legislation does not provide Councils with the authority to expropriate land.

The evidence presented by people living in the village in 1951 or having knowledge of the village at that time, is cogent and compelling:

- Lady (Frederica) Colfox, born in 1934, is the daughter of Admiral Crutchley. She used to ride the area extensively during the years 1946 – 1962. 'Nettlecombe was served by many footpaths that gave it access to the railway. I do not believe there was a footpath between Wallhayes and its stables to the road in Nettlecombe or a public footpath between the farm gate and Station Road. If you look at the map there was no need'.

- The late Mary Legg was born in 1937 in Home Farm House. She lived there until 1970. Her father rented the whole property, including house, farmyard and adjoining fields. 'The village people used to get to the railway station via Castle Mill Farm (FP 62)[3] or by the path passing through the farmyard and crossing the area where Mr Bob Pitcher has (had) his pheasants. This path came out into the field behind Wallhayes not far from the existing gate. During my parents' tenancy people did not go through Wallhayes property unless invited'.

- The late David Batstone was gardener at Wallhayes 1947-1961 and was in an ideal position to know whether the public used Wallhayes as a thoroughfare. 'I have heard about claims that there was a right of way through Wallhayes before 1951. That is not true. The public did not go through Wallhayes property then or subsequently'.

- Betty Bull has lived in Nettlecombe for over 70 years, never more than 100 yards from Wallhayes. 'There has never, to my knowledge, been a right of Way through Wallhayes. Not until the mid-1980s when a gate was put in did I see a very occasional person going through Wallhayes, invariably the Reads from the Station going to the Post Office'.

[3] FP62 passes through the Old Railway Station which, on the closure of the railway in 1975 became the home of the incoming Read family.

- The great grandfather of Mrs Euphan Davies JP of Glebe House, Powerstock lived at Wallhayes between the two World Wars. Following his death, the property was sold but the gardener's cottage, Packhorse Cottage opposite, was retained by her Great-uncle who lived there until the mid-1970s. Mrs Davies recalls: "As a child during the 1950s and 1960s, I frequently visited my Great-uncle by train, and necessitated me walking from Powerstock station to Packhorse Cottage. I do not recall ever being taken through the claimed Right of Way in question (through the garden of Wallhayes) on any of the many occasion I visited my relations."

- Daphne Bruce is the daughter of Mrs. S.J. Sylvester Bradley who lived in Wallhayes 1947-1960. She was not aware that there was a public footpath through the garden, 'and I would be very surprised if my mother would have agreed to such an intrusion and would most certainly have objected to the official inclusion on a map of such a footpath . . . I cannot recall anyone walking through the stable yard'.

The evidence of Daphne Bruce is pivotal. Her mother Mrs Sylvester Bradley had been a Parish Councillor at the time the Draft Map was drawn up. There is nothing to link her with that decision. From observations of the Parish Council a decade ago, it would be a mistake to assume anything. There is serious doubt that a public footpath would have shared the same choke point as Wallhayes' southern gate where cattle had formerly daily access and egress or that there would have been a path running through a confined stable yard. If there had been a path in use from B to the railway station,, it is reasonable to believe that those living in Wallhayes would make use of it. According to Mrs. Bruce, that was not the case.

"One of my children attended school in Bridport and took the train every morning and evening and I can vouch for the fact that she went to the station via the Castle Mill Farm (FP62) and not across the fields."

Mr Connaughton contacted DCC's senior Rights of Way Officer Slade to tell him that there was incontrovertible evidence to the effect that there had been a wrongful designation insofar as the Authority had extended the footpath through Wallhayes without having obtained the owner's permission. His reaction was

interesting. He made no move towards rectifying this wrong but said, simply, 'we had no statutory obligation to inform her'.

The northern extension from Castle Mill Lane to link FP 33 with Nettlecombe occurred in 1973, ten years before the way through Wallhayes came into effect. The Humbert, Flint, Rawlence and Squarey letter of 22 June 1973 containing the landowner's permission specified a route running from Nettlecombe Square down Well Lane. Linkage was therefore intended with FP 29 onto the sports field, namely a section of the diversion requested by the appellants. The location of the footpath outside Wallhayes' northern gate is misplaced.

All the while, the onus rests upon the appellants to make their case while the documents required to support that case are often in the hands of the Rights of Way Officers, invariably a hostile opposition.

Former Prime Minister, John Major agreed that: "the underlying problem is the sheer inadequacy of the records to show whether or not there was ever a Right of Way in any sense. From the point of view of natural justice, there is a real problem." The situation whereby members of the County's Rights of Way Department create an adversarial stand-off with a section of the Community is unacceptable. The grievances of those attempting to protect homes and property within the law lies in the obligation of having to negotiate with public servants who are doctrinally opposed to what they are attempting to achieve. The County's Senior Rights of Way Officer said achieving a diversion would put thousands of pounds of value on a home. Officials should leave their politics at home. The fact is that the diversion application was nothing more than an initiative to right a wrong.

There should be Survey Cards in support of initiatives taken under the 1950 Memorandum. This Survey, a legal requirement was never conducted. In short, the owners of Wallhayes should be able to see the justification for believing that the opening of new ground through their property was legal. Dorset's Rights of Way were unable to supply this evidence, merely saying that the Definitive Statement recorded the ambiguous information that the footpath ran from Nettlecombe Dairy to Point A as shown on the Map. The foundation is too ramshackle to contemplate presenting a plausible legal case against the appellants. Despite the cogent and compelling evidence pointing to the public's exclusive use of FP 62 as the footpath

used by local people to reach the Railway station, FP 62 does not appear on the Provisional Map drawn up by the Parish Council.

Farming News dated 1 February 2001 comments upon documents held in County Councils by the Rights of Way fraternity. The article acknowledged the frequent complaint "about misrepresentation of evidence, taking of witness evidence in private and surreptitious altering of maps and other documents in County Councils' keeping as well as other misdemeanours." Are there circumstances today where it can be imagined Rights of Way Officers in County Councils altering a Map and thus perverting the course of justice in order to secure advantage? It certainly happened with the Wallhayes case in Dorset County Council, wherein there was evidence of a culture of rampant anarchy within the Rights of Way Department. In such circumstances, the burden of proof should shift from the appellant to the Rights of Way fraternity for them to set out the evidence from which the path was first recorded as public. Today, it is sufficient that the path is recorded. The law states that the Definitive documents provides the public with a legal right to the use of a path irrespective how shambolic its origins as a public footpath.

In Wallhayes' Representations and Statements of Support drawn up as an aide-memoire, Mrs Gina Connaughton nee Best describes how : "When we arrived in Nettlecombe in 1961, the southern gate (B) was impassable having become overgrown with brambles and subsumed by the hedge . . . If there had been a public footpath through here, someone should suggest when and for what reason its use was discontinued. Not until 1983 when Mappercombe Estate replaced the old gate was it possible to walk through." Mrs Connaughton went on to describe that after 1983, she was only conscious of the use of the path by the Reads, who bought the old Railway station in 1975 following the line closure and then to reach the Post Office then at Home Farm. The Post Office closed in 1999 since when the local paths became fully recreational.

It is important to emphasise the state of inertia prevailing over the adoption of footpaths at the time. A Search did reveal to Mrs Connaughton's father that the Draft Map associated with the 1949 initiative did include a claim to that part of the former stand alone path now extended through their home. Mrs Connaughton continued: "My mother tells me they assumed there was a bona fide right of way through the

property but there was no physical evidence of a path and no way through the hedge. There was no reason to remonstrate."

Not until 1973 would there be an extension of paths northward of Castle Mill Lane, that is a decade before the route through Wallhayes had been opened for public use. It will be seen therefore that the proposed diversion of FP 32 rectifies one malposition of the intended northward link, and were it not for the Council's decision that the Definitive Map should be taken as what was intended in preference to the Definitive Statement, there would be a point of separation at the northern gate because the route northward has been shown on the Definitive Statement as FP 59. The reason why this should be can be found in the April 1989 Definitive Statement which indicates FP 32 running from 'Nettlecombe Dairy to Powerstock Station'. The grid reference for the commencement of the path from Nettlecombe Dairy is 519956 or Point B, Wallhayes' southern gate. In the final analysis, it matters not a great deal whether the Definitive Map takes precedence over the Definitive Statement, it bears repeating that Councils do not have the authority to expropriate land. The household at Wallhayes continued to enjoy their pre-existing levels of privacy and security until December 1997.

Sitting in her hairdressers, thumbing through the December 1997 edition of the Dorset Magazine Mrs. Best found details of a pub walk of her local area in Powerstock and Nettlecombe. Her interest turned to horror as she went on to discover that the walk's author, one Rodney Legg, invited the public at large the use of her garden. This was not what the 1949 Act had intended. Moreover the area had a profundity of alternative paths. There are those who have reason to argue to the contrary but the fact remains that the public have consistently shown a preference to use an alternative suitable and convenient route rather than go through someone else's home.

Rodney Legg's name would feature again in 2009 in the national newspapers. He was revealed as being Chairman of the Open Spaces Society, the self same organisation that had been involved in the Pierce case. It is worth looking briefly at the circumstances involved in this recent business because it not only tells us something of the person but also provides a different angle on one of the four principles employed by the fraternity to wear down the homeowners.

What annoyed Rodney Legg and the Open Spaces Society were gates erected on his drive by Brian Herrick the owner of Barcroft Hall, South Petherton, Somerset. There had been some walker objection citing obstruction, difficulty in passing through the gates but that was resolved by having the gates permanently left open from October 2007. Of the gates, Mr. Legg said "They are totally out of place, ugly, incongruous, unwarranted and completely excessive. It looks as if footballers' wives or lottery winners have just moved in." *Country Life*'s Agromenes found Legg's comments over the top. "What is not acceptable is that he should lower the tone of public debate by flaunting his self-regarding prejudices. As one instinctively against gates, I can't help hoping that Mr. Herrick wins his appeal to the High Court, simply on grounds of public rudeness and prejudice against private property." Brian Herrick has the benefit of the support of the local Curry Rivel District Footpath Group, a group unencumbered by political baggage.

Somerset County Council had to be sued before they embraced Herrick's bête noire as their Champion, an individual whom the *Daily Mail* claimed derived financial support from the Open Spaces Society. The County Council agreed to indemnify the lead opponent against costs in the event that the allegedly wealthy owner of Barcroft Hall were to be successful in the High Court. Herein lay a variation from the norm, whereas the average homeowner is defeated by the high cost of justice as opposed to one who has the financial wherewithal to last the course. The County Council ensured their Champion would not be deterred by financial restraint.

On Thursday 28 January 2010, the *Western Gazette* web site produced a potted account of progress up to and including Mr Herrick putting his case before Mr Justice Cranston in the High Court. The key component in c.130B of the Highway Act 2000 is that there should not be significant interference to public passage over the way. A photograph which accompanies the Herrick evidence shows nine individuals standing shoulder to shoulder between the two relevant gateposts. In the event, Herrick lost his case. Commentaries appear at Annexes A and B to this Section.

The former Secretary of the Countryside Rights Association, Liz Mear, objected to a neighbour's claims against her property. Cambridgeshire County Council called upon the reinforcement of a self-employed, 'independent' consultant of the opposing Institute of Public Rights of Way (IPROW) - a Fellow of the Institute no less. It is seriously questionable whether it is a proper use of the ratepayers

money to underwrite the unauthorised support of one party in a disagreement. As to how much was involved, the Council resolutely refused to answer this and other questions. Liz Mear said the overall failure to defend her home and the resultant bill for approximately £500,000 had broken their family.

On Tuesday, 16 June 1998, in the home of the Chairman of the Parish Council, John Samways, Mrs. Best expressed her distress at the number of strangers now appearing in her garden. I heard him promise that both he and the Footpath Officer would listen to her concerns before convening a formal meeting to hear the Wallhayes Diversion Application. The Clerk's entry in the Parish Minutes for Monday 10 August 1998 records that 'Members pointed out other paths through Wallhayes not claimed in 1951 and lost'. It is not an enormous property. On Thursday 13 August 1998, the representative County Councillor, Gil Streets, arrived to walk the course. Nothing of great consequence arose as a result of that meeting. I rang Clerk John Read. He was a Nettlecombe Councillor and additionally as Clerk to the Parish Council, he was the de facto leader of the Council. I rang him to tell him of Streets' visit. He said Streets was with him debriefing him. I said "I did not know Streets was a friend of yours." Apparently, their friendship "had gone back to Beaminster School days" where Read had been a teacher.

Read identified himself as being sympathetic towards our diversion. As events would reveal, that was not the case. The Reads persisted in pressing a seemingly pointless argument to the effect that a Miss Chandler and her companion of Merriott House had been regular users of the path through Wallhayes garden. That assertion can be shown to be untrue on two counts: the original gate had been subsumed by the hedge and until 1983 was reported to be have been entwined with brambles of domestic blackberry. Moreover, Miss Chandler left the area in 1982, the year before the gate was disentangled. Ominously, Denis Bowman who had lived at Home Farm for 31 years reported Councillor Read's approach to him asking that he make a Statement confirming Miss Chandler's frequent use of the path through Wallhayes. In a signed Statement, Mr. Bowman said: "I refused. It was untrue and to have said otherwise would have been improper."

Wallhayes had two possible options – or so it seemed at the time, to seek either an extinguishment of the path through the property or to apply for a diversion. Either would have secured the aim of restoring pre-existing levels of security and

privacy. The diversion attracted benefit to both the appellants and the public. The District Councillor, Mrs Gill Haynes, was asked her opinion. She emphasised that Rights of Way matters were intensely political. "If you want an extinguishment, you apply to the County Council; if you apply for a Diversion, you go before the District Council. At the moment the County Council is Liberal Democratic, the District Council Conservative. You have a better prospect of success if you apply for a Diversion", she said, "besides a Diversion is less difficult." The policeman living within the community agreed that action should be taken. "As a local police officer I would encourage any person with a footpath through their garden to try to get it diverted. Any person not recognising the elevated risk of criminal activity where a footpath goes through enclosed premises is naïve to say the least."

There then followed a period of lengthy consultation to ascertain what the local public would support. But first, my wife and I had to go on a project to the Middle East. In a community such as ours, there are no secrets. Councillor Read attended a Gardening Club Committee Meeting at Wallhayes 7-9 p.m. Tuesday, 8 September 1998. Between that time and the departure date of 19 September, Read was asked when the promised exploratory meeting might be held with Chairman Samways. He said the Chairman was still involved with the harvest and it was best to 'leave it for a couple more weeks'.

We returned to Nettlecombe from Oman on Sunday 27 September 1998. At that time, the Parish Council followed the practice of convening its meetings on an 'as required' basis, posting the Agenda on notice boards throughout the satellite villages. We had had our consultations. We believed the Parish Council were supportive. We had secured the permission of the landowner for either an extinguishment or a diversion. We, Mrs. Best and myself, met the Ramblers Association representatives in the home of a local member, Old Staddles in the village square. Also present was the Secretary of the Ramblers West Dorset Group, G. Rosemary Bramah, a person authorised to speak on behalf of the Ramblers. The principal question was put to the Ramblers "Would you say that the Diversion proposal is significantly less convenient to your members than the present route?" The Nettlecombe representative said 'No,' and wrote a letter to that effect. Mrs. Bramah gave verbal assurance, "No, I cannot say that it is." It was now clear that the Diversion was preferred to the Extinguishment. We needed the Ramblers' reassurance before opting for the

diversion. The Application proved serendipitous, for a diversion presented an opportunity for add-back for the community whereas an extinguishment provided no residual benefit. What the diversion did was to enable walkers to come off a dangerous road with a blind crest of a hill set in a cutting and move instead in safety along a field edge. The diversion was achieved by turning the line from the railway station to the southern gate through ninety degrees to connect with FP 29.

We wanted to avoid unnecessary costs and wasting time if there really was no prospect of success. The answer was to put our papers informally before an Independent Inspector on the Lord Chancellor's Panel as a mock examination. The principal instrument of law is Section 119 of the Highways Act 1980. In addition, in making their decisions, public bodies have a duty to take account of the need to reduce crime and disorder under Section 17 of the Crime and Disorder Reduction Act 1998. The Planning Inspectorate did not recognise this obligation.

Section 119(1) and (6) of the Highways Act 1980 requires that the Secretary of State shall not confirm the Order unless he is satisfied that in the interest of the owner, the lessee or occupier of land crossed by the path or of the public, it is expedient that the line of the path should be diverted. Section 119(2) requires that a diversion order should not alter a point of termination of the path if that point is not on a highway, or (where it is on a highway) otherwise to another point which is on the same highway, or a highway connected with it, and which is substantially as convenient to the public. Section 119(6) says the Secretary of State shall also not confirm the Order unless satisfied that the path will not be substantially less convenient to the public in consequence of the diversion; and that it is expedient to confirm the Order having regard to the effects enumerated by the Independent Inspector and which follow a-c. The Appellants agreed to the provisions for compensation as established in Section 28 of the 1980 Act.

The Independent Inspector reported: "If I was dealing with this case, on the evidence you have submitted, I would be satisfied that it conforms with the requirements of HA 1980 s. 119(1) as amended by WCA Schedule 16 para 5. Equally I would have no difficulty in finding it expedient as mentioned in subsection (1) above, and further that the path or way will not be substantially less convenient to the public in consequence of the diversion and it is expedient to confirm the order having regard to the effect which:

(a) the diversion would have on public enjoyment of the path or way as a whole;

(b) the coming into operation of the order would have as respects other land served by the existing right of way, and

(c) any new public right of way created by the order would have as respects the land over which the right of way is so created and any land held with it.

I cannot see that a diversion order as you propose could fail at an inquiry on the evidence that I have seen. All the criteria seems to me to have been met."

Having therefore thoroughly liaised with interested parties and had green lights all the way, those lights went through a wind of change, turning to amber or red. Politics intervened. The performance of the Parish Council had been consistently odd. Landowner, the late William Crutchley, told of an approach he had received from the Parish Council to revoke his agreement with us. He declined, saying his word was his bond, that instead he would adopt a neutral position. Among the objections lodged with the District Council was one signed by the Ramblers Association's G. Rosemary Bramah. She gave no prior notice of her change of position. When asked why that should be, she said she had been 'got at' by a local militant and moreover, the Dorset Area Footpath Secretary had told her her earlier decision had not been the right one. There is a salutary lesson here for those who endeavour to seek accommodation. There are people here with insatiable appetites; always wanting more, with no concept of nobility or honour. The change with the greatest implication came about due to the ponderous administration of the Application. Within two years of receiving a green light from an Independent Inspector on the Lord Chancellor's Panel, he and his associates had been swept away and replaced by former Rights of Way Officers, junior Civil servants elevated from their desks in County Halls into positions of enormous responsibility. Before being released upon unsuspecting communities, this new breed of Inspector received a core 'intensive' two weeks of training.

Contemplation of the Wallhayes experience reveals endemic dishonesty, principally because there are precious few checks and balances in place to encourage honesty. Giving evidence on oath would be a step in the right direction. The second

revelation is the frequency with which the relatively rare verb renege, to break a promise, arises. That is immediately apparent when we resume the linkage with he Parish Council.

On Friday 2 October 1998 District Councillor Haynes rang Wallhayes to say that the Parish Council had done what it had promised it would not. The Parish Footpath Officer told how they had been advised by County Hall to reject the Wallhayes application which they duly did. The essential preliminary meeting promised by Chairman Samways was not the only business outstanding which should have delayed the proposed Parish hearing. Councillor Streets had also undertaken to speak to William Crutchley, whom he claimed to know, with a view to examining options.

Parish Clerk Read was aware of the Chairman's promise of a preliminary hearing of the Wallhayes case. He said in defence of what he had done in convening the Parish meeting when he did, that the requisite notices had been posted in accordance with the law. He was satisfied that the Connaughtons were at home on the day of the Parish Meeting and that he had removed the convening notices the day after. What appears to have been engineered was the convening of a Parish Meeting so timed as to virtually guarantee Wallhayes' inability to present their case, particularly when there were still two promised actions outstanding. Read said he had been the only person to support the application, an assertion not borne out by his behaviour. When the Chairman was asked why he had reneged on his promise, he avoided a direct response, saying instead how surprised he was to find Wallhayes unrepresented at the Parish Meeting.

Of the 350 inhabitants on the Parish Electoral Roll, only two objections were allegedly lodged with the Parish Council. One of those objectors presented herself when the Connaughtons were out walking their dog. "I was one of those who opposed your application," she said. "But you as a very near neighbour are aware of the reasons why we made our application." "Frankly, I am not interested in your reasons. I did not need to know. There are good reasons to oppose your application," which she then went on to enumerate. The reasons were bogus. We suggested her underlying concerns were doctrinal. (At the local Public Inquiry which followed, her husband said doctrinal was not a word she used. She did not.) What

we were saying was that the reasons for objections were political, to which she agreed. "We had the same problem in Weymouth."

When told of her neighbour Mrs Ramage's attitude, Mrs. Best refused to believe what she was hearing. She sought out Mrs Ramage, explaining to her that she was often alone in the house for weeks, that of course if Mrs Ramage wanted to pass through the garden that would be fine. She explained that it was not people she knew and recognised which were her cause for concern but the increasing number of strangers drawn towards the house and garden. These concerns were arbitrarily dismissed by Mrs Ramage. "I want to come through your garden as a right, not as a privilege."

On 22 October 1998 a group of people appeared outside Wallhayes' front door. There was District Councillor Haynes, Parish Council Chairman Samway and officials from the County and District Councils, Mr Phil Drake and Mr Martin Hedges. They had come to resolve the Rights of Way problem. Their solution was to close the present route through Wallhayes' garden and open another, also in the garden but on the eastern side. What they were in effect doing was to establish a standard, in this case, part lane, part garden and a large part of field edge solution against which other options could be measured.

There are more than 6500 Rights of Way in Dorset extending more than 2800 miles. The Rights of Way office (Countryside Access) at County Hall is a powerful Department where manpower, expertise and disposable funds are concentrated. There is only token representation at District Level. Progress is measured by recording every yard captured and brought into the system, a form of performance indicator. This acquisitiveness is fine if the aim is to maximise distance brought under control but it does represent a bear trap should it be necessary to argue a case of public convenience.

The three routes measure as follows: [4]

		A-D	A-end
Present	A B C D	434m	599m
Proposed	A G H J D	444m	609m
DCC plan	A F E C D	734M	899M

(These letters apply only to the map in this Section)

[4] As shown on map entitled Diversion of Part of Footpath 32. Point 3 is the Read home, Point 4 that of the Ramages.

The DCC plan is approximately one third longer than either the Present or Proposed routes. It is not possible to argue that the Proposed or Preferred Plans are substantially less convenient than the DCC plan. When the Independent Inspector was asked for the definition of 'substantially less convenient' he replied, 'virtually impossible'.

From the Wallhayes garden, FP 62 is so close it is possible to toss a rock on the path below. The Council's proposed field edge path and FP 62 converge 200 yards along its length towards the old Railway Station, home of the Reads on FP 62. This was a punitive acquisition, moreover it failed the legal test in so far as the swap proposed within the garden was not in the interest of the owner as required by Section 119 of the Highways Act 1980. The aim of the owners of Wallhayes was to divert a footpath which had been a wrongful designation and not to give formal approval to its resiting elsewhere in the garden. County Councillor Streets had not been present at the meeting yet he endorsed the DCC solution "I did agree with the view put forward by officers at that meeting because I then believed and still do that it was a correct interpretation of the law." The County representative noted my lack of enthusiasm. He said: "There's no gain without pain." "Would this proposal be endorsed by the relevant Council Committee?" I asked. "Oh yes," they said in unison.

The attempt to force the DCC plan upon Wallhayes became the point of separation between the residents and their two elected members. It was evident that there were irreconcilable conflicts of interest. Local people, concerned at the elected representatives' casual disregard of Mrs. Best's interests and who had lived happily in the family home at Wallhayes for over 40 years, took the initiative to invite a District Councillor from the adjoining Ward to provide oversight and representation.

Independent Councillor R.W. Coatsworth was then the Deputy Chairman of West Dorset District Council. He said local people had asked him to intervene. He set about establishing the facts of the case, the two principles of which were, first, both Streets and Haynes had no interest in supporting the Wallhayes application and, Dorset County Council Rights of Way officers admitted to him that Wallhayes had a case, but they were worried that if they allowed a precedent to be created, other applications would follow. At no stage thereafter was the nature of the worrying precedent ever explained. The individual whom Councillor Coatsworth identified as the messenger of the County Council's uncompromising policy, Ms. Gillian

Parkinson, solicitor, allegedly insisted the Rights of Way Department "had a duty to maintain the present footpath route by all means." Ends justified means. Either the public were to emerge as 'net gainers' or there would be no diversion. What this revealed was a serious disconnection between the opinions of the Officers and the Executive and the original source of Wallhayes misfortune. The active opposition taken by the Council Officers was illegal. That much was evident from the act of damage limitation (presumably inserted by an Officer) apparent in the submission of the Chairman of the County Roads and Rights of Way Committee at the Public Inquiry. 'I can understand why the Council's Officers wanted the public to be net gainers in this process but the real issue is whether the new path is substantially as convenient as the old – not better or even the same as'.

The document containing the Parish's objection sent by the Parish Council to the District Council was fundamentally untrue. The local policeman said so at the Inquiry. The objections from 'local residents' which was at the heart of the Parish case resembled the oft heard rhetoric of one objector, Mrs Ramage.

On January 1999, Mrs. Best wrote to Mr Samways, the Chairman of the Parish Council asking for 'a short meeting with you, in order to clarify for us the details of the assistance given by the Parish Council in solving the problem of the path through our garden and its increasing use by members of the general public."

"There can be no question that a footpath has existed along this line throughout living memory" can be shown by the evidence to be untrue. At a meeting held at Wallhayes at 4 p.m., Wednesday 19 January 1999, the three residents and Samways examined the Parish submission. "That's not true, that's not true, that's not true" agreed Samways "but what could I do? I am only the Chairman." (This document, rejuvenated on 17 July 2003, signed but not drafted by the Chairman of the Parish Council, survived in its initial form, going all the way to the Public Inquiry. It would be the Inspector's mishandling of that document which was indicative not only of her bias but also her unsuitability for the post held.) Mrs Best suggested that for a start, he could honour his promise and permit her to discuss her concerns with him, Read and the Parish Footpath officer. He agreed, promising to make arrangements for the trio to meet at Wallhayes. The next day, he telephoned to say that he had been informed that the proposed meeting would be illegal. "By whom had he been

informed?" He was unable to say. Wallhayes was obliged to put its case before the full Parish Council.

The Parish Council Meeting was duly held at 8 p.m. on Monday 1st. March 1999. Councillor Streets was present. We went through the Parish submission but the Councillors were unreceptive. We had walked into an ambush. Points of Order from the floor did nothing to divert the Councillors from their intended course of action. Councillor and Clerk Read wrote in the Parish Record: "Nothing new emerged from the address and the Council stands by its original recommendation." Chairman Samways signed off the Parish Record without having made any intervention. At the end of the meeting, Mr Denis Bowman, who lived at Home Farm, said to Mrs Best, 'you have been stitched up,' but it would not be the last time.

Following the May 1999 election, three new Parish Councillors were elected. We thought we would try once again to ensure that the Parish Council sent a fair and honest statement to the District Council. Bob Pitcher, a newly elected Nettlecombe man examined the Parish statement. "There is something wrong here. I will raise the matter at the next Parish Council Meeting." "Too late" to have the matter put on the Agenda, it had to appear as Item 8 of Any Other Business. When, towards the end of the meeting when Item 8 was reached, the Chairman made a dramatic statement . The Clerk had handed him his resignation. Chairman Samways asked Councillors to give Clerk Read their unqualified support, otherwise he would resign. Apparently, there had been rumours regarding the Clerk's honesty. The nature of the rumours was never disclosed, not would Clerk Read be drawn but it was clear from his ultimatum that he expected all Council members to fall inline.

Read was the Chairman's indispensable asset. When one new Councillor asked what was going on, Read threatened his resignation: "Support me or I resign." The District and County Councillors, Haynes and Streets, were present and proposed that the public should leave. The public were the three Wallhayes appellants who had come to a public meeting to witness a fair and impartial conclusion to the matter of the Parish Council's controversial submission to the District Council. Expelled from the Parish Meeting the Report remained unaltered. Mrs. Best wrote yet again to the Chairman asking what the chaotic Parish Meeting had been about. He replied. Read's threatened resignation had apparently taken him by surprise. He had been

unaware of Read's intentions prior to the meeting. Central Government has proposed giving Parish Councils more authority.

Questions began to be raised of the Parish Council's opposition to the Wallhayes application. The word 'vendetta' came into use but what we had here may not have been a vendetta but rather the result of one individual pursuing his own interest in a pliant Council without the benefit of strong leadership. That there was something seriously wrong here led to the former litigator, Graham Stothard, a resident of West Milton, to write to the Chairman. A local brewer of the same Parish had applied for a similar diversion whilst the Wallhayes Application was still under consideration and had had it fast-tracked and approved.

In his letter of 23 February 2006 to the Chairman, Stothard wrote: 'The considerations of privacy, safety and security for the applicants on the one hand and the loss of amenity, upland views, convenience, historical rights etc on the other are virtually identical in the Wallhayes and Corfe Farm cases. Stripped of peripheral aspects, the core of this case is that both applications involved a desire to do away with a section of right of way going through or between a house and its outbuildings.

It is open to individuals to take whatever view they wish in these circumstances but the Parish Council in its exercise of its public duties must respect the principles of natural justice. It cannot be seen to be doing so when, despite knowing that they were actively opposing one application, they decided, at best, not to oppose the other or at worst to support the other." The Chairman did not reply, delegating that task to his Deputy who made a vague response.

This Annexe is a copy of a letter sent by Richard Connaughton to Marlene Masters drawing attention to areas of concern related to the hearing of the Herrick case in the High Court, 17 February 2010.

Mrs M. Masters

ENGLAND AND WALES HIGH COURT (ADMINISTRATIVE COURTS) DECISIONS Case No. CO\9368\2009 and CO\9411\2009 IN THE HIGH COURT OF JUSTICE QUEEN'S BENCH DIVISION ON 25 and 26 JANUARY 2010 BEFORE MR JUSTICE CRANSTON QC BETWEEN MR B HERRICK & MRS D HERRICK and (1) PETER KIDNER (2) SOMERSET COUNTY COUNCIL Tim Mould QC (instructed by Everys) for the claimants. George Laurence QC and Ross Crail (instructed by Zermansky & Partners for Kidner and Trevor Ward (instructed by Somerset County Council) for Somerset County Council.

You asked me for a Natural Justice view of Mr Justice Cranston's Judgement of the Herrick Case dated 17 February 2010.

Declaration of Interest

The Judge, a distinguished Commercial Lawyer, appears not to have made a Declaration of Interest at the commencement of this case. Given his political association, Member for Dudley North (Labour) (1997-2005) and the intensely political environment that is Rights of Way, the Appellants are entitled to be reassured that the Judge, Sir Ross Cranston, had no conflict of interest. Has he, for example, any past history on matters such as Access?

Relationships

It would be useful to trace the Zermansky and Somerset County Council (SCC) alliance. The first scoping discussions to decide on the way forward between George Laurence QC and SCC's Counsel Colm Lyons was held about Christmas time 2007. Prior to that date, between May-December 2005, SCC had opened contact with the Herricks with regard to the removal of the so-called unauthorised gates. On 23 June 2006, Yeovil Magistrates Court convicted Mr Herrick, gave him an absolute discharge and required him to disengage the main gate electronic mechanism within 56 days. There was no order to remove the gates or pillars. The words of the

Account tell me that Mr Herrick did not comply with the Court Order insofar as the gates were not left unlocked, the excuse being the mechanism was malfunctioning.

It is worth pausing here to describe in outline the legal circumstances which empowered citizen Kidner to take the action which he did. It was the Countryside and Rights of Way Act 2000 which added new measures to the 1980 Act including the removal of unauthorised obstructions from the highway, specifically:

- Section 63 of the 2000 Act introduced ss.130A-130D.
- Section 64 introduced s.137ZA.

These new powers enable a person to serve notice on a highway authority requiring it to secure the removal of certain kinds of obstruction from minor highways. The authority's capacity to avoid nuisance submissions is restricted by further empowerment of the citizen who, if unsatisfied with the authority's reaction, can apply to the courts to order the authority to comply. Compliance would be reflected in issuing a notice under s.143.

On 11 September 2006, Rear Admiral Kidner who lives on a ridge opposite Barcroft Hall, issued a notice under s.130A(1) of the Highways Act 1980 seeking the removal of the gates and pillars. On 10 January 2007 Kidner told SCC that he intended to apply to the Magistrate's Court for an order requiring them to effect the removal of the alleged obstruction. On 15 January 2007 SCC served an s.143 notice on the Herricks requiring them to remove the obstacle within one month. After further correspondence, on 13 March 2007 SCC announced its decision that the gates should be locked open at all times.

Not satisfied with that arrangement, on 8 March 2007, Kidner opened proceedings in the South Somerset Magistrates Court. District Judge Parsons gave his finding on 15 October 2007 ruling that those parts of the structure lying within a distance of 6 metres centred on the junction of the two gates were to be removed. Under s.317 of the 1980 Act the Herricks appealed to the Crown Court. In the Judgement dated 9 February 2009, the Court determined that SCC's letter of 1 March 2007 authorised the retention of the gates if they were kept unlocked. However, the Court decided that the Herricks'inability to rectify the release mechanism meant the 1 March 2007 permission had lapsed.

The Court addressed s.130B(4) to examine whether the gates and pillars represented an obstruction and whether it significantly interfered with the exercise of public rights of way over the footpath. The Court found a general consensus among experienced walkers to the effect that the usable width of the footpath was not reduced by the erection of the pillars which "were sufficiently wide apart to accommodate the previous usable width of the footpath at that point".5 The Court determined that the width of the footpath at the point where it is crossed by the gates was at least 8 metres. The implications of that discovery were that "the footpath was wider than the double gates, and that two of the pillars at least, and part of the fly wall were situated on the footpath itself and caused an obstruction". We need to pause here. An 8 metre wide footpath is enormous. As a safeguard, to ensure there has been no creative accounting, we need to confirm the source of such a statement. The Definitive Statement is silent. Since this is a key factor, SCC must be required to produce cogent and compelling evidence that where the gate stands, the footpath was originally 8 metres wide.

The Court decided that the Council should remove the gates and the middle gate pillar but leave the two outer pillars. In order to ensure the outer pillars did not deter a public almost universally reluctant to enter private property, a reassuring finger post was ordered to be erected by SCC, pointing the way between the two open gates. Since SCC has a statutory obligation to waymark rights of way, such an order was superfluous.

The Herricks went on to appeal to the High Court. The Crown Court posed 5 questions for legal decisions:6

- "Did we err in law in concluding the obstruction was without lawful authority and/or that the Second Respondent as highway authority was able to exercise its powers to secure its removal?" N.
- "Did we err in law in determining an obstruction which actually prevents passage on foot over any part of the highway significantly interferes with the exercise of public rights of way over that way?" N.

5 I identify this point as question 6, the unasked question.

6 Mr Justice Cranston's reply is shown at the end of each question as Y or N.

- "Did we err in law in finding we had the power to specify lesser steps than the removal of all parts of the Structure?" Y.
- "In the event that the High Court answers the previous question in the negative, did we nevertheless err in law so as not to require the Second Respondent to take steps to secure the removal of the totality of the structure?" No answer required.
- "Did we exceed our powers in ordering the Second Respondent to install the finger post?" Y.

A Matter of Public Concern

Zermansky and Partners, Solicitors, and George Laurence QC have close connections with the Ramblers Association. Allegedly, the Ramblers' Association and the Open Spaces Society handed £15,500 to their champion, Admiral Kidner, their means to their end. So much money, so much misery. Consequently, he was in a position to hire someone somewhat more than a jobbing barrister. Now, Zermansky and Laurence represented Admiral Kidner and sought to identify the common ground with SCC. Both sides agreed that a clear duty existed to resist the Herrick appeal and both were confident that the Herricks would fail in that aspiration. The point of divergence concerned Zermansky's client Kidner. They wanted to protect their man from cost liabilities in the unlikely event of the Herricks succeeding. Zermansky told SCC that SCC's argument was with the Herricks and that they had powers under s.143 to remove all the gate paraphernalia from obstructing the Highway. They wanted SCC to join forces with their client so as to act jointly against the Herricks. The SCC lead went without saying but the Kidner presence was deemed almost essential due to the Herrick modus operandi. In 2006 the Magistrates Court ruled that it was only the gate's mechanism which led to the obstruction and since that had now been attended to, there was no obstruction. SCC found itself embargoed by a rule of evidence, an estoppel, whereby the Authority (or person) is precluded from denying the truth of a statement they have previously asserted.

Zermansky intended to argue that, on the balance of probabilities, an actionable obstruction existed but they were not entirely confident. Kidner had not been active in 2006. Whereas an estoppel could be found to exist between the Herricks and SCC, the same could not be said of Kidner. The Leeds solicitors

urgently sought SCC's agreement to make the running supported by Kidner. They wanted SCC to assure their client that they would sponsor arrangements to remove whatever parts of the gateway which were deemed to significantly interfere with the public right of way, "then our client sees no need as between himself and the Council for there to be an Order at all". In that way, with the litigation purely between SCC and the Herricks, Kidner would not be exposed to the risk as to costs. Indeed, the fact that Kidner had been drawn into the process at all was due to SCC prevarication whether or not to take action against the Herricks.

Zermansky sought from SCC an undertaking from them to Kidner in writing:

- Its agreement to secure the removal of the entire obstruction at the conclusion of the present appeal or that part decided by the Crown Court which interferes with the public right of way.
- That it would be playing a full part in the appeal in order to resist it, and
- If contrary to expectation the appeal should succeed and an order to pay the appellants' costs is made against SCC and Mr Kidner, the Council will pay the Herricks' costs and not look to Mr Kidner for a financial contribution.

To their credit, Zermansky did adopt the role of honest broker, attempting to avoid the costs of expensive litigation. The solicitors reminded SCC that the Herricks had offered to leave the gates fixed permanently open. For his part, Kidner had proposed as a compromise solution a partial demolition, although he was prepared to concede that the Herrick offer made sense. He confirmed his continuing support for the latter idea when I met him on 24 March 2009. "We suggest", continued Zermansky, "that on the basis of an undertaking by the Herricks to keep the gates permanently open, the appeal could be allowed by consent". It appears that during the course of domestic debate in Leeds, elements of doubt began to creep in and the hint of a possibility that the case could be lost.

The solicitors proposed that a joint SCC/Kidner letter be written to the Herricks saying that notwithstanding their continuing conviction that all the structures represent an actionable obstruction significantly interfering with the right of way, they would be prepared, subject to the Herricks undertaking to the Court to keep the main

gates standing open, to come to an agreement. Zermansky rehearsed the options to SCC:

- If the appellants reject the offer, the only avenue open to them to recover their costs on appeal is to win on their argument which allowed them to keep the gates closed shut but unlocked.
- If no such letter is written, there is the risk of presenting to the Herricks another course through which they might win their appeal. There is a better than average prospect with both gates wide open, the remaining obstructions could not be argued as significantly interfering with access through the gate s.130B(4)(c), therefore:
- The Herricks would then be free to argue that they had been obliged to appeal in achieving the aforementioned result.

Zermansky reiterated their opinion that the proposed joint approach, the compromise solution, would mitigate against that possibility. "We await hearing from you", said Zermansky to SCC, "as a matter of extreme urgency".

Mark Abbott of SCC Legal Services replied almost by return telling Zermansky that SCC saw no room for compromise. He explained how SCC regarded the Herrick gateway in its totality as an unlawful obstruction of the highway which they had a duty to remove. I would be interested to have sight of SCC's Roads and Rights of Way Committee's Minutes to acquaint myself with the who and when of this hard-line decision. This intention to remove every last brick was identical to Mr Justice Cranston's requirement for unconditional surrender. Abbott explained the SCC position that once the gates were removed and SCC satisfied itself that its duties under s.130 had been fulfilled, there would no longer be a risk of applications in the Herrick mould being generated by other members of the public. The desire among Rights of Way Officers to avoid the creation of a precedent is central to their realpolitik.

The Zermansky request that SCC grant their client an indemnity on costs was clearly involving serious, unhurried consideration within County Hall. The CEO should be invited to explain the Officers' role in SCC's favouring of one side of a dispute. Abbott explained to Kidner's solicitors: "This is an unusual request given

that the County Council is on the receiving end of proceedings instituted by your client and will thus require very careful consideration".

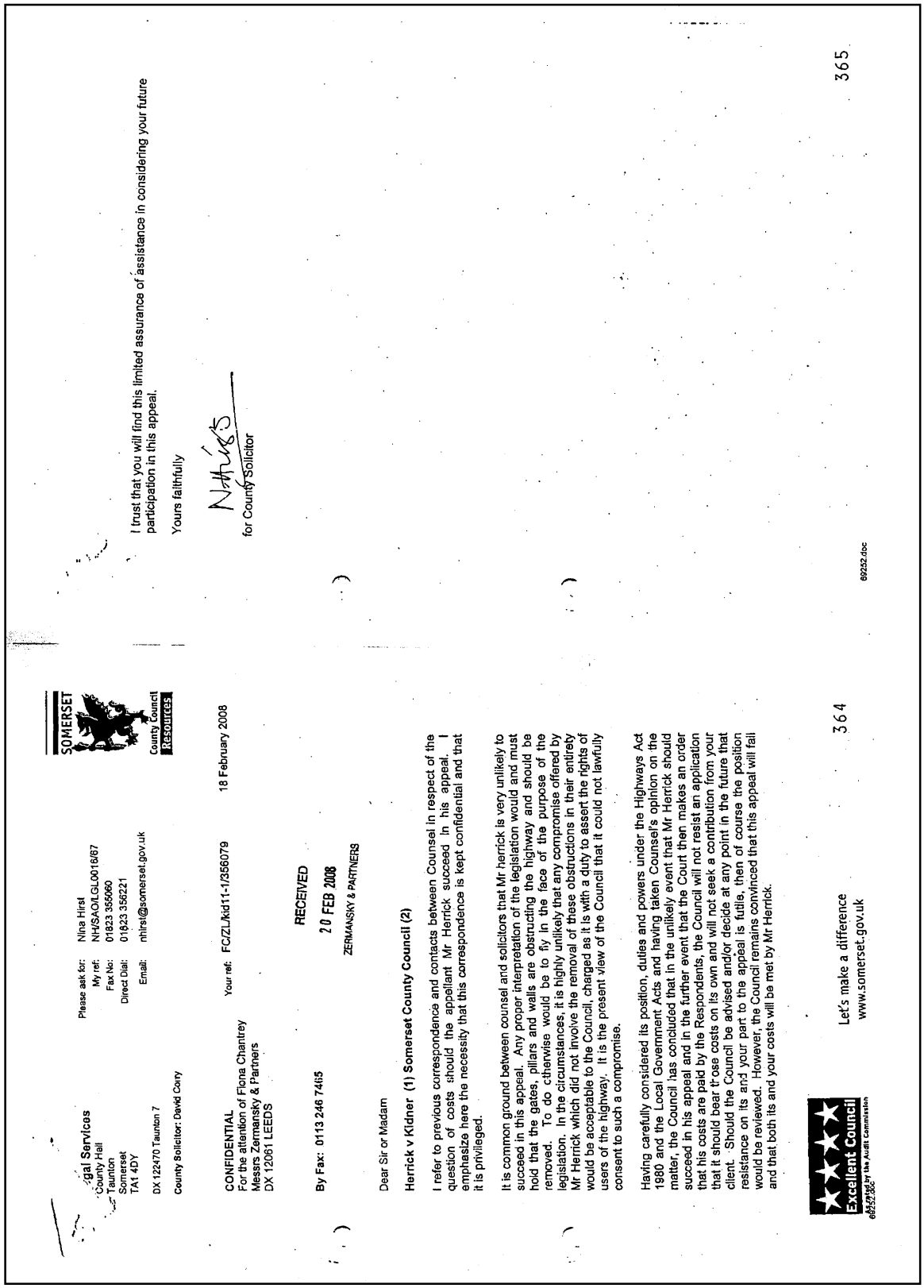
On 18 February 2008, Nina Hirst of SCC Legal Services sent a letter to Zermansky's Fiona Chantrey in which she emphasized the necessity of the correspondence being kept confidential and privileged. It contained the answer Zermansky were awaiting vis-à-vis Kidner's indemnity. "Having carefully considered its position, duties and powers under the Highways Act 1980 and the Local Government Acts and having taken Counsel's opinion on the matter, the Council has concluded that in the unlikely event that Mr Herrick should succeed in his appeal and in the further event that the Court then makes an order that his costs are paid by the Respondents, the Council will not resist an application that it should bear those costs on its own (she meant the ratepayers would bear the cost) and will not seek a contribution from your client. Should the Council be advised and/or decide at any point in the future that resistance on its and your part to the appeal is futile, then of course the position would be reviewed. However, the Council remains convinced that this appeal will fail and that both its and your costs will be met by Mr Herrick".

On 26 March 2009, I wrote to Mrs Denise Chandler, SCC's Group Leader, Rights of Way. I reminded her of a conversation we had on or around 19 March 2009. I asked her two questions. Which party (Kidner or Herrick) was SCC supporting? She said she did not know. Next, I asked her of rumours that SCC had indemnified one of the parties. She said, "that is untrue". As soon as that research phase had ended, I told Mrs Chandler, "I came to the conclusion that neither of your replies had been true". I floated the question to Mrs Chandler whether SCC had been "right to collude with one party in a private dispute? If not illegal, it is immoral".

I mentioned this incident to SCC's Legal Services in a letter to Nina Hirst. Her reaction was unexpected. I took exception to being chastised by her, suggesting that she would be more usefully engaged if she turned her attention away from the messenger to what was going on in County Hall. My subsequent enquiries reveal that she knew precisely what was going on in County Hall – a Four Star "Excellent" County with a buzz phrase, "Let's make a difference".7 As Hirst said to Chantrey: "I trust that you will find this limited assurance of assistance in considering your

7 A change of political leadership within SCC occurred after this sequence of events.

future participation in this appeal" (sic). It had all become very political and very personal.



gal Services
County Hall
Taunton
Somerset
TA1 4DY

DX 122470 Taunton 7

County Solicitor: David Cory

Please ask for: Nina Hirst
My ref: NH/SAO/LGL0016/67
Fax No: 01823 355060
Direct Dial: 01823 356221
Email: nhirst@somerset.gov.uk

SOMERSET
County Council
Resources

CONFIDENTIAL
For the attention of Fiona Chantrey
Messrs Zermansky & Partners
DX 12061 LEEDS

Your ref: FCZ/LJkid11-1/356079 18 February 2008

RECEIVED
20 FEB 2008
ZERMANSKY & PARTNERS

By Fax: 0113 246 7415

Dear Sir or Madam

Herrick v Kidner (1) Somerset County Council (2)

I refer to previous correspondence and contacts between Counsel in respect of the question of costs should the appellant Mr Herrick succeed in his appeal. I emphasize here the necessity that this correspondence is kept confidential and that it is privileged.

It is common ground between counsel and solicitors that Mr herrick is very unlikely to succeed in this appeal. Any proper interpretation of the legislation would and must hold that the gates, pillars and walls are obstructing the highway and should be removed. To do otherwise would be to fly in the face of the purpose of the legislation. In the circumstances, it is highly unlikely that any compromise offered by Mr Herrick which did not involve the removal of these obstructions in their entirety would be acceptable to the Council, charged as it is with a duty to assert the rights of users of the highway. It is the present view of the Council that it could not lawfully consent to such a compromise.

Having carefully considered its position, duties and powers under the Highways Act 1980 and the Local Government Acts and having taken Counsel's opinion on the matter, the Council has concluded that in the unlikely event that Mr Herrick should succeed in his appeal and in the further event that the Court then makes an order that his costs are paid by the Respondents, the Council will not resist an application that it should bear those costs on its own and will not seek a contribution from your client. Should the Council be advised and/or decide at any point in the future that resistance on its and your part to the appeal is futile, then of course the position would be reviewed. However, the Council remains convinced that this appeal will fail and that both its and your costs will be met by Mr Herrick.

I trust that you will find this limited assurance of assistance in considering your future participation in this appeal.

Yours faithfully

for County Solicitor

Excellent Council
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Legal Authorities

The legal argument is best left to those so qualified. There is, however, a number of points that stand out as being worthy of public comment.

There are no authorities specifically relevant to this case. Ernstbrunner v. Manchester CC [2009] EWHC 3 293 (Admin) comes close. Considering the findings of the Crown Court, Lloyd Jones J noted the decision that while a locked gate is an obstacle that significantly interferes with the exercise of a public right of way, it was not persuaded that the same could be said in respect of an unlocked gate. The Crown Court took the view that making out the case for the existence of significant interference might depend on particular circumstances - e.g. whether the gate is in the country or the town. Mr Justice Cranston was unimpressed by this logic, arguing that Lloyd Jones J was focused on the problem of a locked gate. It could be argued that he was overzealous in dismissing the possibility that there might be circumstances in which a gate locked open does not constitute a significant interference with the public rights of way over a footpath. Lloyd Jones J "did not have cited to him the wealth of authority advanced before me", (there are no authorities directly on the point), nor the benefit of detailed argument on the particular issue". There is an assumption here that the detailed argument had been beneficial in coming to a fair Judgement.

Mr Justice Cranston took the view that "any obstruction which significantly interferes with their (the public's) ability to exercise their right to pass and repass and to enjoy amenity rights over each and every part of the footpath is caught by subsection 130B(4)(c). The public are not to be confined to a particular part or parts of a footpath. That the public could pass through the Barcroft Hall gateway, and that only half of the 8 metre width of footpath at that point was obstructed by the gateway, is beside the point". A 4 metre wide footpath is in excess of twice the standard width required of a footpath. The origin of the 8 metre footpath is yet to be proven.

I have noted the mental gymnastics involved in arguing diverse parts of law relating to the structure but ultimately, if we look at a picture, that has the benefit of saving a thousand words:

This photograph of the gate in question leaves those of sound mind in no doubt that the two central gates locked open cannot be said to represent significant interference to the public. The Judge had observed, (55) and it warrants repeating: "In particular

the Crown Court found there to be a general consensus among those who have walked in the area for many years that the actual usable width of the footpath was not reduced by the pillars, which with a gap of 4 metres were sufficiently wide apart to accommodate the previous usable width of the footpath at that point". To my mind, the general consensus denies the footpath was, *ab initio*, 8 metres wide. The Judge's conclusion that the law requires a total removal of the gateway is not an idea which appears to totally convince him: "It may be that removal of part only of an obstruction would mean that it no longer significantly interferes with the exercise of public rights of way over the footpath, but that case was not put" (63). In fact, Sir Ross could not and did not ignore considering an intermediate option en route to the preferred Decision for unconditional removal. "Its (the Crown Court's) order for removal of part only of Barcroft Hall gateway is not sustainable", said Judge Cranston (64).

If Mr Justice Cranston had known that there was more to his assertion 'There was simply a decision that the Council would not oppose Mr Kidner's application' (56) how would that have influenced his conclusions?

I found the argument regarding the negative effect of leaving the outer posts in situ laboured and contrived, more mystic Meg with its allegations of psychological influences than reasoned logic. The idea was deservedly ridiculed in the national press. To embrace the submission of the Council's Mr Ward as in para 64 deflates the value of the argument since it could be argued this looks suspiciously as if there is some scavenging around here for justification to deny the application. Add to this again the laboured emphasis placed upon the fingerboard which the Judge said the County Court had no authority to order to be set in front of the open gate. The fingerboard was there because 'the Council had a power to erect' it. The open gates and fingerboard were clearly shown on BBC Southwest local news and could not be considered as anything other than offering an unfettered invitation to walkers to enter.

Mr Herrick is a member of the Ramblers' Association whose land is very positively laid out to encourage walkers and people in wheelchairs. This is certainly an example where the failure to conduct a site visit has made an intolerable contribution towards coming to the wrong conclusion. The failure to conduct a site visit is a serious omission for, had that taken place as it should have, we would have been spared this harmful speculation and the Decision would probably not have been infected.

Prime Minister Blair assigned the safe seat of Dudley North to his friend Charles Falconer to fight the 1997 General Election. When Falconer met the representatives of the Local Party for their confirmation, they told him he was to remove his children from private schools. Falconer walked out. Blair then sought out another friend who was parachuted into Dudley North and subsequently adopted as what would be the Constituency's Member of Parliament. His name was Ross Cranston. The point to be made here is that Dudley North is not Dorset South and the now Sir Ross Cranston spent 8 years there.

No one is looking for a return to the days when the Judiciary was predominantly Tory but in the same way that the socialisation of the House of Lords has arguably had a regrettable influence on standards within the Upper Chamber, the left wing politicisation of the Judiciary is only to be deprecated if the politics are obviously identifiable in the Judgement passed down. Judges tend to interpret the law in accordance with their own outlook and that has been the case for over a century. When Judges indulge in subliminal social engineering I believe they believe that the resultant balancing act is founded upon legal and not political decisions. If we believe judicial independence to be worth fighting for, we have to become proactive in preventing further politicisation of the Judiciary.

On 28 January 2008, a four day case was due to begin where the Crawley and Horsham Hunt was seeking permission to keep animal welfare activists off almost 100,000 acres of West Sussex countryside. The High Court Judge appointed to hear the case is on record as having said: "I am confident the vast majority of my constituents share my view foxhunting is not a sport but a barbaric and cruel activity". The lawyer representing the hunt did not suggest that the Judge would be biased but rather that there might be "an appearance of bias". After 30 minutes of legal argument, the Judge stood down, ordering the £10,000 of legal costs of the hearing to

be paid from public funds. The point is that there is a truism that where those with defined political views stand (this Judge was a Government Solicitor-General) is where they sit. The High Court Judge in question was Mr Justice Cranston.

It is not unreasonable for a layman to say that the decision of the Judge to proceed with this case does not reassure those who would anticipate an enhanced level of judgement from a High Court Judge. The Judge's voting record in the House of Commons had been persistently opposed to hunting.

The year 2000 can be identified as a tipping point when the worst of the deterioration became evident. It was not accidental that this was the year the Human Rights Act 1998 entered the statute book. Since then, Judicial Decisions have increasingly had an influence on policy making. But the situation is cyclic insofar as we have no procedure in place for Judicial appointments to be made democratically accountable. That is not necessarily a bad thing. For example, if we were to introduce such a system it would more than likely make Judges more rather than less politically supportive of their sponsors. What can be done is to insist upon Judges making a Declaration of Interest at the commencement of each and every Hearing. That promises greater precision than having a Register of Interests. There should be an expectation that the Judge relates in open court his attitudes, opinions and record relative to the issue in contention – in this case, Rights of Way.

From what I have seen, I do not believe our Judge set out to be biased but rather that his mindset led him seemingly automatically to a Judgement which does not appear to have been arrived at impartially. But then, the Herricks did not deserve to suffer the consequences of having to face a political tug-of-war because they were unfortunate with the draw. I have written elsewhere of my disenchantment with the legal system. My loss of faith in the notion of equality before the law is emblematic of a parallel view that our very democracy has become endangered.

<u>The Tall Poppy Syndrome</u>

A Local Authority is divided between the Administrative side in which the Authority's advisers are to be found and on the other side, the Executive comprising the elected members or Decision makers. If the advisers enjoy an excess of delegated authority as decision takers there is a risk that in exercising the functions of the elected members, the elected members become superfluous. It is in the gift of the

elected members within their Specialist Committees to delegate to their advisers certain of their routine decision making powers. The emphasis is upon the word 'routine'. There will be occasions when the routine becomes influenced by special factors which will require matters to be referred back to the Executive for action on a case by case basis. I have in mind here the Peppard Case. Rarely have I been so revolted by the hostile action within SCC aimed at denying this elderly couple in the twilight of their lives proper justice. Unfortunately it is symptomatic of a wider malaise.

The Herrick Case, for example, is not simply one of petty jealousy and resentment, a local intention to cut a successful businessman down to size because many small-minded people, irrespective of rank, find the success of others intolerable. It is bad enough having this unpleasantness going on within one's County but to find County employees foremost among the leadership of this nasty pogrom is undoubtedly a crime. The implications of what has taken place in Taunton spreads far beyond the South West, for the matter of the Herricks' gate "will state the law authoritatively not only in relation to this footpath but in all manner of circumstances up and down the country, in both rural and urban areas". The cheating, the improper use of authority, influenced the Judgement to the extent that a respectable argument can be made of its untenability. It is too often the lot of an appellant to find himself/herself facing a high wall of injustice.

There are three areas arising from the Herrick case requiring examination. The investigators should not be Council employees. Ideally, Somerset and Avon CID should be called to investigate what appears to have been criminal activity designed to secure an advantage for one side. The matters of public concern are:

- Prior to Mr Justice Cranston's Hearing, SCC declared the claimants to be vexatious complainants, denying them any access to County Hall for six months and thereby placing them potentially at a disadvantage in comparison to the respondents. The Herricks should be informed by the CEO (1) What had given rise to the decision to declare them vexatious complainants, (2) who made that decision and (3) the reason why.
- Who decided that SCC would not contemplate the locked-open-gate compromise proposed by Herrick, Zermansky and Kidner, insisting, as the

sole detractor, on total removal of the gateway? The Decision is not an Officers' decision yet it is difficult to imagine such a matter being subjected to discussion and a vote within the Roads and Rights of Way Committee. Who decided on the no-compromise route?

- Who made the Decision conveyed to Zermansky that Kidner would be provided with indemnity by SCC if he wished to participate as respondent against the Herricks? It is possible that had the County Council not made that facility available, Kidner might possibly have declined to proceed, in which case the Judgement could have been different. The public needs to know who these conspirators were for they must not go unpunished.

There is no further appeal following the Cranston Judgement which asserts the Law until such time as it is reversed by legislation or another High Court Judge decides that it is flawed. The Herricks sought fairness and justice but what they got was undeniably suffused in politics. They paid over £300,000 to defend their home against the usual suspects. The Open Spaces Society was offended by gates which gave the impression "footballers' wives or lottery winner have just moved in". "No longer can landowners and occupiers get away with filching parts of the highway", but they can continue providing support in the filching of homeowners' rights. It would seem that Open Spaces exist between certain individuals' ears.

Richard Connaughton PhD (Politics)
Nettlecombe, Dorset
23 February 2010

Postscript. In the light of recent events, Section 63 of the Countryside and Rights of Way Act 2000 ss 130A-130D should be re-examined for essential, sensible amendment. To entitle citizens to the right to serve upon highway authorities a demand for the removal of an alleged obstruction from minor highways, plays into the hands of those whose hobbies include the spread of misery and spite among homeowners they often resent. No sooner had the Cranston Judgement been announced than the implications of what the judge had done became evident. A report came from Dorset of a shepherd ordered to remove a field gate, and from Devon, a family with three small children, living beside a river, were similarly ordered to remove their safety gate.

This Annexe represents a Record of Proceedings of part of a Regulation Committee Meeting held in the County Hall, Taunton on Thursday, 4 March 2010.

EVENTS AT SOMERSET COUNTY COUNCIL'S (SCC)
REGULATION COMMITTEE AT COUNTY HALL, TAUNTON,
ON THURSDAY 4 MARCH 2010

SCC's Regulation Committee is responsible for Rights of Way in the County of Somerset.

Within this overall study, reference is made to a number of collateral events including the Peppard and Herrick cases. Both cases came before SCC's Regulation Committee on 4 March 2010. After evaluation, this is a convenient juncture to draw a pencil line under the relevance of these two cases to the overall study.

Peppard and Herrick requested that their applications be heard 'out of turn' rather than conform with the Statement of Priorities, a component of SCC Policy. During the course of the meeting, reference was made to an impending Policy Review. The inadequacies of the present Policy were exposed at the Regulation Committee Meeting. Modern Policy is mission oriented, it is not written in an attempt to cover every eventuality. That would free up some of the inflexible thought processes laid bare at the meeting. The Peppard's Case Officer, Denise Chandler, acknowledged the Peppards were elderly and in poor health but said: "The Statement of Priorities takes no account of the circumstances of the applicant". A lateral thinker would be aware that such a statement goes either way.

The Chairman, Mr D.N. Yeomans, opened the meeting at 2pm. He made two preliminary announcements:

- He declared a prejudicial interest in the Peppard Case.
- In respect of the Herrick Case, he ruled that no reference should be made to the recent High Court proceedings. No reason was given. A number present regarded this decision to be a component of a damage limitation exercise.

The Peppard Case

The Peppards live within the Chairman's Division. He supported the proposition that the Peppards' 36 year search for justice had been extreme. I said to the Committee: "There is not a worse example in the literature that I have seen of man's inhumanity to man than your treatment of the Peppards". The officers told the Committee that the Peppard case should not be taken out of turn because, "exceptional circumstances have not been established". Notwithstanding the fact of their ill health and advanced age, another exceptional circumstance had been created by the energetic representative of the British Horse Society (BHS).

Glimmer of hope for footpath protesters

BY DAVE NICHOLS
e-mail newsdesk@westgaz.co.uk

TWO siblings hoping to live their final years in peace without wondering who is outside their front door have won a marginal victory.

Ivy and Archie Peppard have been campaigning for more than 36 years to get rid of the public footpath that runs outside their house on Turn Hill Farm in High Ham, near Langport. They were previously refused permission to delete the track off maps and further attempts to get Somerset County Council to look at fresh evidence has also been denied.

But last week members of the council's regulation committee felt that due to the deteriorating health of Mr Peppard, the case should be given priority and agreed to take their application for deletion "out of turn". Over the next few months the council will decide whether to delete the path.

Ms Peppard, 78, said: "We are very pleased with this decision and only hope that the final outcome will end up good. Archie is not that well at the moment and this has been going on for so long now, we just want it to all be over."

An application for a Definitive Map Modification Order was submitted to the county council in April.

Applications are scored and placed in a queue. The Peppards' case was low down on the list, so the pair lobbied the council in July to give their case priority.

Their plea was rejected initially but they applied again as they say they have new evidence, which supports their claim the footpath was added to maps in 1959 without consultation with the family.

The pensioners say they first knew about the path in 1973 and have been fighting the council with former rights of way consultant Marlene Masters of Yarlington for the past 15 years.

Mrs Masters said: "I am pleased, but exhausted. It should not have taken this long and we have only won the first round."

Mr and Ms Peppard are also backed by Somerton and Frome MP David Heath, deputy high court judge Liolin Price and county councillor Derek Yeomans.

Mr Yeomans, as chairman of the council's regulation committee, had to leave the meeting on Thursday because of his "prejudicial" interest in the case.

GETTING THERE: Rodney Peppard with his mother Ivy and uncle Archie Peppard have been campaigning for more than 36 years to remove a footpath that runs outside their house on Turn Hill Farm in High Ham, near Langport. Somerset County Council has agreed to take their latest application to delete the path off maps "out of turn" due to exceptional circumstances. *Picture by Jennie Banks*

Western Gazette 11 March 2010

It is alleged that between May and October 2009, this person had submitted 114 applications for the access friendly establishment of Bridleways through the County. The significance is the effect these applications have in relation to a Statement of Priorities which rules: if an applicant had made a first or second unsuccessful application, any subsequent application goes to the bottom of the list. At the top of this bottom are those applications representing promised improvements while applications for deletion, which both the Peppards and Herricks were, go to the bottom of the bottom. What the BHS had done was to constipate the system with their mass of priority first time applications which all take priority. It will be readily understood why the Peppards were still awaiting a fair hearing after 36 years.

Fortunately for the Peppards, the Chairman made a strong case to his colleagues in support of them. The Committee accepted what their Chairman had had to say, as a consequence of which, their application should now go to the top of the list.

The Herrick Case

The Herrick application dated 28 October 2009 applied for the deletion of the western end of a footpath in Barcroft Lane on the grounds that it was included in error when the Definitive Map was drawn up. The strangest of all reasons given by the officers for not taking this application out of turn was time and space related since there was before them a proposal from the BHS to convert the contested footpath into a bridleway. The Chairman thought this development bizarre. The Minutes of that Meeting reveal that: "The Council had a duty to investigate any evidence that there may be higher rights applying to the footpath in question". Such an investigation need not require an exorbitant amount of time. Some flexibility is required. The claim was both convenient and its use insidious. The Case Officer, Denise Chandler, recommended that the Herrick application be taken as set out in the Statement of Priorities. If the Committee were to agree, the effect of that refusal meant the Herricks would be waiting until 2011 until the Officers scored the application for priority.

Admiral Kidner stood up to oppose taking the application out of turn. He claimed, in addition, to be representing the views of the local Council et al although there was no request from the Committee for sight of the letters of authority.

Representatives of Curry Rivel and District Walking Club and South Petherton Walking Group spoke in support of Mr Herrick's application.

I had been familiar with the matter of Barcroft Hall for a year, researching the respective cases. I concluded that support was due to the Herricks. I said to the Committee: "The basic question is: is this matter contentious?

- It is contentious when the course of justice is perverted by representatives of the Authority actively favouring one side in the dispute. This was achieved by:
    - Declaring the Herricks to be vexatious complainants. That is not how the civilised behave.
    - By agreeing to indemnify Kidner in the event Herrick was awarded costs…" I was stopped by the Chairman at this point. "You are discussing the High Court Hearing", he said. I insisted I was not. "What I am describing occurred prior to the High Court action." He disagreed, insisting that I discontinue discussion of what he believed to be the High Court business. There was no point in arguing for to do so would have damaged the Herrick case. I asked the Chairman that my gagging be recorded in the Minutes of the Meeting.

There were two other matters to arise from this Council Meeting which would leave the impartial observer with the distinct impression that there was no understanding of the concept of equality of arms under the law. The contradiction of the opposites, whereby a centre-right Council was pursuing radical measures was due entirely to the manner in which the officials operated.

It will be recalled that the Officers opposed both the Peppard and Herrick applications. What these applications had in common was, if they succeeded they would make very modest limitations on public access. The Officers' entire *raison d'être* is Countryside Access. They are instinctively opposed to any initiative which threatens to represent a reduction in footpath availability, even by a matter of a few yards and even if the application sought to right wrongs. There is therefore this immediate doctrinal confrontation between the aspirations of the Peppards and Herricks on the one hand and the Officers on the other. The Council should, as a matter of urgency, investigate the role of their Officers in business such as this.

I sat there, observing the rapport between Officers and elected members. The former were there, seated at the High Table, where they enjoyed freedom and privileges beyond those which were available to their opponents. To favour insiders, officers of the Council, and to penalise those representing the opposing side does not fall within the understanding of natural justice. I noted the Herricks' solicitor was permitted just 3 minutes to present a complicated application to the Committee. It is small wonder that when the time came to vote, at least one member admitted he did not understand and chose, as a last resort, to accept the Officers' recommendation. The evidence suggests that they were interested parties acting from a privileged position against the interest of the appellant. Committee Members should be trained sufficiently to enable them to understand the procedure and come to their own conclusions based upon the evidence put before them. The abrogation of their decision-making privilege is unacceptable, particularly when it means the transfer of that privilege to advisors representing one side of the argument. There was a clock there, where the passage of 3 minutes was dutifully and accurately recorded as though in a boxing round.

The Chairman told those present that the elected members, facing one another across the chamber in tribal lines, were not political but made their decisions based on the facts presented to them. One Liberal Democrat Councillor, Mrs C. Bakewell, had her impartiality challenged on the grounds of her criticism of the Herricks with extreme prejudice. She should have declared an interest. According to the Minutes: "The Chairman asked Cllr Bakewell if she had an open mind on the matter and she indicated that she had come to the meeting with an open mind and had not made any decision on the matter until hearing the debate at Committee". Despite her promise to listen to the evidence with an open mind, the end result was precisely as feared.

There were 4 Liberal Democrats and 4 Conservative Councillors present, members of the Regulation Committee. There should have been 5 Conservatives. One was absent having been injured that morning. There was no time to arrange a substitute. The numbers are important. It is to do with proportionality regulations and representation of the people. The situation in the chamber was exacerbated due to one Councillor, Mr Gill, sitting as a Liberal Democrat member who had allegedly been elected as a Conservative, since when he had crossed the floor, thereby representing the minority within his Division.

I found from my own experience in 2001 that calculation and logic have no place in an attempt to predict a result. For example, taking the Herricks for who they are and what they have, it might have been expected that the Liberal Democrats would oppose them while the Conservatives would be less doctrinal. In principle, therefore, to the Herricks the numbers mattered. The absence of one Conservative, all things being equal, could be argued to mean that a quorum had not been established.

But things are not always equal. Attention turned to a Conservative Councillor who made a proposal prior to any discussion. "I find all this too complicated. I propose we accept the Officers' recommendation." Herrick had lost. The Officers' run of luck continued unabated, facilitated by the 3-minute rule. It played entirely into the hands of the Officers and their interests.

Herrick had every right to believe that Committee members should make an effort to grasp the issues involved. The Conservative Councillor sitting next to the first to declare his voting intentions also gave a thumbs down. With the block Liberal vote in the negative, the Herricks lost by 6 votes to 2, the two being, to my mind, the only two Conservatives appearing to have any concept or understanding of the issues involved. What the 6 Members opposing the Herrick application were saying was that this was not a contentious issue. That is manifestly not the case.

There was selective discussion at the Regulation Committee Meeting of Article 6 of The Human Rights Act 1998. The Act guarantees citizens the right to a fair, impartial and independent tribunal. Did the Herricks receive that to which they were entitled under the law? No. Based upon their past record, would I, personally, be content with an opinion on this matter from the County's Legal Department which exonerated the Council from wrongdoing? No. The conclusion is that the Decision by Somerset County Council in relation to the Herricks on Thursday, 4 March 2010 is inadmissible.

There are problems here. Decisions must be based upon circumstances and not twisted to fit a template. The clarification of the functions of Decision Maker and Advisor require urgent attention. It appears that Officers are acting with extreme prejudice against any proposal that is not positively directed towards Countryside

Access. Advisors should be obliged to make meaningful declarations of interest as a preliminary to future Regulation Committee Meetings.

The Government intends to introduce The Local Government and Planning Bill. There is a number of thoughts arising:

- In the interest of local democracy, the decisions of County Council Committees investigating Rights of Way matters shall not be overturned by Government Inspectors of doubtful legitimacy. The public should exercise control over their lives through their locally elected representatives. Other matters should be subject to investigation by an appointed Adjudicator, a barrister, specialising in Rights of Way matters.

- Writing as one familiar with transport operations and law, it is not evident why highways are the remit of the Planning Inspectorate. At the moment, the existence – or not – of a highway can only be determined by a Court. There is within the 1940s literature a comment by L.J. Scott to the effect that the tribunal should be "chaired by a barrister of not less than seven years' standing legally qualified in the complicated matter of highway law". How it is expected that an individual, whose pinnacle of experience immediately prior to being appointed Inspector had been responsibility for updating her County's Definitive Map, can approach that standard is difficult to fathom.

- It is essential that elected Members understand it is they who are elected to make that decision, not, as is so often the case, to concede that privilege to their advisors. Members must exercise effective control over their advisors. The advisors are committed to an access agenda and should not, must not, be considered impartial. Policy is for the elected members to decide, an act which should not exclude pragmatism and flexibility. Where it is thought necessary to employ an independent consultant, the choice is in the gift of the Chairman, not the advisors.

- Elected members are to be trained by independent, impartial, apolitical trainers.

- Legal representatives appearing before Local Government Committees must be afforded fair and reasonable time to make their case.

- The requirement to give evidence on oath could be a means of limiting the widespread incidence of untruthfulness.
- The closure of Definitive Maps to new additions is overdue. The maps should remain accessible for the removal of wrongful designations.

3

WEST DORSET DISTRICT COUNCIL (WDDC)

In November 2000, there was but one waymark indicating the route of the path through Wallhayes from the northern gate to the railway station, at the stile to the west of the station. The word at the time was that West Dorset District Council had examined the evidence and was of a mind to restore to Wallhayes the pre-existing levels of privacy and security through the means of a Diversion. It came as a surprise therefore to see that in mid-November the County Council's officers had had cause to erect a waymark at the northern gate guiding the general public southward through Wallhayes. It seemed nugatory. Here we had the District Council about to approve the Diversion around Wallhayes and the County Council encouraging the wider public to use a route which in a matter of days would be the subject of an Order for its removal.

I took the post out, put it in safekeeping and told the Rights of Way Officers what I had done and why. Apparently, that action caused consternation among the Rights of Way community in County Hall. In an eleventh hour letter, Jonathan Mair, a senior solicitor at County Hall wrote to Mr Muir West Dorset District Council's Head of Legal Services. The letter was in two parts. First, a legal argument and second the relaying of senior Rights of Way officer Slade's objection "to the proposed order because it is clear that the diversion would result in a path which is substantially less convenient to the public."

The basis upon which the Mair intervention was made was later considered by the Administrative Court where Mr Justice Crane ruled that the County Council's interpretation of subsection (2) of s. 119 of the Highways Act 1980 was incorrect.

Initially, Mr Slade suggested we approach the late William Crutchley with a proposal to exchange 300m of path for 300m of the derelict railway line passing through Mappercombe Estate property. He should not have bothered. We invited him to our home so that he might give us guidance. He did. He said: "Do nothing." We thanked him for his advice. His advice to Mair that the proposed diverted path would be substantially less convenient to the public was a totally unsustainable assertion coming from a Department which had set the DCC standard.

4551 Appendix B
[2 Pages]

DORSET County Council

CORPORATE SERVICES
Elaine Taylor • Director

Kathleen Rice• Head of Legal Services
County Hall • Colliton Park • Dorchester • DT1 1XJ • Tel: (01305) 251000 • Direct Line: (01305 or 01202) 225090
Fax: (01305 or 01202) 224399 • Minicom: (01305) 267933 • DX8716 Dorchester

Mr A Muir
Head of Legal Services
West Dorset District Council
DX8724
DORCHESTER

Your ref:
My ref: JM/SBB/5090
Ask for: Jonathan Mair
Date: 27 November 2000

BY DX AND FAX 01305 251481

Dear Alan

RE: PROCEDURES FOR FOOTPATH DIVERSION ORDERS

I understand that at their meeting tomorrow your Council's Environment Committee are to consider a report recommending changes to the procedures for footpath diversions under Section 119 of the Highways Act 1980. I am sorry for the lateness of this letter but I was only alerted to this today.

The power to divert is a concurrent one shared by our two authorities. However in order to avoid duplication of function and in order to ensure consistency of approach diversion and extinguishment orders tend now to be dealt with by your authority only. I am concerned though that despite the County Council's overall responsibilities for rights of way there has been no formal consultation about your proposed changes to procedure. I do have serious misgivings about those changes and the way in which you have applied the comments made by Mr Justice Collins in the case of ex parte Patterson.

In paragraph 3.4 of your report you summarise the judge's comment that a local authority must, initially when considering whether to make a diversion order, consider only whether it is in the interest of the owner.

However, if you turn to section 119 you will see that the discretion to make an order "in the interest of the owner" is expressed to be subject to the requirements of subsection (2). Subsection (2) makes it plain that at the initial stage an authority shall not make an order which would result in a path substantially less convenient to the public. If you turn then to the foot of the second page of the decision of Mr Justice Collins you will see that he did not deal with subsection 2 but only because, as he points out, it did not apply to the particular circumstances before him in ex parte Patterson.

I can see the sense of a two stage decision making process looking firstly at whether or not to make an order and later at whether, in the light of other considerations and objections, that order should be confirmed. However, the very clear requirement of the Act is that stage one involves looking at not only whether an order is in the applicant's interests but also whether the resultant path is substantially as convenient to the public. Stage two would of course take in the wider criteria set out in subsection (6).

This is more than an academic quibble. If the only test at stage one is whether an order is in the owner's interest then every application for a diversion, no matter how misconceived, will result in an order being published. If an order is objected to then there will be consideration of the test contained in subsection (6) but the test in subsection (2) will never have been addressed.

The practical application of all of this is seen in the application on your agenda to divert footpath 32, Powerstock. The report recommends that an order be made on the basis that this is in the interests of the applicant. The correct test and the test which you are bound to apply is that set out section 119, subsections (1) and (2). The County Rights of Way Officer has instructed me to object to the proposed order because it is clear that the diversion would result in a path which is substantially less convenient to the public.

I appreciate that there is little time ahead of your meeting tomorrow afternoon but if you would like to discuss this then I am in the office all morning. Rather than face the prospect of our two authorities arguing over this point in public in an inquiry or a court setting I would ask you to consider again the tests in section 119 Highways Act and at this stage to include both subsections (1) and (2) in the first stage of your new procedure.

Yours sincerely

Jonathan Mair

Jonathan Mair
Principal Solicitor

The effect of the ill-advised Mair intervention was to set progress with the application back 4½ years. The bill in terms of effort, stress and cost proved enormous. The irony of all this is that a year after the County Council heard the Application proper, it was challenged by the Fraternity and as a consequence, in 2006 a Local Public Inquiry was held. It fell upon the County Council to defend its Order, the case in support of the Appellants' duly led by Jonathan Mair.

To return to the auspices of West Dorset District Council, in 2000, as one of its first legislative flagship measures, New Labour made the European Convention on Human Rights justicable in British Courts. The resurrection of the District's quasi-judicial Inquiry became subject to stop-start review as the District Council considered the Human Rights Act 1998 and its relevance to the Wallhayes question. The Council noted the relevance of Article 8, the right to respect for private and family life but it was Article 6 which became the subject of deep consideration to the extent that the relevant Committee went into secret session.

Article 6, the right to a Fair Trial, applies to all citizens. It says "…..everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement….." The key words considered here are *fair*, *independent* and *impartial*.

It will be seen however, that having taken the trouble to identify the key points arising in the new Human Rights legislation, nothing was learned and nothing applied. Whereas subversion was the dominant factor driving the Parish Council, the District Council's action against us was characterised by the absence of equity.

The District Council's Chamber is square shaped with seats and chairs along four sides. It had formerly been under the County Council's ownership when in 1889, it was adopted as a Council Chamber. The complex is of an earlier date, 1796 – 7 when a new Crown Court was built to replace an earlier one on the same site. Justice was rough and punishment gruesome. In 1815 citizens could be executed for 288 offences including stealing goods worth five shilling (£6) or cutting down a young tree. Today, of course, punishment is no longer gruesome but justice remains rough.

Content that the new Human Rights Act was fully understood, the quasi-judicial hearing by West Dorset District Council's Environment Committee to consider the Wallhayes diversion application began a little after 10.30 a.m. Monday,

30 April, 2001. The County Council maintained its irresistible predilection to interfere in the jurisdiction of subordinate authorities. The warning to the District Council was explicit, if they did not do as was expected of them, the County Council would lodge a formal objection to the Order through their Roads and Rights of Way Committee. Moreover, it was noted by the appellants that witness statements were anonymous. The Chairman said "he was satisfied they were all genuine letters of objection." Councillor R.W. Coatsworth, Vice Chairman of the Council warned Members that the evidence was not entirely reliable.

At the beginning of the Inquiry Declarations of Interests were made, something which occurs at all levels of local government. Two members declared themselves to be members of the Dorset Wildlife Trust, another a member of the Ramblers' Association and another a member of the CPRE. All four took part in the discussion and voting. In retrospect I have thought of the logic behind members declaring their interests. If that logic were to be extrapolated to include, say, the Inspector who chaired the Local Public Inquiry which followed, her customary allegiance to the Rights of Way fraternity would have obliged her to debar herself from participation in the Inquiry.

In 1870, William Samways, 19 was fined ten shillings and imprisoned for seven days for the first time offence of 'ringing a doorbell'. John Samways, Chairman of Powerstock Parish Council's presence in the Council Chamber was not as a defendant but as de facto prosecutor. In view of the nature of his involvement in this matter, the expression of bland sympathy was unworthy and inadequate. Over a period of time, as the truth became known, his resignation as Chairman of the Parish Council went nowhere near far enough.

Mrs Haynes, the Local District Council Members, had recommended we take our case to the District rather than County Council because, in her view, the structure of the former would be politically more amenable. Thirteen Environment Committee Members were present and ten absent. The advice was therefore nonsensical. Our prospects depended in effect upon a lottery and, given the antecedents of those who had already given declarations of interest, the balance appeared loaded against us.

Our solicitors did wish to know the identities of those who had lodged objections. Mrs Haynes intervened. Apparently in *her* Committee (she was not an

Environment Committee Member and had no vote) it was not unusual for them to accept anonymous submissions. On her word, therefore, the Chairman refused the solicitor's request. A whistleblower said we should follow up this line of inquiry. Of the seven local objections received, three had been written by the same person, a near neighbour. It was she who requested anonymity.

Mrs Haynes proceeded to damage our prospects. She told the Committee that she had worked with officers to try to establish a suitable alternative. She had been one of those to reconnoitre and recommend the DCC solution. She went on and "expressed concern at the length of the proposed diversion and the potential for consequent increased use of the highway." It seems impossible that an elected member could go through a decision-making process without recalling what the decision had been founded upon. The proposed diversion is 10m longer than that which it is intended to replace. Her solution was 300m longer than the existing path. The DCC Plan, which she approved, accepted increased use of the highway. Councillor Streets, there under the Open Door Policy, then told the Committee that 'a considerable number' of local people opposed the application. That is untrue and can be shown to be untrue. He had also endorsed the DCC Plan. He should have left the claustrophobic confines of evening parish meetings to take a view from the inhabitants. Councillor Coatsworth did this. He found the majority of village ambivalent while those who did express an opinion supported the diversion. The 'considerable number' of local people are almost entirely encapsulated within the two properties on either side of Wallhayes and a Parish Council orientated clique living in a hotspot of 4 properties running off Powerstock Square.

Mr. Streets accounted to the District and County Monitoring officers for any possible variation between his account and mine as: "unlike Mr. Connaughton I am not in the habit of keeping detailed records of conversations and meetings." Streets told the Committee that "it was quite common to find public rights of way running through peoples' gardens." He had one passing within six yards of his kitchen window "of the same character as the applicants' " which is "something I have to live with."

I decided to go and visit Streets' house, Trefoil House, Shortmoor, Beaminster, to assess whether Streets' right of way was indeed of the same character as mine. I was surprised to find Trefoil House to be a redundant Church of ease set

in a grave yard. From the church yard to the RC church St. John's next door runs a short path of paving stones. The path is neither marked nor is it shown on the Definitive Map. "The right of way," explained Streets, "was granted by Her Majesty Queen Elizabeth II in Council." So, his right of way could not be described as "of the same character as the applicants." He attributed the deceit to wishing to "demonstrate sympathy with the applicant."

Our Application was rejected 6 voted to 5. A Councillor approached me and apologised. "In all my years on the Council I have never seen a stitch up as comprehensive as that which you have suffered." Mrs Best wrote a letter to the Leader, a former naval person "we were subjected to misleading and inaccurate comments of two Councillors . . . . both seemingly with a very superficial knowledge of our ward." She received in return not an apology but a rebuke "unfounded allegations against individuals are not a responsible way of proceeding." The Wallhayes solicitor responded: "Representations made by Councillors were fundamentally incorrect and clearly prejudiced the possibility of the Committee in considering our client's application fairly and impartially."

An application was made to the High Court for Judicial Review. Mr Justice Mumby ruled Wallhayes had an arguable case which was heard before Mr Justice Crane on Monday 25 March 2002. The Judge declined to rule on the length of footpath at issue or identify where the points of termination should be. He said that was a matter for the Council or Secretary of State. A walker however must not be left unable to reach his or her destination. The Judge determined the Council to be liable for 75% of the costs. The District's Counsel reminded the Judge of the Council's offer to re-hear the case. Mr Justice Crane said he had made provision in his calculation, otherwise the Council would have faced the total liability. The appellants accepted their 25% levy as the price to pay for a future fair and impartial hearing. They were determined not to return to Streets and Haynes, applying instead to transfer to the jurisdiction of the County Council. True, they anticipated a rough ride with the Officers but ultimately they were advisers; authority being vested in the Executive, the democratically elected Decision-makers. If the Officers' advice were binding, the role and function of elected Decision-makers would be superfluous. Somerset County Council would be well advised to reflect upon that latter comment.

4

DORSET COUNTY COUNCIL (DCC)

The irony involved in approaching Dorset County Council to deliver a fair and impartial Hearing of their application, had not escaped Wallhayes' attention. DCC had earlier warned WDDC that if they failed to produce the desired result, the matter would be referred to DCC's Roads and Rights of Way Committee. The truth is that Wallhayes had run out of options.

In their new application for a diversion and submitted to DCC, the three applicants agreed liability to the Council's standard charge of £300 – both DCC and WDDC have shared responsibility for hearing diversion applications and therefore it was assumed the same fee pertaining to WDDC would apply to DCC. DCC, however, required the applicants to pay a consultant's fee of £1500 and a further £500 for advertising, all to be paid through their solicitor. The reasons put forward for buying-in a consultant were the unavailability of staff due to Mr Slade embargoing himself by virtue of his earlier actions and the requirement to deal with the matter expeditiously. Wallhayes had not requested a fast-track hearing, nor was that which was delivered. The new application was dated 30 January 2003, the Hearing approving the Order was held on 15 May 2004, the Order published on 17 December 2004 and confirmed on 14 July 2005.

The applicants regarded the fee of £300 as an obligatory cost to be paid en route to a proper hearing. They regarded a charge of £2000 as vindictive. Agreed, compared to the tens of thousands of pounds already expended in the quest for justice, the sum was not large.

It was a matter of principle. One County Councillor had said of the officers "they have got it in for you." Certainly, for them the whole business had become personal.

It should be remembered that over the previous six years, DCC had consistently emphasised the inviolability of the Definitive Map. The principle of continuity was established as the Council's second attempt to defeat the application. The earlier attempt, justified on the grounds that my father in law had made no

attempt to divert the footpath was quietly dropped when it was pointed out that the Rodney Legg initiative, the change of circumstances, had not occurred until two years after his death. It was practice to dismiss argument against the Definitive Map with the phrase "it's on the map." DCC's purpose in arguing against their own dicta to the extent that a third point of termination lay half way along the length of Footpath 32 represented their Third Paradigm, an attempt to block the application on the grounds that the diverted path could not be co-terminus with the one it was proposed to replace. For DCC, this novel and unconventional approach was difficult to argue and time-consuming but it was DCC's course of action by choice, requiring to their minds, the services of a consultant to formulate their case. Wallhayes' solicitor objected. The fee was over the top. Senior Rights of Way officer C.J. Slade wrote that he had 'been advised under the Local Authorities (Charge for Overseas Assistance and Public Path Orders) Regulations 1996 and in accordance with advice contained in circular 11 of 1996, the County Council should charge for the costs actually incurred'. Apparently, the County Council had no statutory fee. When Councillor Coatsworth approached Mr Slade asking for details of the charges for the processing of diversion applications, Mr Slade replied: 'it is no secret that we are considering £600 to be the right charge, with a discount for applicants who undertake a preliminary informal consultation . . there will inevitably be a degree of subsidy from the public purse in many cases.' Mr Slade went on to mention a matter upon which he had commented before: '. . a person with a path through their garden may enhance the value of their property by many thousands of pounds by diverting it'. It bears repetition that the Wallhayes application, however, was an exercise in restoring the status quo. There is a legal understanding that that which is improperly removed should be returned to its rightful owner.

Wallhayes believed that DCC's Rights of Way Office's purpose in hiring their own nominated consultant was to deliver the result favoured by DCC. There was in their minds therefore an unusual analogy of the victims being required to pay the prosecutor. An ultimatum came, not an unusual occurrence within the Legal Department. 'If your client is not prepared to meet the County Council's costs in accordance with the Regulations then the County Council are not willing to determine the application.' A further £2000 was accordingly added to the cost of seeking a fair and impartial hearing when £600 was thought to be 'the right charge.' No one

could accuse Wallhayes of not having undertaken 'a preliminary informal consultation', thereby qualifying for a discount on the £600 fee.

A letter requesting that costs be reduced was sent to DCC's CEO observing that 'the reason why we are where we are now is entirely due to the acts or omissions of the very same DCC officers who insist we pay for the services they say they are too busy to undertake'. This valid observation was not well received. In a petulant response under cover of the CEO's signature the real problems within DCC were sidestepped in preference to punishing the messenger. 'You have criticised the local County Councillor, the Monitoring Officer, the rights of way staff and legal staff'. Rather than consider the possibility that that which was alleged might be true, the rights of way and legal sections were instructed 'not to undertake any further work on the application'. After essential grovelling, the application was restored.

The CEO wrote how he had been 'advised' following the District hearing, that 'Mr. Justice Crane appears to have accepted that you were to some extent responsible for the way in which the Committee approached the matter. On this basis he awarded you three quarters of your costs'. The reason Wallhayes forfeited one quarter of their costs was not because they 'unduly influenced' WDDC in the conduct of their business but rather than WDDC had offered to re-hear the Wallhayes application, an offer that was declined for reasons already enunciated. Of more concern to the public is the three quarters costs awarded against the authority, estimated at £40,000 and charged to the ratepayers.

Not only was DCC unreceptive to criticism, it was equally not averse to the use of intimidation to silence criticism. It should not be forgotten that this Authority, whose policy was being meticulously followed by Wallhayes, had admitted at the working level that Wallhayes had a case but that it would block the application for fear of creating a precedent. DCC has never denied this to have been the case. What had been witnessed was this blocking process in progress involving Rights of Way and Legal Departments.

In April 2003 a recently arrived resident decided to walk from the railway station along Footpath 32 across the field to Nettlecombe. The path traverses a convex slope so that new walkers are unaware of the need to pass through the Wallhayes garden. What Mrs Dunstan had to say is the recurring inconvenient truth

which detractors hide away, setting aside those of a political disposition and, as confirmed at the Pierce hearing by the Ramblers Association, walkers do not enjoy walking through someone's home, preferring a convenient alternative.

> I have to say that I felt very much a trespasser and was totally embarrassed when the owner of the residence approached me from her garden….. I am writing to express my view that this situation should be resolved quickly because Mrs Best should not have to suffer the intrusion of members of the public walking through her property. She should not be denied her legal right to the privacy of her own property the absence of which would leave her exposed to the danger of misbehaviour from disreputable wayfarers.

The complainant received a reply from the County Council. 'The County Council, as Highway Authority, did sign and waymark it (the footpath) properly as we have a duty to do. However, Mrs Best's son-in-law, Mr. Connaughton, has removed direction signs.' Wallhayes has always been sensitive with regard to behaving properly towards local residents. It is unacceptable that a Council employee should promulgate such potentially disruptive untruths. There has never been a signpost at the southern gate, nor has the Council ever waymarked the route. Mr Connaughton did not remove direction signs. Moreover, the Council officer went on to assert wrongly 'that the garden had been extended to include the path'. That conclusion could not have been drawn from a comparison of old maps.

What disturbed the applicants were the echoes of those untrue statements among those who sympathised with the County Council's aim to block the application. For example, the Parish Council: 'Waymarks had all been removed'. The Ramblers' Association: 'This garden has been extended across the line of the path and a dividing hedge removed . . . signs and waymarks have disappeared from their strategic points on a number of occasions'. Parish Clerk Read: 'The land over which section B-C of the existing footpath runs was originally part of Home Farm which was acquired by the owners of Wallhayes to extend their garden'. (Readers are invited to observe the Inspector's treatment of this widespread evidence of collusion.) In fact, the land was not originally part of Home Farm but of Nettlecombe Dairy. Relative boundaries were redrawn as a result of consolidation within the Dairy some time around 1930. Miss Suky Best of London W11 1 AE

daughter of Parish Councillor Best wrote to say that 'The section in question has never had waymarkers that I can see', and then concludes, 'It seems odd that the signs on this bit of disputed path are always missing, could it be coincidence?' An independent observer picked up this latter comment of Miss Best's, 'that there are no way markers on this section of the path' and infers some sinister reason. 'The Council will confirm there has never been a marker at the south end and the one at the north is the subject of other documentation' Spiteful untruthfulness is not uncommon. There is no regulating machinery to discourage them. Similarly, there have never been waymarks on the Wallhayes property. Arguably the placing of waymarks through Wallhayes' garden would have proved nugatory. A 1998 Gallup Poll revealed that 37 per cent of those walkers interviewed were disinclined to obey waymarked paths in open country. Arguably that percentage would be higher in respect of Wallhayes where curiosity tends to draw individuals to view an interesting garden, winner of Melplash Agricultural Society's Large Garden Award 2003. Again, Miss Best believed the appellants' claim that the public did drift off the line of the path to be improbable. The local policeman said she was wrong since there was evidence this did occur.

That there is a difference between walking the countryside and someone's garden is evident in the statement of the then Environment Secretary, Michael Meacher, stating categorically that Rights of Way did not pass through people's homes. It is also of interest that the somewhat different Countryside and Rights of Way Act 2000 Act nevertheless established a clear defining principle: 'it has never been intended to provide access to, for example, people's back gardens'. That same principle is included in the draft Coastal Path legislation.

The applicants requested of Miles Butler, Director of Environmental Services a site meeting at Wallhayes with Mr Slade to afford an opportunity for the officer to explain his allegations. Mr Butler refused. A request to his predecessor had proved similarly fruitless. In an internal review, that self same Directorate appointed as investigating officer into a complaint against the Rights of Way Office, the husband of a wife in that office engaged in the administration of the Wallhayes case. The authorities appear more concerned to protect the reputation of their organisation and employees than to do what is right. A request inviting the Ramblers' Mrs Bramah to indicate on the ground where the garden had crossed the path, where the hedge was

removed and where the signs had been erected was similarly declined. Accountability in Dorset is not afforded high regard.

One person who heard these destructive criticisms at the following Local Public Inquiry commented that she was able to give 'some weight' to the Parish's submission. This was the same individual who wilfully suppressed the revised submission of the District Council to which she not only attached no weight but also no comment. Indicators identify association and collusion. In relation to our opposition; Collusion Indicators can be identified in the recurrence of phrases, words and assertions in submissions that are mischievous and plain wrong. There are Indicators which prove an improper relationship between Dorset County's Rights of Way officers and kindred spirits in Powerstock Parish Council. Evidence appears to indicate that the Rights of Way officers exerted control over the Parish Council.

One example is the County's use of the word precedent the creation of which was to be avoided. The need for the avoidance of the creation of a precedent self evidently went down the line. Once absorbed within the Parish, the avoidance of a precedent returned to the County Council as an objective in no less than five Parish objections. It had been overdone. The obvious question "What is the nature of the undesirable precedent?" was left resolutely unanswered in County and Parish. The insistence for an answer and the corresponding refusal to supply one became a source of embarrassment within the Rights of Way community. The Chairman of the Parish Council had submitted the Parish's heavily criticised list of objections to County Hall. The first had been an objection to the diverted path's additional length. Chairman Samways had been a founding member of the group which devised the DCC preferred plan measuring 899m. The diversion to which he complained on the grounds of additional length is 609 compared to the existing path's 599. Not only is this hypocrisy, it is also less than honest.

The last of the Parish's objections related to the avoidance of a precedent. The idea had originated among County Hall's Rights of Way Officers. It had been their creation, a wrong which assumedly entitled the officials to delete, which they did. They removed the final Parish objection re precedent from the Parish's submission.

It is Wallhayes' understanding that C.J. Slade appointed the County Council's consultant. The consultant had been formerly employed in the Rights of Way Department in the adjoining Devon County Council, Exeter. Research reveals that once she had been previously engaged by Mr Slade. When the other appellant was interviewed, he was asked how much the County Council had charged him for their consideration of his Diversion Application. "Nothing, nothing at all", he said. When asked why that might have been, he said that Mrs Slade, wife of the Senior Rights of Way officer was in his employment.

The Consultant submitted her report to the Legal Department where it was modified before being released to Committee Members. It was therefore not the Consultant's Report but a Joint Report. Among the deleted items which did not survive editorial overview was one inconvenient truth: In view of what was said in the forthcoming Government Inspector's Report, it is a reasonable proposition to assert that County Hall had a clear idea of the end game. 'Logically, the diversion would be in the interest of the Trustees of the Mappercombe Estate as it would turn a long cross-field path into a shorter field-edge path.' The Legal officer said, 'our Consultant's Report had been sent to Legal Services to be "cleared." What the censorship and the removal of this sentence achieved was to leave the way open for the Inspector to come to one of her more preposterous conclusions. Wallhayes made application to the County Council for a preview of the Joint Report. Permission was denied. It was explained by P.S. Crowther that it was not Wallhayes' Report but the Committee Members' Report. Committee Members did not receive Reports until a week before Hearings. Arguments as to different requirements were arbitrarily dismissed. The meeting to hear the Wallhayes application was scheduled for Thursday 4 December 2003. The previous Thursday 27 November 2003, Committee Members received the Report, which arrived at Wallhayes on Saturday, 29 November 2003 and at the solicitors in Bath on Monday 1 December 2003. The Report recommended that contrary to what was shown on the Definitive Map, the Roads and Rights of Way Committee identify point C (due to tampering with the Map within DCC point C became point A) as a termination point of Footpath 32, Powerstock and no Order be made relating to the Application.

There is an obvious problem with this proposal. A single path, such as FP 32 as shown on the Definitive Map can have only two points of termination – termination

means end. The language does not allow for an additional point of termination midway along the length of FP 32. If a passenger on the London-Edinburgh Express alights at Peterborough, the points of termination of the train remain unaltered.

On 1 December, Wallhayes' solicitor rang. He said he could not provide fair representation without first seeking the advice of Counsel. Moreover, the County Council's Report was entirely silent on the Wallhayes legal submission sent to DCC on 21 October 2003. Under the established provisions for this hearing, DCC undertook to 'provide Consultant with copies or access to all files and information in its possession relevant to the proposed diversion', something they either failed to do or the Consultant had overlooked.

Wallhayes' solicitor wrote a stern letter to DCC pointing out that the purpose of the Report had been:

> to put forward a balanced view that accurately reflects the position of the applicant and those that are objecting to it. To say that this Report tends to favour those opposing the application would be an understatement. Not only does the Report ignore the legal submissions made by myself in correspondence but also it chooses to introduce factual points, which, hitherto have not been made.

The Report's authors did not address Wallhayes' legal submission until 23 January 2004, over 7 weeks after the intended Hearing on 4 December 2003. The County Report had been based upon a narrative account, an earlier version of this particular dossier. Wallhayes instructed their solicitor that due to having been denied access to the Report and for the exclusion of their entire legal argument, a postponement of the Committee Meeting was inevitable. Earlier meetings had also been postponed. One of the dates chosen had clashed with wedding arrangements of the daughter of the family, in Sardinia, and on another date, the Wallhayes solicitor had been called to the Crown Court.

Still on the Monday, 1 December 2003, the Wallhayes solicitor rang back. The County Council had said their Consultant was already in the air from her Channel Islands home to attend the meeting on Thursday, 4 December 2003. The Wallhayes solicitor said the County Council had issued an ultimatum. Postponement would not be possible after 4 pm that day, either agree to proceed by then or forfeit the

opportunity. Wallhayes suggested that the reason for the regrettable requirement for a further postponement rested with the County Council first for unreasonably withholding the Report and for their failure to include the Wallhayes legal argument in the Report. The solicitor said the County Council were adamant, moreover Wallhayes would be required to reimburse the County Council the cost of the postponement. 'How much?' the solicitor was asked. 'Approximately £1000', came his reply, 'what are your instructions?' 'We will pay if that is the considered view of the Committee Chairman.' This sum was in addition to the £2000 demanded by DCC before they would contemplate hearing the case.

Exposure to the elected Members on the County's Roads and Rights of Way Committee proved to be a reassuring experience. Amidst all the chicanery, subversion and intimidation , the overview of the working of this Committee did much to restore confidence in the way DCC conducted its business. That too had been the case when the County Council referred the Wallhayes application back to the District Council's Regional Committee for the second time of asking, where the application was supported by 7 votes to 1, although the result may have come as an unwelcome surprise to some. Readers should take note of the Inspector's handling of this inconvenient truth. The County Councillors made time to come to Nettlecombe, walk the course and hold a public meeting in the village hall on 13 May 2004.

A Mrs Ramage who had been persistently vocal in her objections throughout the walking of the course was no less energetic in the village hall. Apparently the lane was dangerous. Why then, asked a member of the public, did she allow her 'defecating dog' to roam unsupervised along these lanes? She had no answer. She objected to the diversion because it would prevent her from walking to Askerswell and Loders. A member of the public pointed out that Footpath 62 was more convenient to her for that purpose, to which she responded: 'I want to use both'. One member of the public was of the opinion that making the Order would represent natural justice, a point resurrected at the Committee Meeting in County Hall that afternoon. But this is not about natural justice but doing what is right.

Brian Read, Parish Clerk, stood up and made a number of statements the veracity of which Wallhayes challenged. When the Chairman of the Parish Council was approached about what his Clerk had said, he replied that the Clerk was attending DCC's Hearing as a private individual and he, the Chairman, had no transcript of

what had been said. He and the Parish Footpath Officer had both been present at the Hearing. A transcript could not provide a hiding place from Clerk Read's allegation that there had been 'broken limbs' along Footpath 62, the traditional village route up to the Railway Station, now his home. Reference to DCC revealed there to be 'no recorded claims for injury along this path' and, having examined the Powerstock Footpath File back to 1980, 'there are no records of any personal injury reported to this section of Footpath 62 Powerstock'. When challenged, Read was unable to supply any names or dates.

The Roads and Rights of Way Committee reconvened in County Hall that afternoon. The Consultant presented her case. The Committee were unimpressed by the argument. Two Councillors who had walked the course asserted that both paths were of equal convenience to the public. At the end of deliberation, the Committee voted 5 to 1 to make the Order to divert Footpath 32, Powerstock along the route A-E-F-G-H-I as shown on Drawing Number 03/23. Members had concluded that:

- The proposed diversion was expedient for the two landowners
- In cases where the definitive map and statement did not coincide, the map was considered to be the clearest indication of what was intended and this showed that Footpath 32 began at Point A and terminated at Point I; and
- The extra distances involved in making the diversion were small and therefore were not substantially inconvenient.

The Committee came to these conclusions on matters of fact and conclusions to which the Committee was entitled to arrive. In a case such as this where the local, democratically elected representatives of the County arrived with all the relevant information at a fact-based Decision, unless that Decision be shown to be irrational, those intent upon intervening should exercise caution before disagreeing with that Decision. The law does provide a loophole whereby the view of the representatives of local democracy can be overturned by a singular individual appointed by the Secretary of State. That individual has to pass the test that if he or she does overturn the Decision of the Committee he or she can show beyond all doubt that has been

done fairly and impartially by a person who passed the test confirming his or her independence from any interest-based body.

5

CONFIRMATION

Months passed, there was neither Order nor Confirmation. On three occasions P.S. Crowther of DCC's Legal Department was asked for a progress report. He said there were staff shortages. Making and publishing an Order is neither onerous nor time-consuming for those of a mind so to do. Wallhayes' solicitor joined the protest but in P.S. Crowther's letter of 1o November 2004 received the same report of staff shortages. The Order was eventually published on 17 December 2004, seven months after the decision had been taken, with representations and objections to be lodged by 28 January 2005.

February and March 2005 passed without any tangible news of objections or representations. In a letter of 7 March, P.S. Crowther advised that he had received a significant number of representations and that he would be submitting the Order to the Secretary of State in due course. He promised copies of representations within 'the next few days'. On 5 April 2005 Wallhayes' solicitor wrote to the CEO of DCC complaining formally of unreasonable delays in dealing with the matter on the part of Legal and Democratic Services. We wanted to be admitted into the information loop. A month had passed since Crowther's promise of information within the 'next few days'.

Since 2000, we had reason to be concerned when DCC Rights of Way and Legal Departments acted in concert to stop the District Council making an Order to divert Powerstock Footpath 32. From that point there was the feeling that the latter Department shared the Rights of Way Department's determination that the diversion would not come to fruition.

In a letter of 29 April 2005 in response to Wallhayes' complaint, the product of DCC's monitoring system was revealed to Wallhayes' solicitor, Mr Steve Cheeseman, Corporate Service's Complaints Manager – and husband of Rights of Way's Mrs Cheeseman – blamed the delay upon 'pressures of work in the Legal and Democratic Services team and the fact there was a vacancy in the team.' Then, interestingly, he wrote: 'I assure you that the County Council has not deliberately attempted to delay the progress of your client's application'. No one had suggested

that was the case. Mr Cheeseman's letter came from Mr Crowther's office. It did appear however that a filibuster was at play. A reason could be that the officers hoped to postpone the confirmation stage of the Order until a new Administration and a new Committee were in place after the May 2005 County Council elections. Protests arising from such speculation would be understandable were it not for the fact that this is precisely what happened.

Consideration of Confirmation of the Order took place on 14 July 2005, 14 months after the Committee had resolved that the Order be made. Only one member from the original 13 May 2004 hearing was present. At the confirmation stage, the Committee considered those matters arising from the objections not addressed at the meeting on 13 May 2004, with a view to deciding whether they would support, take a neutral stance or object to the Order at the Inquiry.

Reference to the Wallhayes Report reveals the Applicants having been 'stitched up' at Parish and District levels. That did not happen at County on this occasion but not, apparently, for the want of trying on the part of some.

In his letter to S.P. Holdsworth of Thring Townsend of 25 May 2005, P.S. Crowther revealed for the first time that 'the Rights of Way Team have looked at the Definitive Statement for Powerstock in more detail'. 'They found', continued Crowther, 'that the northern section of the path is recorded separately on the Definitive Statement as Footpath 59 although you will recall that the whole path is recorded as Footpath 32 on the Definitive Map'. The Definitive Statement had been 'sealed' and held within County Hall. For seven years, both parties had formulated their arguments around what appeared on the Definitive Map.

The serious implication of that statement is to be found in what has become the routine personal objection from Parish Clerk Brian Read dated 18 December 2004. 'I have been told (though I personally have no documentary evidence for it) that this new path was at first designated FP 59, but was subsequently given the same number as the original FP32 to which it linked.' That information could only have originated in the Rights of Way Department. Wallhayes was not shown the final package of objections until April 2005 and was not told officially by DCC of the Footpath 59 factor until May 2005. It would also appear that the Rights of Way Department 'looked at the Definitive Statement for Powerstock in more detail' as

early as May 2004. Initially, this development did not unduly concern Wallhayes. The route remains the same and the conclusion of the Roads and Rights of Way Committee in terms of precedence is absolutely clear. What it did indicate was the umbilical linkage between the Rights of Way officers at County Hall and the Parish Council.

We therefore had a situation where a year would pass before the Council advised the Applicants of new information which the Council regarded to be significant and the details of which had been conveyed to Parish Clerk Read at least five months before the news dribbled out to the Applicants. If Read's statement had any veracity, the Authority should first have advised the Applicants, no matter how embarrassingly, that a 'discovery' had been made which would form part of the fourth successive justification employed by personnel within the Council to wreck the Application.

In his letter of 22 June 2005, P.S. Crowther sought to reassure Wallhayes' solicitor. 'The fact that the northern half of Footpath 32 is recorded in the Definitive Statement, albeit under a different number, may lead them (the Committee) to conclude that the Statement should carry more weight in light of this information. Equally, they may conclude that, irrespective of the recording of the northern half of the route as Footpath 59, the Statement carries less weight than the Map and their original view stands.' That proposition was never put to the Committee. The Rights of Way representative made an unequivocal statement to the Committee that the Definitive Statement took precedence over the Definitive Map. The Committee was not invited to consider the above test. P.S. Crowther, who was present, made no attempt to intervene in what appeared to be a unilateral judgment at variance with what DCC's solicitor had set down.

After requesting that the hearing be transferred to County to be heard by the elected members, there were ten local objections at this the penultimate trawl, all but one (Mrs Ramage) associated with the Parish Council – Councillors, relatives and friends – apparently supporting the undeclared interest of the Parish Clerk. Read allegedly wrote the Parish submission and submitted a personal objection together with objections from his son and wife. Forty per cent of the objections therefore had come from the pens of the Read family. Raising an objection by itself is insufficient. Writing to Rights of Way's Mrs Cheeseman, Police Constable Poole of Nettlecombe

said of the Parish Council-inspired batch of objections: "Taken as a whole they paint a picture to me of an area I hardly recognise. I was born in the Parish 50 years ago and have lived and worked in the area all my life." The point is that the objection itself is nowhere near as important as its contents and veracity. In his submission, the police officer added his opinion that the Wallhayes saga:

- "appears to have been dealt with in the most dubious manner by some of the concerned Authorities";
- "it appears from reading the letters of objection and related papers that there has been an orchestrated campaign conducted against this application"; and
- "I hope that when the matter is resolved, it is resolved by taking into account actual facts and not unbalanced rhetoric."

In the most recent and final round at which objections were solicited, there were again ten local objections, half of which had been written by the Read and Ramage families. Four others came from a hotspot in a street in the village of Powerstock and the final submission is a representation rather than an objection. The expectation that the public view would be expressed through the Parish Council is an oxymoron. There was also a tight ring of distant objectors. We attempted to link the two circles. One outsider was related to a hotspot person. The Ramages had also spread their net. A Miss Ramage of London NW2 wrote a silly, irrelevant letter on her mother's theme of the Wallhayes conkers. In the tally, they all count.

On 14 July 2005, Councillor Coatsworth informed the Committee that whilst out canvassing, 'I did not find any great concern except for a few who were in favour of the diversion'. The local people were not steadfastly against the diversion. Many appreciated the benefit which arose from the compromise solution allowing walkers to avoid a dangerous hill along the road. The public do not enjoy walking through people's gardens and would prefer to take a path which avoids a person's home, subject to it not being inconvenient for a recreational walker. That is the Parish people's true position. The statement made to the Committee by the representative of the Rights of Way Department on 14 July 2005 to the effect that 'the public object to the Application' is deplorable and can be shown to be untrue by reference to the above examples of nepotism and to the County Council's own analysis.

The County Council analysed the representations and objections submitted to the 14 July 2005 Hearing. There were 18 objections and representations. As a result of the Committee's deliberations of 13 May 2004, twelve of those objection had been filtered out, six objections or part thereof were carried forward to the confirmation stage on 14 July 2005. Those six objections, therefore, whose topics related to the terms of reference for a Confirmation hearing and which therefore could not have been excluded earlier, represent the sum of what remained of the public's objection to the Application. Eighteen objections do not represent 'the public', nor were they objections which had found support or been upheld at either of the two Roads and Rights of Way Committee Meetings. Nothing survived. Someone at the 14 July 2005 Committee Meeting must have known that the Members were not being given the truth. No one intervened. In her Decision report, the Inspector declared in the text that there had been 8 individuals opposed to the Application. At the Inquiry, I told the Inspector that it was not quantity but the quality of objection which mattered. Not one person was shown in the text of the outrageous Decision document as favouring the Diversion.

When the Officers' Report to Committee Members was released, I telephoned Vanessa Penny of Rights of Way, asking that an element of balance be introduced to the Report to reflect fairness and impartiality. She regretted that would not be possible. When asked who were the officers who 'consider that the diverted route would be substantially less convenient to the public' , she said Crowther of the Legal Department, to whom she connected me. When the same question was put to him, he said 'Sweeney of Rights of Way.' It will be recalled that Crowther wrote that the purpose of the confirmation stage was for members to decide whether they support, take a neutral stance or object to the Order at Inquiry. Only the latter two options were put up front to members, having emerged from recommendations which had no foundation within the text of the Report. I wrote to the CEO for permission to address the Committee, a request that was understandably denied, but I was offered the opportunity to make a written statement.

The Report, produced in the names of two Service Heads and under the authority of the Director of Environmental Services, is a dreadful, superficial piece of work.

Powerstock Footpath 59 has to be a non-sequitur. Irrespective of what the Rights of Way Department said to Members, the Legal position as outlined by the County Solicitor was '(Members) may conclude that, irrespective of the recording of the northern half of the route as Footpath 59, the Statement carries less weight than the map and their original view stands.' While not put to Members as a proposition, their confirmation of the Order means that the original view taken on 13 May 2004 relative to the Statement and the Definitive Map stands.

It is important to pause to examine other ways in which the FP59 factor was used with a view to frustrating the Application. It provides one example of how opposition was co-ordinated among interested parties. It may be recalled that Powerstock Parish Clerk Brian Read wrote in his objection to the diversion dated 18 December 2004: 'I have been told (though I personally have no documentary evidence for it) that this new path was at first designated FP59, but was subsequently given the same number as the original FP32 to which it linked.' Since the Authority had not posed the obvious question, that was done in a letter from Wallhayes to Read dated 1 August 2005: 'Please advise who it was who told you that the northern section of Footpath 32 had previously been FP59, and when he or she told you.' Read responded promptly on 2 August: 'Details of footpaths are included on schedules issued to the Parish Council by the Dorset County and West Dorset District Councils. I enclose a dated copy of the relevant schedule for your information'. Wallhayes' letter of 4 August acknowledged Read's letter of the 2nd. 'Thank you for the schedule which you kindly sent me. However, you did not answer the question I put to you. These are: "Please advise who it was who told you that the northern section of FP32 had previously been FP 59, and when he or she told you" .' We wanted to know the identity of the person Read was dealing with in County Hall.

Since it was in the public interest to know the identity of the individual in County Hall working with Clerk Read against our interests, I went to the Parish Council Meeting on Monday 22 August 2005. I asked Acting Chairman Bunney for permission to put the question to Read. The Acting Chairman refused. Read did not volunteer to respond. I asked him directly. Bunney intervened saying all questions through the Chair. The Chair Bunney refused to put the question to Read. The FP59 issue had been used on (14 July 2005) as a device at the County Roads and Rights of Way Committee Meeting with a view to damaging if not wrecking the Application.

The next day, at 1 p.m. Tuesday 23 August 2005, I asked Read, politely, who his informant had been. He said: "I am not prepared to discuss or be intimidated by a third party in discussing my private correspondence."

William Crutchley's solicitor's letter dated 12 July 2005 and addressed to P. Crowther confirmed that the Estate's position remained as outlined in his letter of 29 October 2003, that the Estate's position was one of neutrality. It was on the basis of that letter that DCC's Counsel, Philip Petchy, gave his opinion dated 12 November 2003 that Mappercombe's position was one of neutrality. It is evident that at the time the Order was made, neither the Estate nor DCC's consultant had identified any factor which indicated that making the diversion would not be in the Estate's interest.

The Report's author provides the Membership with no evidence to support his recommendation that they 'resolve that the Diversion Order does not satisfy the confirmation test.' That this was neither a fair nor balanced report is borne out by the presentation to Members with but two options, either to object to the Order or to take a neutral position at Public Inquiry. Nowhere does the Report draw Members' attention to the relevance of compensation provisions within Section 119 of the Highways Act 1980.

Although the hearing began badly with the anticipated statement from a Councillor to the effect that the new evidence changed the foundation upon which the original decision to make the Order had been based, other Councillors were not so lacking in objectivity. They were not swayed by the officials' arguments. Fears, therefore, that a majority would seize the opportunity to object to the Order were ill-founded. We were genuinely surprised and pleased to see the Committee support the Application again by 5 votes to 1. Councillor Coatsworth had made a strong statement in support and the presence of the Leader of the Council gave a clear indication of his interest in the proceedings of this Application.

The Leader of the Council had been present at the Committee Meeting. He noted the Officers' economy with the truth and how they had been economic in the options they put before the Committee. He reported his unease to the CEO. The CEO asked Senior Solicitor Jonathan Mair to investigate. Mair wrote to me to tell me of developments and that he would be 'concentrating my efforts on taking the matter forward.' I heard nothing further.

On 14 July 2005 the County Council agreed that the Order be made to divert the requisite part of Powerstock FP32. They therefore reached a conclusion which, but for the County Council's unjustified intervention on 28 November 2000, could have been made 56 months earlier.

Financial implications arose as a result of this rare victory. First, the Executive had agreed that if one were to succeed at this stage, a partial refund of costs would be investigated. After receipt of due application, the Rights of Way Department refused to take the matter further. Second, the Appellants were told informally, that as a result of their success, if the Parish Council wished to continue what resembled a vendetta, they would have to fund continuing opposition from their own resources precisely as the Appellants had to do. The Parish Council queried this assertion at County Hall, were told it was erroneous and the matter was dropped in the space of four weeks.

The cost both to Appellants and ratepayers had been enormous. If objections are made subsequently, or remain on the table and it can be the objection of one person, the matter has to be referred to the Secretary of State who then, under s. 250 Local Government Act 1972, appoints one of his Inspectors to hold a Local Inquiry. That he did, a Mrs. Erica Eden MIPROW, a person known locally through her role in the Pierce case. On 24 April 2004, Dr. Peter F. Griffiths, had written to the County's Director of Environmental Services. His last words recommended the Application's investigation "by a totally independent individual."

Mrs. Erica Eden MIPROW, was neither impartial nor an independent person.

The matter of the Wallhayes diversion thereafter became the responsibility of the County Council, it is their lead. Officers could not, by convention be engaged overtly in opposition to Wallhayes. Although Mr Mair admitted his officers remained opposed to the Wallhayes Application, they were obliged not to adopt a position contrary to that established by the Council's Executive. Mr Mair wrote to Wallhayes' solicitors to inform them that he would represent the Council's, and by association, Wallhayes' position. That was a strange turn of events.

6

THE LOCAL PUBLIC INQUIRY

The Local Public Inquiry into Dorset County Council's Order to divert part of Powerstock FP 32 was held in the Parish Hall, 21-22 February 2006 and 26-27 April 2006. Under s.250 Local Government Act 1972, the Secretary of State DEFRA nominated Inspector Mrs Erica Eden MIPROW as his representative subordinate.

Those opposed to the Diversion sat in the block of seats on the left, those supporting the Diversion on the right. Facing them sat the Inspector. On her left were those supporting the proposition, the County Council's senior solicitor, Jonathan Mair, in the lead supported by the Appellant's Counsel from the Chambers of Mr John Hobson QC and the instructing solicitor from Thring Townsend, Bath. On the Inspector's right sat the three individuals who had been self-selected to oppose the Council's Order – Mrs Ramage, close neighbour to Wallhayes and, representing the Ramblers' Association, the District Officer, Mrs Rosemary Bramah and Brian Panton, Dorset Area Footpath Secretary.

Sitting among those on the left, I recognised Henry Best from Somerset, brother-in-law of Parish Councillor Mrs Jenny Best. He repeated to me virtually verbatim the core issue in the Ramage statement, a matter which did not appear in the Decision document. He said there was considerable interest in the outcome of this Inquiry because: "If the diversion is permitted, regardless of the great loss to the public, then the future is bleak for the network of paths that run through gardens and drives in most of our county villages". I was in no doubt whatsoever that our application would fail. Whereas the case was strong, not least the principle that something taken improperly should be restored to its rightful owner, it would not be allowed to succeed. It would be interesting to see the methodology adopted to overturn a strong case.

Two complaints arising from the Inquiry, neither of which were acknowledged or answered, one from the policeman resident in Nettlecombe, the other from a former Bridport police inspector, foretold the unsubtlety of the Inspector's Decision. "It looked to me", wrote PC T.J. Poole, "as though either the Inspector was working to a personal predetermined end, or had been so instructed by DEFRA. …one simple

example:- the Inspector gives weight to the Parish Council, whose points of objection included the excessive length of the diversion – generally agreed to have been 10 metres". This was the same Parish Council which, in the similar Corfe Farm Diversion, saw no difficulty in expecting the public to walk over 500 metres from the previous point of termination to the new one. If the latter case were applicable, i.e. the Inspector was working under instructions, it would explain the extreme measures adopted by the Planning Inspectorate, an Agency of DEFRA, to ensure the Inspector would not be called to account. Prior to the Inquiry, I confided in former Police Inspector Hugh Thomas my conviction that irrespective of its merit, the case was doomed. He said I was being unnecessarily pessimistic. After he had witnessed what should have been a fair, independent and impartial hearing, he penned a letter of complaint to the Planning Inspectorate. "I acknowledge that the Decision document can only contain a fraction of the evidence put before the Inquiry but I am drawn to the inescapable conclusion that almost exclusively, only evidence in support of the Decision has been included and that other, perhaps more compelling evidence, has been disregarded or more ominously, misrepresented." What he had described was a Government-sponsored 'fix'.

A third example came from County and District Councillor Coatsworth, Chairman of West Dorset District Council, who said of Mrs Eden: "She seemed to show bias towards one side, was inconsistent and abrupt almost to the point of rudeness and ill tempered in such a way as to lose control. I believe that Mrs Eden's conduct may have driven her to conclusions which cannot be justified or understood by any reasonable person". A citizen has an inalienable right to comprehend conclusions reached by an official adjudicator. It is unacceptable that those responsible for the upkeep of the law should deny citizens the right to an explanation of the incomprehensible purely on the grounds that the Inspector was 'entitled' to come to the conclusions that she did.

Beyond certain provisions in s.250(2) of the Local Government Act, there was no framework for the conduct of the Inquiry nor, until 2007, were there any Rules of Procedure for the conduct of Rights of Way Inquiries. Procedure was entirely in the gift of the nominated Inspector. Mrs Eden established her parameters for the Inquiry:

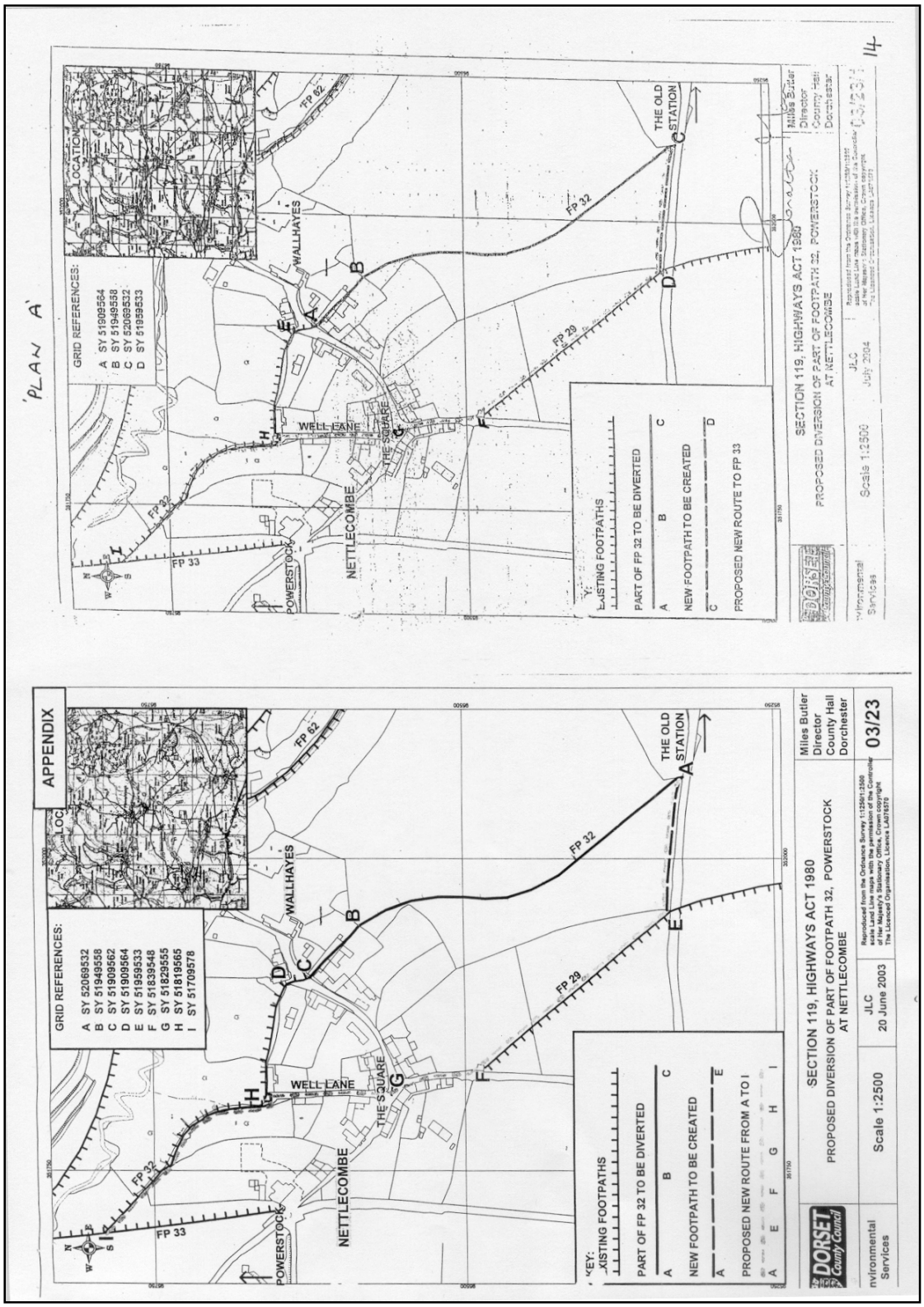
- There would be no discussion of the wrongful designation.

- Walking the course would be restricted to one person from each side. Following the interregnum, on 26 April 2006, Mrs Eden opened up the walking of the course to all – all, that is, present on 26 April 2006. Mrs Eden told Dorset CID that she had never restricted walking the course to one from each side. Cogent and compelling evidence proves that she did.

- The Inspector said she was not to be approached or come into contact with any one involved in the Inquiry except within the formal framework of the Inquiry. She broke this rule by virtue of her verbal assault, in a public place, upon Dorset CC's senior solicitor. Her argument that she had raised her voice so that 'others might hear' is untrue. I heard her shouting angrily at Mr Mair from outside the building.

- After opening submissions had begun, the Inspector declared it to be her intention to consider the whole matter afresh. She would consider whether the Order should have been made in the first place, not simply whether an Order that had been made should be confirmed by her Secretary of State. It had not occurred to the Inspector that what she proposed was overambitious for an Inquiry which had been granted but one day to complete. It took four days and needed two.

An applicant submits his Application to the County Council. Accompanying that application is a map showing the present situation and the change that is sought. That map, therefore, is in the ownership of the Applicant. The agreed, sealed map is that shown on the left of the two here. The variation from the original is the insertion of the letter D at the request of the County Legal Department. We had concerns where we might be going but agreed, so as to be seen to be fully cooperative. Come the day, it was not that map that appeared but the one on the right of the two shown here. Point A, which had always featured at the extreme south, now appeared half way along FP 32. These events, tampering with the map, are not accidental: there is always a reason. Nothing arose however during the course or the Inquiry to explain an action which led to a chaotic start. Only when the Inspector published her Decision did we appear to have a reason for alterations having been made to the map. We will account for our progress with discovering who was responsible for the tampering and why, in due course.



The activist, Mrs Ramage, was the first to make her statement. Mrs Eden said to her: "your purpose is to ensure this Application fails". She did not say "and it is my intention to help you to do so", but that was evident. Mrs Ramage talked for an hour on her family's access to the Wallhayes conker trees and to a lesser extent to a particular view which pleasured her. The guarantee from the owners of permissive

access through the garden proved inadequate for, as Mrs Ramage said "people change", to which the Inspector added her sympathetic support "and houses get sold". None of this however circumvented the trespass problem once assorted Ramages had passed through Wallhayes. The significance of the trespass dimension dawned late upon the Inspector who moved quickly to wrap up that particular irrelevance.

It will be recalled that, at the outset, Mrs Ramage had told the District Council that she was not opposed to diversions "as long as the proposed diversion does not diminish footpath provision". In cross-examination at the Public Inquiry, Mrs Ramage said she would object to any inclusion of road as part of a diversion, deeming such a course to be significantly more inconvenient. Any reasonable person could see that such a proposition need not always be so, as is evidenced within our own sphere of interest. In his complaint to the Planning Inspectorate, PC Poole told them that Mrs Ramage had distorted the truth which appeared to have been ignored by the Inspector. He had noted that "Mrs Eden has chosen to use Mrs Ramage as one of her main witnesses". He received neither acknowledgement nor reply to his complaint from the Planning Inspectorate.

At the Inquiry, and according to the Inspector, Mrs Ramage said that to the best of her knowledge there had been no orchestrated campaign and she took exception to the insinuation that she had a hidden motive in objecting to the application. Mrs Ramage's contested assertion to the effect that her objections were based solely on the fact that the path would not be substantially as convenient is not borne out by the evidence. She had not told the truth. She said that she was not opposed to diversions as long as footpath provision is not affected and would not accept any diversion which included the use of lanes. These are political considerations which have no place here. The Inspector was entirely in sympathy with the Ramage position. Her basis for determining that the diversion had "a detrimental effect on the public's enjoyment of the path as a whole" was based on "a reduction in the amount of footpath", a good proportion of which was the restoration of a length of path to its rightful owners. The remainder of the path would revert to its historic function as a stand-alone path connecting points B-C.

Mrs Ramage sat among two Ramblers' prosecutors, Mrs Bramah the District Representative and Mr Panton the Area Representative. It was outside the Inquiry that Mrs Bramah told how she had come under pressure from Mrs Ramage and one of

her own superiors, either Mr Panton or one of his associates, to dissociate herself from her earlier statement to the Appellants that the proposed diversion was not substantially less convenient for her members. Since then, for Mrs Bramah who knew the local paths very well, nothing had changed. It was Mrs Bramah who, on 26 October 2005, told Mrs Eden that her members "didn't like walking through people's gardens". Given Mr Panton's insistence that due regard be given to the views of his 2500 Dorset members, such a fact cannot be easily set aside. The Inspector dutifully

MILNE & LYALL
SOLICITORS

Oxford House · 33 West Street · Bridport · Dorset DT6 3QW
Telephone: 01308 422362 · Facsimile: 01308 427592 · Dx: 43201 Bridport
Direct Line: 01308 458570
E-mail: property@milne-and-lyall.demon.co.uk

Our Ref: 15P7066-KC Your Ref:

To whom it may concern,

On the 26th day of October 2005 I represented Mr Joseph Kevin Peirce and Mrs Ethel Rose Pierce of 176 West Bay Road, Bridport, Dorset, DT6 4EG at a Public Enquiry at the Leisure Centre, Bridport. This was an enquiry into their application to the West Dorset District Council for the diversion of a footpath which ran through their garden at 176 West Bay Road. The enquiry was necessary because objections had been made to the Diversion Order made by the West Dorset District Council.

One of the witnesses who supported Mr and Mrs Peirce was a Mrs Bramah who was the chairman of the local branch of the Ramblers Association. During her evidence Mrs Bramah said that one of the reasons why the Ramblers Association supported the diversion of the footpath was that it went through Mr and Mrs Peirce's garden and Ramblers didn't like walking through people's garden.

Dated this 3rd day of September 2007.

SIGNED.....

CHRISTOPHER JOHN GRAHAM WHITE

wrote in her Decision that Panton's ambiguous, unproven view "that some weight should be given to the opposition".

There is more to this impression of confusion among the ranks of the Ramblers' executives. We have no problems with the rank and file who want nothing more than to simply enjoy their national heritage. They are, almost without exception, kind, courteous and sensible people.

Disinformation is a form of subversion, prevalent among the opposition. Mrs Bramah included in her complaint the observation that Richard Connaughton must now be regretting removing hedges from his garden. The allegation was untrue. Mrs Bramah was invited to point out on the ground what she meant. She was not the first person given to this trait to decline the offer. It was on Day 4, walking the course, that I asked her to point out from where in the garden the hedges had been removed. She hurried off with Mrs Ramage in attendance. Neither could show the points from which hedges had been removed because none had been. That was not the revelation of the day but rather the quality of the Judgement of the Inspector. She said to me and Mrs Bramah, "You are both to blame!" It was pathetic.

A further economy with the truth is the impression given in Rambler statements to the effect that Mappercombe Estate has become more conformist in relation to the timely restoration of footpaths following cultivation. In the case of FP 32, with the winter rain upon heavy clay, that is not the case, but it is not for the want of trying – it is a physical impossibility.

For eight years the Appellants had fought the Fraternity until, following appearances before County and District specialist committees, the systematic stitching-up which we had faced was behind us as 85% of the County and District elected members voted in favour of the Diversion. Roy Harding, who comes from a long established Dorset family, put before the Inquiry his view of the next stage. "DCC came to this village in 2005 and held an open forum here in this Hut at which opponents and supporters of the application were given time to put their points of view. Many did, including myself. The Committee subsequently went away, deliberated and came forward with the proposed amendment (i.e. in favour of making the Order). They righted a wrong after hearing the evidence for and against and nothing has changed since then except that detractors cannot accept an honestly

achieved position that does not accord with their wishes." There is no mention of Roy Harding or what he said within the body of the Decision. Despite Central Government's platitudes in praise of greater local political autonomy, they let their Mrs Eden loose upon us. Counsel told her of the weight of locally elected opinion supporting the Diversion, to which she replied sharply, "I am not interested in that". She should have been.

The challenge facing Mrs Eden was to make a favourable representation of the Parish Council's position, one of which she, by her behaviour, was clearly strongly supportive. The task she set herself was to create a silk purse out of a sow's ear. "The Parish Council (claimed by objectors to represent us all)", observed former litigator Graham Stothard, "opposed their own District and County Council but strangely could not put up a spokesman to explain their views and answer any questions". Mrs Eden said she did not believe that Richard Connaughton provided anything that could be substantiated to undermine the validity of the Parish Council's objection. That was true to some extent, if only because the objection was without substance. His presentation was strategic by nature. The scrap of paper carried forward into this round was the same objection the Parish Council Chairman had originally said successively "that's not true, that's not true, that's not true". This was the same submission the County Council found necessary to amend and the one put down as nonsense before the Local Public Inquiry by PC T.J. Poole. The Inspector, however, wrote in her Decision a conclusion so absurd as to question her suitability to be acting as an Inspector. "I do give some weight to its (the Parish Council's) written objection as an elected Council (it was not), but it is not as much as I would be able to give if it had been tested under cross-examination."

The bias and hostility shown by Mrs Eden was unacceptable. This saga is replete with examples of her poor conduct and putting people down without just cause. Every individual put down was a supporter of the Appellant. At the end of the Inquiry, the Appellant was in discussion with his Counsel. Mrs Eden intervened. "Any claims for expenses?" she asked. Without waiting for an answer, she said "that's it then" and walked away. We did not deserve Mrs Erica Eden, MIPROW. "Your Chapter 6 rights have been trampled upon", said former police inspector Thomas. What we had seen at the Inquiry had not been the conduct of an Independent and Impartial Inspector.

Mrs Eden uses the post-nominal MIPROW, Member of the Institute of Public Rights of Way Officers, as an apparent qualification to undertake her work when, in reality, it represents a disqualification since she is clearly not Independent. Seven of 18 Government Inspectors were members of IPROW. The Association's publicly stated aims are:

- To represent and promote the views and interests of members in the fields of public rights of way and access to the countryside.
- To promote the professional standing of those who work in its profession.
- To promote high standards in the management of public rights of way and access to the countryside.
- To encourage the exchange of ideas and information in its profession and to foster communication and cooperation between related bodies.
- To promote and foster a better understanding between rights of way and countryside access professionals and the whole community.

In the Mear Case, Cambridgeshire County Council employed a Ms Rumfitt FIPROW, self-styled Independent Consultant, to assist them in the defeat of the Mear family. There is no record of IPROW deploying its expertise in any other way than opposition to Applications similar to the Wallhayes case. Dorset CID informed the Planning Inspectorate that Mrs Eden "was identifiable with one side of the argument". An Independent Officer cannot be so described if she is biased or prejudiced, meaning intolerant or showing hostility to one group holding opposing views. Mrs Eden is a subordinate of the Secretary of State DEFRA, the Policy Maker who has delegated the decision taking responsibility to Mrs Eden – an unacceptable relationship. Undoubtedly, Inspectors are subordinates, the satraps of a system.

Bias can be a difficult condition to prove. Help comes from the unlikely source of an arrogant Inspector, apparently confident in her own impunity and untouchability. This case can be proven by reference to her overzealous attempt to bolster the credibility of the Parish Council compared with her extraordinary treatment of representatives of the West Dorset District Council, declared supporters of the Wallhayes Application. What is evident here is her wilful neglect of the obligation to perform her duty as an impartial adjudicator and the misconduct which

therefore flows from that negligence. Such conduct amounts to an abuse of the public's trust placed in her for acting without reasonable excuse or justification.

In the most recent round, the County Council required of West Dorset District Council the refreshing of their controversial 2001 determination not to make an Order for the Wallhayes path diversion. The Committee duly re-examined the Application, voting 7:1 to support the making of the Order. District Councillor Mark Roberts attended the Inquiry but had to leave early due to another engagement. He applied to approach the Inspector where he told her of the changed circumstances, the District now supporting the Application, and proffered an official document to that effect. The Inspector said she did not want a document in which she professed no interest. Councillor Roberts repeated that the document represented West Dorset District Council's present position which she should accept from him. She said she would not!

Councillor Roberts turned and walked away in a clear state of disbelief. He handed the document to District and County Councillor Coatsworth, asking him to see whether he would be more acceptable. Councillor Coatsworth repeated the process, the Inspector this time taking the District Council's letter with bad grace. The whole episode had the benefit of one line in the Inspector's notes, "Mr Coatsworth read statement of Mark Roberts for WDDC", and no mention in the ultimate Decision document. What did receive mention in the introduction was the original but misleading and no longer valid decision of West Dorset District Council. So this was an Inspector who showed favour to an unelected Parish Council – she said it was "an elected Council" – by giving "some weight" to a ridiculous written objection whilst controversially giving no weight to the written support of the representatives of the obviously elected members of West Dorset District Council.

Mrs Eden's Inquiry had not been fair, nor had she been either impartial or independent, as required by law. The Planning Inspectorate received nine varied and substantive complaints from professional and retired professional people regarding Inspector Eden's conduct of an 'outrageous' Powerstock Inquiry. The Inspector's colleague, Melanie Weston, rejected eight complaints in favour of what she heard from the object of the complainants, Mrs Eden. Such a supposition extends credibility to breaking point.

On 26 February 2007, Richard Connaughton sent a synopsis of events to the Complaints Officer. He replied that nothing more could be said of a case beset by prevarication. The inertia, the inability to act constructively, was blamed upon the passage of time. The evidence of bias, unfairness and partiality is almost exclusively documentary. Elements of hearsay could be overcome either by requesting statements or by hearing evidence in court. The Planning Inspectorate's attitude revealed their being aware that it takes two to dialogue. Rather than address a serious complaint, the officer, Ashley K. Gray, resorted to a gagging device, a deaf ear, reserving the right "to file any further correspondence from you about this case without reply". I had written to him on 26 February 2007 "for the last time to lay out the facts". The realisation began to dawn that the Planning Inspectorate was not neutral. The document I sent him included what I describe as Paschendaele photographs in which the line of the path is under water. Only the barest modicum of curiosity is required to ask of his colleague the Inspector precisely how she "was not convinced that the existing path would have been unusable at any time". Having sent Gray the dossier, I concluded: "If, having read this, you still believe that the Decision is above serious criticism, then the depth of the problem runs extremely deep". The dismissive treatment of the Wallhayes complaint was not unique. At Annexe A is an account of the progress farmer Malcolm Read made in a complaint he sent to Quality Assurance's Ashley K. Gray with regard to the conduct of Inspector Millman.

What with this record and further unacceptable conduct still to be revealed, this section of the Inspectorate cannot be considered fit for purpose. It would be informative to know who, precisely, Melanie Weston and Ashley K. Gray are. Any potential case in defence has been wrecked by the disastrous decision to ignore the warnings of Dorset CID. It says much for the confidence of those who behave badly that they appear gratuitously content to ignore police warnings: "Whilst complaints have been made about the Inspector's Decision, there appears to have been no independent review of this Decision within DEFRA. It seems clear to me that there are unanswered questions concerning the conduct of any internal enquiry". An interesting question is whether the Planning Inspectorate's response would have been any different had the police letter come from the Metropolitan rather than Dorset police.

After the completion of the second day of the Inquiry, at the beginning of the interregnum, the Appellants wrote to their solicitor asking that he advise precisely what was going on. He responded, also on behalf of Counsel, commenting adversely upon the nature of the Inspector and the outcome to be expected at the end.

The process had been so comprehensively hijacked that the Member of Parliament's successive warnings to Secretary of State DEFRA and the Judiciary, the objections of responsible officers of DCC, the protestations of professional individuals, complaints from two independent police sources and one retired police officer were all set aside without any attempt at justification. There had been an apparent willingness on the part of the Rt Hon Hilary Benn to listen to an outraged West Dorset Delegation but that invitation had been withdrawn. The Chairman of West Dorset District Council said that in two cases within his jurisdiction, Mrs Eden had perverted the course of justice. The Department did not want to know: a number had questions to answer in the same way the Inspector had.

Mrs Eden was the beneficiary of the blind, devoted support of her colleagues. To them she was an Inspector of the highest quality with an outstanding reputation. None of those colleagues had been present to witness her conduct of an outrageous Inquiry in Powerstock. But her reputation had gone before her. Mrs M.A.E. Clark of Lewes, East Sussex produced evidence of her experience of Mrs Eden: "The Inquiry will stick in my mind for ever. The rudeness of the Inspector towards Sue Montague of Counsel… the whole Inquiry was one-sided from the start and left me and my supporters in no doubt that it was only the objectors that Inspector Erica Eden was interested in". A Peter Browning of St Austell wrote to the editor of *The Sunday Telegraph* telling him of "a deep sense of outrage at the manner this same Inspector (Eden) conducted the Public Inquiry into an alleged footpath across our land, not only in the way in which she allowed (if not encouraged) the normal rules of evidence to be breached, but by the invention of "evidence" in her report after the close of the Inquiry".

A person in whom we have more than passing interest, the Planning Inspectorate's Mrs Melanie Weston wrote to DCC's CEO in response to his complaint. "We have a considerable reputation for our Inspectors' impartiality and professionalism. Certainly, I am satisfied that the Inspector handled this case in an entirely fair, efficient and professional manner. Indeed Erica Eden is one of our more

experienced Inspectors and has a great deal of expertise in handling such Inquiries." Mrs Weston had not the first idea how Mrs Eden had conducted the Inquiry. DCC's senior solicitor observed how Mrs Eden had "…very pointedly refused to accept there could have been any reasonable interpretation of events other than her own". Arrogance to this degree should have seen her ruled out in the selection process.

Evidence of recurring serious misrepresentation on the part of Mrs Eden is not exclusively applicable to s.119 of the Highways Act. A case in point is illustrative of the confusion that is evident whereby considerations of wildlife and countryside are treated as transport law. One of the nastier aspects of claims made by rights of way adherents is in the manner whereby a landowner, having allowed permissive use of one or more of his paths, can lose his paths to applicants who can demonstrate 20 or more years of public use. This means that the good landowner risks losing control over part of his land due to his benevolence, whereas a difficult landowner, unprepared to make such concessions is, all things being equal, left entirely untroubled. The Chevington Footpath Inquiry, April 2008, heard by Mrs Eden, is an example of this type of dispute.

The Report by Nicholas Willcocks MRICS, Managing Director of Clark and Willcocks Ltd of Lavenham, Suffolk, dated 18 September 2008, cannot be easily set aside. "After the first 30 minutes of the three day Inquiry" [he told his client] "we had lost merely by the Inspector's manner". (In the Wallhayes case, the former litigator, Graham Stothard, told Richard Connaughton: "It was apparent from the Inspector's body language that she opposed you".) Willcocks continued: "It is my opinion that throughout the Inquiry she appeared to favour the claimant and all but put words into the mouths of his supporters. She continually interrupted during cross examination by our solicitor with her own questions and her questions at the end of examination were more of a further examination than mere questions, she was also in my mind rather leading and seeking to get answers that went against the objector. In her findings report and Decision, she would appear to have ignored one of our principal witnesses, the local gamekeeper, and has misrepresented and adjusted evidence to suit her case".[8]

[8] Mrs Eden had been considering one of the most provocative of sections in the Highways Act 1980, Section 31, whereby an owner can lose their pathway by virtue of presumed dedication where it can be proven the public have enjoyed more than 20 years' uninterrupted use. The section should be revised for it penalises the good owner who has allowed permissive use of his property as opposed to

"The evidence from the claimants was all very similar and it is clear that they had agreed in advance what evidence to give…. In conclusion, I find the Inspector's report at best amateur and naïve or at worst deliberately one sided and designed to mislead and frustrate." The trait described here has been described in an identical fashion elsewhere by PC T.J. Poole.

Mrs Eden said in her Decision Document that the Wallhayes case is not inherently undermined by the opposition organising their campaign. "If either side was selective in the information it provided, the inquiry process gave the opportunity to counter this effect." Mrs Eden had been foremost among those being selective in the use of evidence. Rather than countering the effect of selectivity, the inquiry process went on to consolidate criminal intervention. The Eden statement, heavy in cliché, had been seen before. Cambridge County Council's Chris Capps had insisted that it was "settled law", although he refused to supply the essential reference, "that where a public authority has taken a decision which can be subjected to the scrutiny of the court or tribunals, either through Judicial Review or as provided by a particular statutory provision, the Article 6 requirement for a fair and public hearing by an independent and impartial tribunal established by law is satisfied. Mrs Eden wrote an outrageous decision. DEFRA refused to answer questions arising. "Go to Judicial Review", they said. DEFRA contested the Judicial Review, putting before the Judiciary evidence upon which the Court should not have relied. So total was their dependence, they mimicked in their finding that which DEFRA supplied and which formed the basis of the issues which the Appellants had originally gone to Court to have answered. What should have been a Tribunal of Fact was allowed to degenerate into a Tribunal of Fiction. The forthcoming Decision Section is important. It will lay the lie that the Inquiry counters the effect of the selective use of information. It did not but was rather an active component in the process.

I told an Inspector fixated upon numbers in support for or against the Diversion, that numbers by themselves were an inexact science, the figures being distorted by nepotism and politics. She would write that she had considered this point, where people "lived and to whom they were related and the weight that should

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the bad owner who faces none of these threats by virtue of exercising total denial of public use. There is a procedural difficulty in evidence here. Section 32 of the Highways Act 1980 specifically makes mention of Courts or Tribunals yet it appears that the process is being improperly subsumed by application for a footpath modification under Section 53 of the Wildlife and Countryside Act.

(be) apportioned to them. "I have", she wrote, "examined all the evidence I received from all sides and carefully considered it in the light of various factors, including who provided it and the quality of the evidence, in order to establish and weigh the facts of the case against the necessary tests". She found that "the new termination point would not be substantially as convenient as the existing point", which formed no part of the proper test. But what of those who, during the course of the Inquiry, she identified as sharing her views?

Mrs Eden sketched out the four homes of the residents in the so-called Powerstock Hot Spot. In the southernmost cottage in Powerstock Square lives Mr David Hawkins and partner, Parish Councillor Ms McLaughlin. Hawkins told the Inquiry he had no problem walking through people's gardens. He told Mrs Eden that the Wallhayes problem was essentially a problem of signage. Due north, next door to the Hawkins' home, is the home of Parish Councillor Chris Bunney. Between the Bunneys and the fourth cottage belonging to Parish Councillor Mrs Jenny Best, separated by narrow walkways, is the Murless cottage.

Murless told the Inquiry that he had a footpath going through his garden (FP34) which is true – it bypasses Powerstock Square. Murless said the path posed no problems and he really could not understand the difficulties presented by "that selfish man". Next door neighbour, Councillor Mrs Jenny Best, said in her written evidence that the Wallhayes problem was essentially one of signage. She wrote in her letter of complaint to DCC dated 18 July 2008, "I have noticed, however, that elsewhere in the Parish, the footpaths have been well marked". The signage of the route of the footpath next to the Murless cottage is so indistinct as to be easily overlooked.

The Inspector turned to a similar arrangement of housing running off Nettlecombe Square. The first house being in the ownership of Rambler Association Member Mrs Chrisine Newell, the second PC T.J. Poole, the third Mrs R.E. Best's Wallhayes and finally Anthony Morrissey's Rose Cottage. "What", said the Inspector, "is the difference between these two groups?" "The Nettlecombe group, living as they do on site are supportive and familiar with the problem and the options available while those in the other village, are not".

The Appellants sought out the Performance Indicators for a Planning Inspectorate Government Inspector:

- "The Inspector is in no sense concerned with the parties to the dispute or subject to their influence or control;
- The Inspector's findings are based exclusively on the evidence and submissions before him/her;
- The Inspector has a duty to exercise independent judgement;
- The Inspector is required not to be subject to any improper influence;
- It is the stated mission of the Planning Inspectorate to uphold the principles of openness, fairness and impartiality."

To which the concluding question put to the Inspectorate was:

"We would ask of the Inspectorate their opinion whether any of these five requirements have been met during the course of this Inquiry". There was no reply.

The crime which we have discussed, for that is what it is, represents segments of malpractice which combine to produce a broad, unforgivable conspiracy. The Appellants had spent eight patient years, stitched-up at every juncture, at ever increasing cost in health and treasure until they eventually succeeded. The elected membership of Dorset and West Dorset backed their aspiration with a massive 85% vote of support. The officers' nominee, as consultant, a former Rights of Way Officer from Devon who had put before the County Roads and Rights of Way Committee a case that the single footpath in question had three ends, was seen on her way. A strange arrangement allowed the minority individuals dissatisfied with the normal democratic process another opportunity to appear before the solitary appointee of the Secretary of State DEFRA. That one person, a former colleague of the Officers' original independent consultant, overturned the Roads and Rights of Way Committee decision, thereby empowering the Authority's advisors at the expense of the democratically elected District and County Councillors.

Mrs Eden determined that FP32 had three ends. She made no provision during the 4 days of inquiry to share her ideas with those present. It was not accidental that the first time the Appellants and their supporters became aware of this act of gamesmanship was when the Decision Document was released. There were

two implications of what Mrs Eden had done. She denied the Appellants discussion of a well rehearsed argument in rebuttal but more seriously, the refusal to allow questions being put to this Inspector obliged the Appellants the investment in an Application for Judicial Review with consequences already outlined.

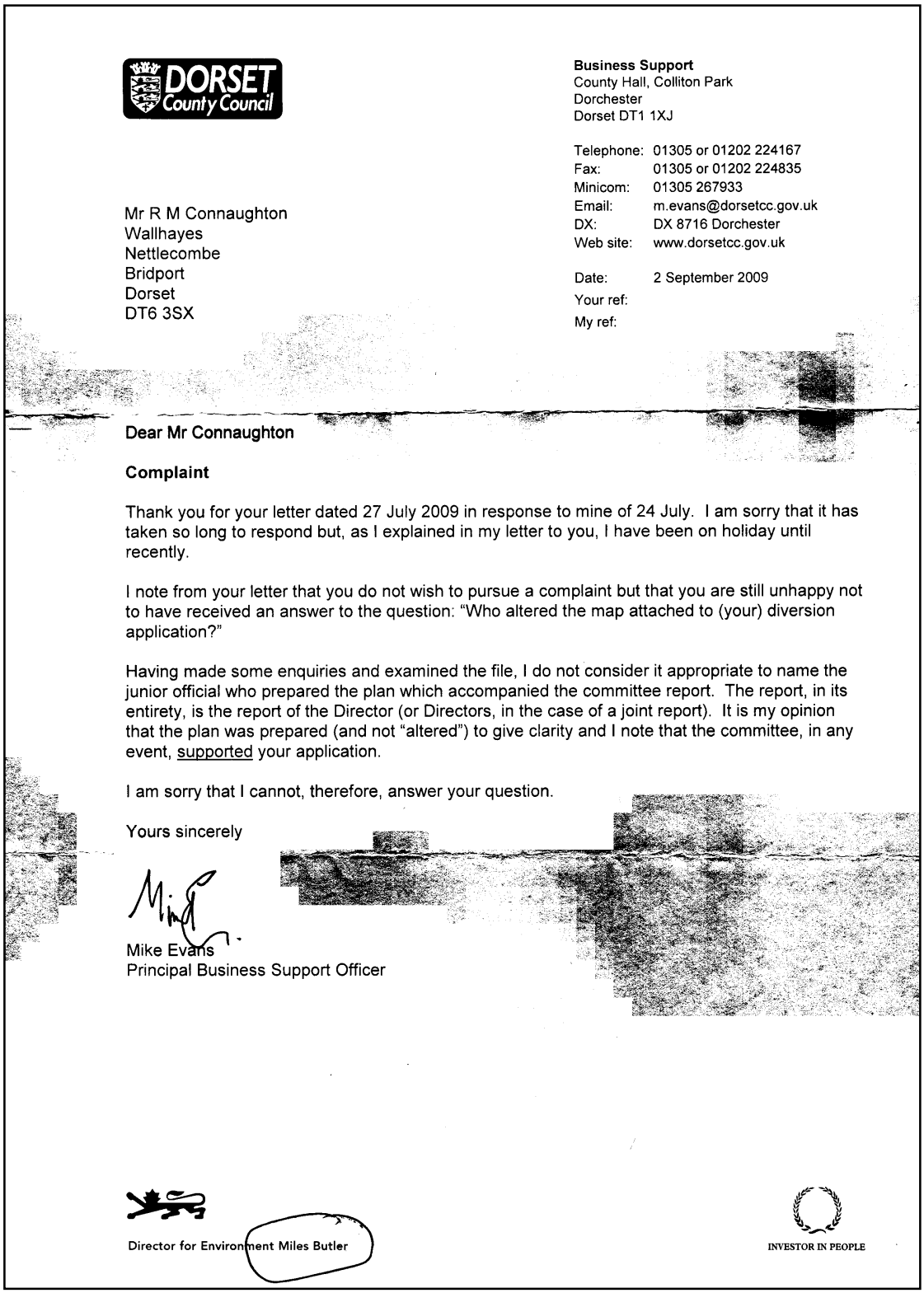
The arrival of the Decision Document also served to answer the unanswered question carried forward from the commencement of the Inquiry, namely: The map as submitted by the Appellants to the Roads and Rights of Way Committee, 13 May 2004, had undergone unauthorised amendment within the County Council prior to the Local Public Inquiry. The effect of the tampering with the map, placing Point A half way along FP 32 at the break point of the third point of termination was to facilitate and support the Inspector's Decision.

The seriousness of such a proposition becomes apparent during the course of developing the logic of what happened. The reason for the alteration of the map is self-evident. What it suggests is that the County Rights of Way Officers were aware of the end game well in advance of that game being played. If that were the case, it seems impossible to have implemented such a plan without the active cooperation of the Planning Inspectorate.

Miss Penney seemed to be the person most likely to be aware of the history of the changing maps. She knew nothing except that the bogus map had been signed off by the County's Senior Solicitor, Mr Mair.

We asked the Environment Services Directorate to help investigate the matter. We declined their offer of a domestic, in-house Inquiry. We had seen the effectiveness of such enterprises before. All we wanted answered was a two-part question: who altered the maps and why? There was no resultant sense of purpose, no sense of the seriousness of the matter. We have spoken in the past of receiving Nonsense Letters aimed at fobbing-off members of the public. It would be illustrative to reproduce here a related Nonsense Letter from DCC's Directorate of Environmental Services.

The Section which follows concerns the controversial Decision. As we prepare to make the transition from the Inquiry to the findings of the Inquiry, it is pertinent to reflect upon PC T.J. Poole's opinion that the Inspector appeared to use Mrs Ramage to take her where she, the Inspector, wanted to go. In her Decision



DORSET County Council

Business Support
County Hall, Colliton Park
Dorchester
Dorset DT1 1XJ

Telephone: 01305 or 01202 224167
Fax: 01305 or 01202 224835
Minicom: 01305 267933
Email: m.evans@dorsetcc.gov.uk
DX: DX 8716 Dorchester
Web site: www.dorsetcc.gov.uk

Date: 2 September 2009
Your ref:
My ref:

Mr R M Connaughton
Wallhayes
Nettlecombe
Bridport
Dorset
DT6 3SX

Dear Mr Connaughton

Complaint

Thank you for your letter dated 27 July 2009 in response to mine of 24 July. I am sorry that it has taken so long to respond but, as I explained in my letter to you, I have been on holiday until recently.

I note from your letter that you do not wish to pursue a complaint but that you are still unhappy not to have received an answer to the question: "Who altered the map attached to (your) diversion application?"

Having made some enquiries and examined the file, I do not consider it appropriate to name the junior official who prepared the plan which accompanied the committee report. The report, in its entirety, is the report of the Director (or Directors, in the case of a joint report). It is my opinion that the plan was prepared (and not "altered") to give clarity and I note that the committee, in any event, supported your application.

I am sorry that I cannot, therefore, answer your question.

Yours sincerely

Mike Evans
Principal Business Support Officer

Director for Environment Miles Butler

INVESTOR IN PEOPLE

document, Mrs Eden drew attention to the County Council view that the Diversion would afford the Appellants "greater privacy and enable them to improve their security". She then noted the undeniable truth that the path constituted part of the private garden but then, "Mrs Ramage thought this inaccurate", insisting that the public's ability to look through the windows at the front of the house "was a greater

threat to privacy and security than the footpath". The very least the Appellants expected was the right to explain what they considered to be the principal factors they believed affected their privacy and security.

The Inspector continued to record in her Decision document: "Mrs Connaughton said that (public access to the) path causes her mother, who is 87 (now 91) years old, anxiety and distress to the extent that she does not like to be left alone. Mrs Ramage, while sympathetic to Mrs Best, thought that because she lived in the part of the house farthest away from the path with her own front door that the risks were exaggerated". The torment Mrs Ramage and comrades inflicted upon Mrs Best was beyond that expected of the civilised. This stems from an inherent inability to see a situation in any way other than as seen by them. [DCC's Senior Solicitor said something very similar of Mrs Eden[9] with whom Mrs Ramage appeared to have much in common]. Mrs Best had withdrawn into her home, curtains permanently drawn-to, her house in a state of semi-darkness, so fearful that for these, her last years, her own relatives were tied to the house in providing moral support. The very least that is welcome is the self-serving claims of the Ramages that "the risks were exaggerated". In Mrs Best's mind they were not.

Decision-making, an examination of which follows, is a skill. It should be taught – thoroughly. It exists at a variety of levels. At the macro level, which often involves a vital national interest, the models to be applied can be complex, including the Bureaucratic Politics and Rational Actor models. At this working level, time is invariably a significant factor. Our case, at the micro level has neither this complexity nor immediacy. Indeed it took Mrs Eden 4½ months to write out a simple Decision, the ABC of which is accuracy, balance and clarity.

[9] Mrs Eden "very pointedly refused there could have been any reasonable interpretation of events other than her own".

COLLATERAL

It was important that the malpractice attendant upon the handling of public complaints such as Wallhayes should not be susceptible to dismissal as an aberration. To do that, it was necessary to identify other similar circumstances by way of collateral evidence.

Malcolm Read is a farmer living at Broadmead Farm, West Grimstead, Salisbury. He was in dispute with Wiltshire CC with regard to a Modification Order championed by a Mr Bill Riley. His interest was represented by Graham Plumbe, one of life's white knights. Mr Read wrote his complaint in a letter to Ashley K. Gray dated 7 August 2008. In that letter, he recalled how Mr Plumbe had complained that the nominated Government Inspector, a Mr Millman, "had refused to hear evidence alleging partiality of a witness". The Officer dealing with the case said in defence that Mr Plumbe had been imprecise and that he appeared to be making "unfounded insinuations".

Well before the assembly of the relevant Local Public Inquiry, Mr Read wrote to the Order Making Authority, the Audit Commission and the Local Government Ombudsman, complaining that the applicant for the Map Modification Order, Mr Riley, was allegedly the voluntary researcher for the County Council's Rights of Way Department. All three Authorities advised Read that he would be able to raise this issue at the Inquiry as a relevant conflict of interests. The Read objection was founded upon the Rights of Way Officer's previous dependence on Riley's advice. There was no reason why the situation under discussion should be any different. Read said that, based on his observations of the Rights of Way Officer's experience and performance in court, "disagreeing with the applicant had never been an option for her".

Malcolm Read wrote in advance of the Local Public Inquiry to both the Planning Inspectorate and Inspector Millman, sharing with them his fears that he was not about to be the beneficiary of a fair Hearing. "In the event, when the Inquiry opened, Mr Millman read out a long statement saying that on no account was I to mention, in any way, the relationship between the applicant (Riley) and the Rights of Way Officers, either in cross-examination or in my submission. And if I did, he

would make an award of costs against me." Allegedly, Inspector Millman had formerly been a Hertfordshire Rights of Way Officer. It is reported that during the course of the Inquiry, he appears to be attentive and even-handed. The test however lies in what is written in the Decision Letter. Millman had been the Inspector on the Mear and Just cases.

It would be useful to pause as a digression on this matter of an Inspector allegedly threatening a member of the public with a fine for making mention of a matter germane to his case. Inspectors do use the fine device as a weapon against their opponents. Applications for costs can be a form of fine. There was a recent case involving an Inspector who had been one of Mrs Eden's associates in Devon County Council. The white knight in question was Mrs Marlene Masters. The case involved North Somerset District Council who had adopted a neutral position between the principals, the supporters and objectors. The application for costs should be confined to the principal parties, yet the Inspector granted North Somerset Council's application for costs of £6,000 which was charged to Mrs Masters and the person she represented.

"For some reason best known to themselves", continued Read, "they obviously did not want the relationship between the applicant and the Rights of Way Officer raised at the Inquiry. So", alleged Malcolm Read, "they concocted the extraordinary proposition that dubious documentary evidence going back 300 years provided such a clear cut picture of the past that everything else – the motivation of a witness for example, is irrelevant". Graham Plumbe penned a note to the effect, "it is fundamental to any Inquiry that the credibility (or motivation) of witnesses is taken into account". Read told Ashley K. Gray that "if the Lord Chancellor had not abdicated his supervisory role over tribunals, that would still be the case". Read's experience went back to the days when the Lord Chancellor was the responsible Authority prior to the mass call forward of Rights of Way Officers to replace the then existing Independent Inspectors. He concluded that, "left to its own devices, the Planning Inspectorate seems to lack integrity".

When the County Council's witness presented her evidence, each step was allegedly demolished by Counsel representing another objector. The witness fell back upon the proposition that what had taken place was about the balance of

probabilities “as though the balance of probabilities was alchemy, which turned bad evidence into good”.

When it came to Malcolm Read’s turn to cross-examine the witness, he tried to explore her understanding of the meaning of the balance of probabilities. How was it, he asked, out of the 70 documents presented as evidence to the Inquiry only a miniscule number had even hinted at vehicular rights and none of which had proven conclusive? The Inspector allegedly said she did not have to answer. “It seemed”, said Read, “that he was preventing the Inquiry from going into an area which he did not want explored. Had the Council’s witness had difficulty in explaining to me how the 70 documents demonstrated a balance of probabilities in favour of the Order, then Mr Millman could not have avoided (as he did) explaining the same proposition in his Decision Letter”.

Read raised the issue with the Planning Inspectorate. They said that if he had done as was requested, that would have amounted to his “giving reasons for his reasons”. An excuse which Malcolm Read believed to be “pure sophistry. It seems therefore that in preventing me from examining the County Council’s witness in the matter of balance of probabilities, Mr Millman was preventing me from undermining his own predetermined position in this matter”.

The complainant concluded his letter to Ashley K. Gray: “I trust that my own experience of how Mr Millman conducted the Inquiry in which I was involved will convince you that Mr Plumbe was not making “unfounded insinuations” when he said the Inspector’s approach in this case had been adopted elsewhere”. In short, it was quite common.

Mr Read had no response from Ashley K. Gray, a task apparently delegated to Peter Pocock. Read was not impressed to find the letter bearing the heading “Hampshire County Council (Basingstoke and Deane Borough No.22) (Parish of Upton Grey and the Parish of Weston Corbet) DMMO 2004”. Read lives in Wiltshire. “If Mr Pocock cannot even distinguish one case from another, I surely cannot be expected to have any confidence in his ability to look into matters I put to him.” But it was worse than that, as Pocock continued: “I note that the first part of your letter refers to the applicant and you being a voluntary researcher for the Council and being consulted on your own applications”. Mr Pocock evaded the questions by

calling up the usual excuse: "…as the Order decision is a legal document, I cannot add to it or put my gloss on it". That in itself does not excuse malpractice.

Read decided to go up the chain of command and engage Mr Martin Steer, Head of Specialist Casework Branch. "What happened then?" "Nothing", he replied, "I assume it was just allowed to run into the sand". As Mr Steer explained, "I have no record (or memory) of having responded to a letter from Malcolm Read dated 5 March 2009". What Steer had done was to send the complaint to a Mr David Bourton who told Read that his letter of complaint had been drawn to the attention of Mr Steve Small, the line manager of Mr Pocock, where it died. On 9 March 2010, Malcolm Read again wrote to Martin Steer to "please now deal with my complaint". Here was an example of the First Principle – the drawing out of procedures and responses over time with the aim of physically and mentally exhausting homeowners.

The Planning Inspectorate reveals that whereas it has the authority to investigate alleged mismanagement by its Inspectors, it has no such inclination. "At the end of their game of collective ping pong", said Read, "they told me to involve the Government Ombudsman. I had already done that. They told me to bring my concerns to the Inquiry, which I had done, only to face threat and hostility for having made the attempt." The Government Ombudsman's ineffectiveness in this area had not passed the attention of we novices. It is a fair assumption therefore that the Inspectorate was also well aware of what the Ombudsman could and could not do. The Inspectorate had a duty to treat Malcolm Read's complaint seriously and, no matter how invidious it is, to investigate a colleague's behaviour; that is, in theory, an unavoidable part of the job. Their failure to do their duty merely has the potential to foster in the minds of those Inspectors we have encountered, confirmation of their unaccountability and untouchability.

Not content with being steered into a cul-de-sac, on 17 May 2010, Malcolm Read wrote to his new MP, John Glen, in the hope that this would generate action:

"Despite losing the Inquiry, the Order was eventually withdrawn because a very similar case at Winchester was won in the Appeal Court. Whilst I was therefore minded to drop the issue, I have nevertheless been approached by a number of people who are having similar problems with the way the Planning Inspectorate has conducted itself since the Lord Chancellor allowed it to become self-policing.

Indeed, this self-policing is, in the experience of myself and these others, quite outrageous… everyone has been able to avoid addressing my complaint concerning the conflict of interest, and of course the Planning Inspectorate is still active in the matter of Restricted Byways and footpaths going through people's gardens." The nub of the matter is that Secretary of State DEFRA cannot be both policymaker and decision taker.

7

THE DECISION

The Inspector's Decision lies at the heart of the matter. It is the vital ground. If the Decision is wrong then, by implication, so is the Judgement from which it is derived. Warnings of substance that the Decision was flawed have been set before the Government, the Judiciary and the Crown Prosecution Service (CPS) to whom the penultimate Section of the Report is dedicated. This presents a rare opportunity for the public to see the CPS in action. They ruled that Mrs Eden's misconduct had "not been serious" and that she had "no case to answer". These conclusions were reached without believing it necessary to consider "the correctness or otherwise of Mrs Eden's Decision". Thus, in the public interest we will now undertake the evaluation of this key component for the benefit of CPS et al.

DEFRA has surrounded the questions and matters arising from this Decision with a ring of steel accessible only through a Judicial Review. The application for Judicial Review was denied at the High Court, justified by reference to the questions and matters which had been the reason for seeking Judicial Review.

What we expect to see, the ABC of Decision Making, is accuracy, balance and clarity to the exclusion of selectivity and suppression. A bad Decision arises due to three basic causes, mindset, dilettantism or through a deliberate act to mislead. If it is true that Judges' mindsets form their Decisions, why should the same logic not apply to politicised Inspectors? In our analysis of the information before us, the evidence of criminal intent is beyond reasonable doubt. The Inspector wilfully neglected to perform her duty and had wilfully conducted herself to such a degree as to amount to an abuse of the public's trust in her, without reasonable excuse or justification.

The evidence to that effect will be presented in 3 parts:

- By reference to Indicators.
- By Forensic Examination.
- Through consideration of the Inspector's conclusions.

Indicators

Indicators are matters which stand out as problematical on first or subsequent reading from the text of a Decision Document. Indicators indicate problems, the depth of the problem reflected in both the quality and quantity of the Indicators. The examples drawn from Mrs Eden's Decision include:

- At the Local Public Inquiry, the Chairman of DCC's Roads and Rights of Way Committee explained the County's Diversion Policy: "The County Council has a policy of supporting, in principle, applications to divert footpaths away from gardens if an acceptable route can be found". This fundamental statement was excluded from the Decision document yet a subsidiary line of thought was included. A councillor amplified the Chairman's statement by stating: "this was particularly relevant where privacy and security were issues". The Inspector has a trait of drawing on opposition statements as beneficiaries of the last word. Mr Streets, activist and former Councillor was afforded that privilege, the last word in the Decision Document where it is recorded that he "thought that the policy related only to County Farms". The Inspector, having heard the definitive statement knew what Streets had said to be wrong. It was irrelevant.

- Mrs Eden records the District Council as having refused the original diversion application but did not reveal that the District Council reversed that decision, an event she wilfully suppressed.

- In describing the proposed diversion, Mrs Eden wrote of the path following "the north side of a hedge and bank (parallel to a public road)". She had created a bear trap quite deliberately and into which a High Court Judge obligingly fell. This had been an odious act of misrepresentation since she knew the reason the proposed footpath followed a public road was to enable walkers to take a safe route off the public road which the CID confirmed to be hazardous. The point was therefore something positive, not negative, and should have been so described.

- The Inspector said, as a matter of fact based on information from the Ramblers' Association, that the landowners reinstated paths "after

ploughing and it was understood the landowner did keep the path clear". That is not the case, not because the landowners are negligent but during wet winters it is physically impossible to restore all paths on clay within the statutory 2 weeks. In 2009-10 the section C-B has remained deep ploughed for over 4 months and was beyond sensible recreational use.

- As a result of her misconduct at the Inquiry, Mrs Eden suffered the indignity of being declared persona non grata in the County of Dorset, an act believed to be without precedence.

The Forensic Examination

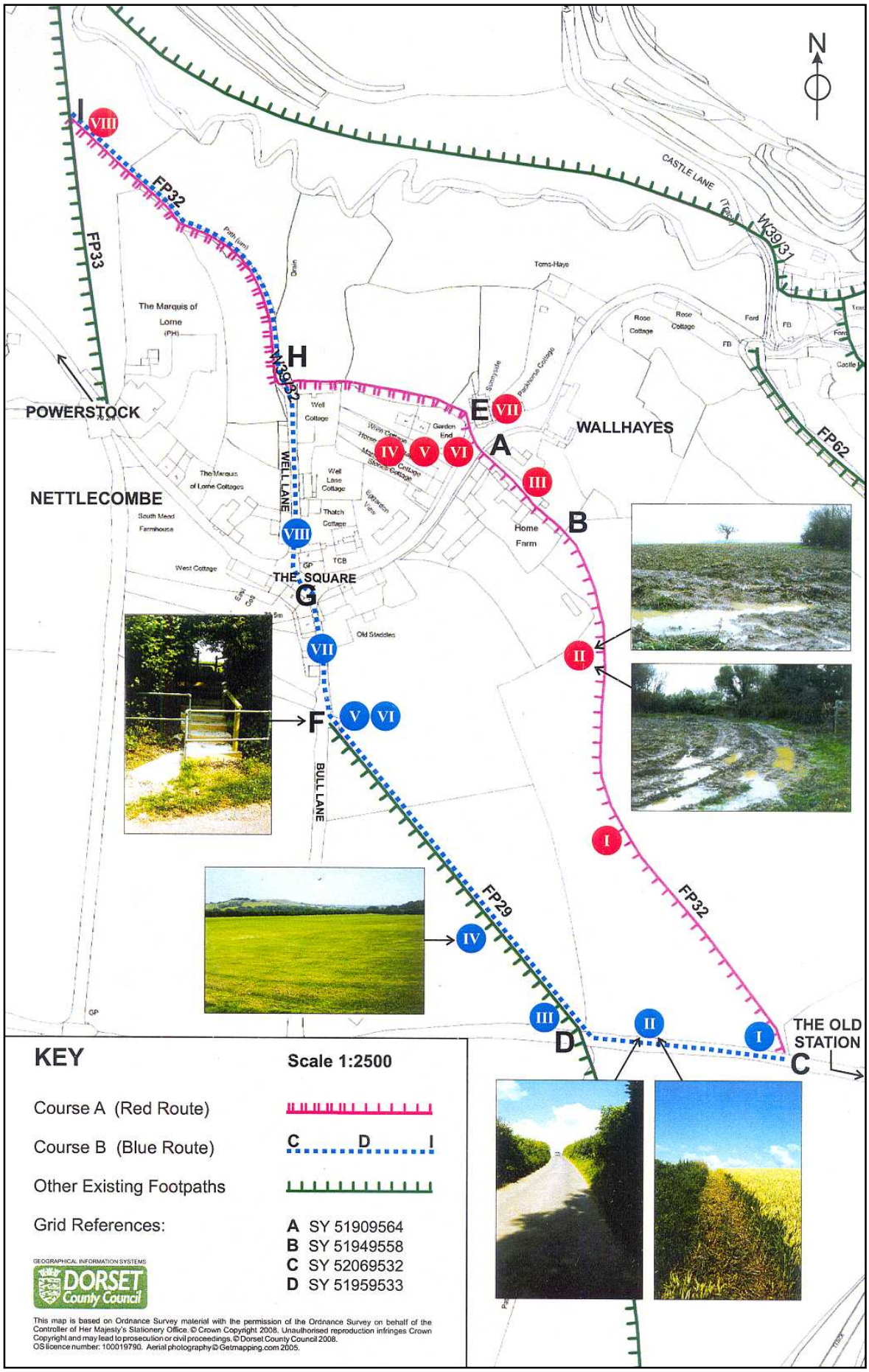
Situating the Appreciation

The empirical test of the Eden Decision, her 'convenience/detriment analysis', is conducted here by Appreciation of the Situation methodology. This regime commences with the declaration of the Aim, the consideration of *all* factors, the identification of the Courses Open and the separate consideration of their advantages and disadvantages, from which the Course Adopted is identified and from which flows the Plan. Only the relevant part of this methodology will be examined here.[10]

The process can be corrupted. When this occurs, a form of cheating, it is known as Situating the Appreciation, easily recognisable in Decisions through the selective and manipulative use of factors, but particularly the writing-up, the over-egging of the desired course, while writing-down the others. In this case here, there are two courses open. Course A, the status quo – the Red Course – the preference of the Planning Inspectorate, and Course B, the proposed diversion – the Blue Course – which has been the subject of misrepresentation within the Decision document. That allegation will now be proven, thereby emphasising that the subject under consideration is not an administrative but a criminal matter.

Course A – The Red Course. (The Roman Numbers which follow refer to those shown on the coloured map.)

[10] Richard Connaughton was formerly a Member of the Directing Staff at both the Staff College, Camberley and the Australian Army Command and Staff College. Here, students' decision-making at both the tactical and operational levels was verified against this methodology.


N
CASTLE LANE
WK39/31
FP32
FP33
FP62
FP29
The Marquis of Lorne (PH)
POWERSTOCK
NETTLECOMBE
WALLHAYES
THE SQUARE
WELL LANE
BULL LANE
Toms-Haye
Home Farm
Old Staddles
West Cottage
South Mead Farmhouse
The Marquis of Lorne Cottages
Well Cottage
Well Lane Cottage
Thatch Cottage
Rose Cottage
Ford
Castle
THE OLD STATION
A
B
C
D
E
F
G
H
I
II
III
IV
V
VI
VII
VIII
KEY
Scale 1:2500
Course A (Red Route)
Course B (Blue Route)
C D I
Other Existing Footpaths
Grid References:
A SY 51909564
B SY 51949558
C SY 52069532
D SY 51959533
GEOGRAPHICAL INFORMATION SYSTEMS
DORSET County Council
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I. Mrs Erica Eden is the only individual (which includes DCC's officers' chosen Consultant) in the 10-year life of this Application not to agree that exchanging a 300m cross-field path across an arable field in exchange for a 100m field-edge path was not expedient and in the landowner's interest. This topic is revisited later.

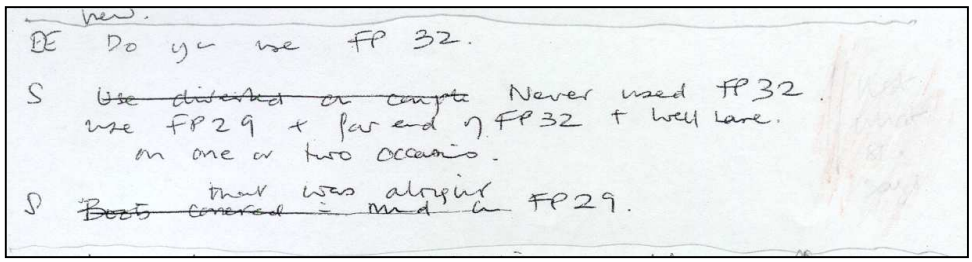
II. Mrs Eden ignored evidence put to her at the Inquiry of the limitations of FP32 C-B. In her Decision, Mrs Eden's judgement that the path would not be unusable at any time can be seen to be valueless since she was in no position to make such a statement. See photos Red II which prove her judgement to be wrong. The only way in which such a self-seeking decision could be challenged is at JR.

III. Mrs Eden altered the submission of Mrs R.E. Best where she had written of the pub walk through the garden causing 'a significant increase in traffic'. Mrs Eden amended Mrs Best's phrase in her Decision document to read "led to a temporary increase in the use of the footpath by strangers". Here is an example of blatant misinformation by the individual appointed by the Secretary of State as defacto judge. There's no wriggle room here.

> After the closure of Powerstock Station in the 70s and once the Read family were in residence there, they would from time to time after 1983 use the path across the field to visit the Post Office at Home Farm House in Nettlecombe. Otherwise, local people respected our privacy.
>
> The situation changed completely in December 1997 when an article in *Dorset* magazine (which I saw by chance in a hairdresser's) invited the general public to include our footpath in an advertised 'pub walk'. This resulted in a significant increase in traffic, with various unpleasant consequences, and apparently established the precedent that anyone at all, however ill-intentioned, could claim a legal right to be on the premises at any hour of the day or night.
>
> This is a matter of great anxiety to me, as I am often here on my own when the rest of the family are away. Who, in a similar position, would not fight their corner? It is our home.
>
> Rosemary E. Best
> Mrs R.E. Best
> Nettlecombe
> 12 February 2004

Mrs Best's is not the only example where the Inspector has wilfully misrepresented that which was said in support of the Appellants. Mr Graham Stothard, formerly a litigation expert, told the Inquiry that he had "used FP29 and the far end of FP32 as well as Well Lane". Confirmation

that this is what he said can be found in the Inspector's notes. In her Decision, Mrs Eden wrote: "He had never walked Footpath 29".[11]



IV. PC T.J. Poole, who has lived within the community for 50 years and who lives at A, an area where domestic and delivery vehicles turn and reverse, told the Inspector Point A was more hazardous than F. She said he was wrong. See photos below.

V. The Inspector said that the Point A option favoured by her enjoyed better visibility than Point F, a statement which can be shown visually to be untrue.

The Matter of Visibility A v F

"While the visibility at point A may have limitations, when I compare it with the exit at point F I find the latter is worse." - Erica Eden, MIPROW

A.

LHS up to 70m

RHS nil

[11] The revelationary Land Registration Act, 2002, carries warnings equally applicable to common or garden or Government-sponsored villains: "If you dishonestly enter information or make a statement that you know is, or might be, untrue or misleading, and intend by doing so to make a gain for yourself or another person, or to cause loss or the risk of loss to another person, you may commit the offence of fraud under Section 1 of the Fraud Act 2006, the maximum penalty for which is 10 years' imprisonment or an unlimited fine, or both."

F.

LHS up to 140m

RHS 63m

VI. The Inspector quoted *witnesses* giving evidence in support of the use of Point A. Mr Connaughton will state that at no stage during the Inquiry did anyone say that walkers parked their vehicles at A. When asked who the witnesses were, Mrs Eden believed them to have been Mr Streets from Beaminster. It was not. The witnesses never existed. There is supporting documentary evidence to that effect. The Inspector had lied. Mrs Eden had allowed herself to be carried away in the spinning of her web of deceit. Apparently she had done it before. In his letter of 3 June 2008 to the Editor of *The Sunday Telegraph*, Mr Peter Browning of St Austell provided corroboration of there being an integrity problem with this Inspector. He wrote how he had been outraged 'not only in the way in which she allowed (if not encouraged) the normal rules of evidence to be breached, but by the invention of "evidence" in her report after the close of the Inquiry'.

VII. For the Inspector to write (and to have it mimicked by the Appeal Judge): "I think that for those walking the whole of Footpath 32 the loss of natural continuation southward from point E has a considerable effect on convenience", is mischievous and untrue. She has entirely ignored the purpose and effect of the diversion.

VIII. In bolstering the uncompelling case for Point A to be a third point of termination, the Inspector claimed that Point I was unlikely to be where walkers would choose to start or end their walk. The same logic applies to Point C.

Course B – The Blue Course. Having seen how the attributes of Course A have been inflated we will now examine the manner in which Course B is written-down.

I. The stile at C is the largest of the set. It is common to both Courses. If a walker can negotiate C, he or she can negotiate all the others.

II. The Inspector's description of the new length of path C-D, "parallel to a public road" has been described as *odious* because she has represented the positive as negative. During the Walking of the Course, she was extremely reluctant to see the dangerous hill on the road C-D and to listen to the reason why the public had preferred a diversion rather than an extinguishment because they benefited from the creation of a field edge path to avoid the safety hazard on the public road. See photos Blue II on the map. In describing the effect and not the reason, she left her statement as a hostage to fortune for the Judiciary to come to an entirely wrong conclusion.

III. In her Decision document, Mrs Eden acknowledges the existence of a compensation agreement. However, she wrote in her notes "Don't need to give regard to compensation". This means that if agreeable and expedient, the stile at D, for example, could be replaced by a gate. The Inspector acknowledged that stiles might be replaced with gates at some time "but I have no evidence this will happen". The mechanics *were* in place for this to happen: this was an Inquiry. She could have satisfied her curiosity by asking the question, but made no attempt.

IV. In PC T.J. Poole's evidence to the Inquiry, he said: "Regarding the alleged problems that would face walkers crossing the village sports field, I cannot believe that in a five or six acre field, such as it is, there would be any problems". See photo Blue IV on map.

V. At F, the Inspector found some water damage to the "steep and rocky surface…..(which) when taken with *poor visibility* it means that

walkers must, at the same time be aware of conditions underfoot and of approaching traffic". The photograph shows a strip of ground between the steps and lane, from which approaching traffic can be observed. The Inspector acknowledged that improvements might be effected, "but I have no evidence that will happen". Yet in the aforementioned FPS/X2600/4/6 dated 1 August 2007 (28), Inspector Eden admitted: "My understanding is that a Highway Authority usually has responsibility for the surface of public rights of way". Point F is an existing Right of Way, the repair of which is the Local Authority's responsibility. In all probability therefore, any repair work deemed necessary would be put into effect, which it was.

VI. At F, it is possible to see 140 metres to the left and 63 metres to the right without stepping onto the highway. At A, subject to the number of residents' parked cars, it is possible to see 70 metres to the left and nil to the right. See photos.

VII. The Inspector said *supporters* had suggested that: "The number of cars parked on Bull Lane probably only amounted to 3 or maybe 4". That is untrue. *Supporters* made no such assertion. The Inspector measured the road herself, declaring it to be 2.9 metres wide. This means that if only one car parked on Bull Lane, it would block the road to other four-wheeled traffic. It is for that reason that the visibility from F is consistently superior to that at A where residents park their cars in the lane. Independent adjudicators should contemplate how it was possible for *supporters* – i.e. more than one – to make identical damaging statements about a practice that is self-evidently untrue.

VIII. Finally, there is the matter of "the character of the additional length on 'roads'". The myth that the lanes can never be as good as a FP cannot go unchallenged. Well Lane G-H is a popular, pleasant and convenient route between I and F compared to its equivalent E-H which is an unprepossessing, intrusive, triple-gated path of uneven surface. The truth of that matter is there for visual confirmation. In a letter dated 22nd June 1973, the Landowner's agents gave permission

to establish a new footpath running northward from Nettlecombe Square to FP33 "GR 518955 to 517958". The proposed diversion therefore conforms with the original intention insofar as the original permission relates to G, not E. In addition, there are within the Parish, precedents where lanes and roads of equal or greater length have been approved by the Rights of Way Officers to act as linkages. In her Norfolk judgement, Mrs Eden wrote that "the proposed diversion is longer by 27 metres (compared with 10 metres in our case – 599 metres v. 609 metres) and the journey to return to point A (Norfolk) (along the roadside) is a further 140 metres. I consider these small distances are not substantially less convenient". Yet, in her Wallhayes Decision document, Mrs Eden wrote: "I find that the length of road from point F to the Square is about 70 metres and, from the Square to point A (Dorset) (an unnecessary leg) about 110 metres. I consider this to be a significant distance to be walked on roads (lanes) to return to the termination point". In her Dorset judgement, the Inspector wrote: "*When the additional length* (10m) is considered alongside the fact that a significant proportion of the walk would be on roads (154 metres) then I think the recreational purpose would be affected detrimentally with walking across a field (unusable for a significant part of the year) and a garden" (for which there is a substantial body of evidence the public prefer to avoid). The public wants consistency and balance in Decision making.

Course Adopted

The course adopted by the Inspector was Course A. The Inspector ruled that the character of the additional length on roads, the stiles, the exit at F, the loss of continuation from point E and the use of the football pitch, led her to conclude that the diversion would be substantially less convenient to the public. In addition, she concluded that it was not expedient to confirm the Order because the effect on the public would be more detrimental than the effect on the Appellants arising from not diverting the path. That much appears to have been predetermined. The careful selection of evidence was the direct consequence for the poor showing of Course B in the Inspector's Decision. Other than the cosmetic, there had been no attempt at

balanced consideration in an orchestrated campaign. Whilst cross-examining PC Poole, the Ramblers' Panton asked for evidence the campaign against the appellants had been orchestrated. He replied: "I formed an opinion that inaccurate points were being repeated by objectors. Some seemed to stretch credibility and deviate from the facts. It smacked of collusion… I believe that those who believe passionately about something can stretch the facts". Source: Inspector's notes. Were there to be a GCSE in Decision-making, the Eden decision would fail. There can be few better examples of situating the appreciation. Despite its crudeness, its imperfections, the Eden decision carries an unimaginable weight of persuasion, accepted without question in the highest Courts in the land.

Factors in support of Course B, none of which was adduced in either a one-sided Decision or in Court, include:

- The diverted path is available throughout the year;
- The 'going' is superior;
- The diverted route is the more convenient for walkers travelling from C-I. The route should be examined in its entirety to ensure that walkers can reach where they want to go, without inconvenience;
- The diversion takes walkers into the heart of the Domesday village of Nettlecombe, requiring shorter lengths of lane usage than via A;
- It resolves the substantial public anxiety arising from walking through a private home;
- It rights a wrong in that it restores to Wallhayes its pre-existing state of privacy and security;
- It formalises what the walking public presently do by choice.

The Inspectorate allowed a Decision to go before the Court in which not one of the substantive points raised had been positive in support of the Application. No great gift of intelligence is required to notice that this so-called Decision is entirely bereft of balance. It is not until the Judge comes to his conclusion or judgement that Appellants are aware of precisely where they have failed. It was at this Hearing that Counsel for the Appellants asked the High Court Judge whether he had read the evidence, which included the Letwin submission shown here. We have adduced

HOUSE OF COMMONS
LONDON SW1A 0AA
020 7219 3000

Powerstock Footpath 32

I am Oliver Letwin, the Member of Parliament for West Dorset. In the public interest I wish to make this independent representation at the Oral Hearing considering Sir Michael Harrison's refusal to allow the matter of Powerstock Footpath 32 to proceed to Judicial Review.

I have had sight of a letter written by Mr Hugh Thomas of Peggottys, Chalkpit Lane, Litton Cheney; of another letter written by Mr Graham Stothart of Ruscombe House, West Milton and of a third letter from Mr T.J. Poole, of Home Farm House, Nettlecombe, and of a letter written by County Councillor Ronald Coatsworth. Each of these four correspondents were present, I understand, for all or part of the Inquiry into the footpath which is the subject of the Oral Hearing.

Each of the four correspondents clearly casts doubt upon the fairness and impartiality of the Inspector and hence the validity of her Decision.

I believe that it is in the public interest that the conduct of Inquiries into footpaths should be seen to be above reproach.

The question of the location of footpaths in my constituency of West Dorset is inevitably controversial and involves strongly held sentiments as well as delicate matters of public policy in relation to the environment. It is accordingly important that there should be public confidence in the impartiality with which all proceedings associated with such matters are conducted.

Under circumstances in which not only a respected County Councillor but also other members of the public with knowledge of the local area who attended the Inquiry have raised severe misgivings about the impartiality of the Inquiry, I believe that it is only through a process of Judicial Review that these misgivings can either be allayed or validated – and public confidence in the system of Inquiry thereby be re-established.

Personal Secretary: Mrs Angela Charles
[illegible] 020 7219 4568 e-mail: charlesa@parliament.uk

On 10 November 2006, I wrote to the Secretary of State for the Environment, Food and Rural Affairs. I raised with him the concerns that had been raised with me about the fairness and impartiality of the Inquiry in the hope that he would avoid the need for a Judicial Review by convening another Inquiry. He appears to have been assured by his officials that there was no need for such action – hence, his refusal to contemplate another Inquiry, and my conclusion that it is only through a process of Judicial Review that the question of whether the Inquiry was impartial can be resolved.

In the cause of natural justice and in the public interest, I hope that this application will be permitted to proceed to Judicial Review.

Oliver Letwin

Oliver Letwin

- advantages that should have been considered. For the most part, the disadvantages are political and therefore inadmissible.

Conclusion(s)

The Judiciary declared Mrs Eden's entitlement to come to the conclusions she did. For their part, the Appellants were prevented from challenging these conclusions except through Judicial Review. A vicious circle had therefore been established. We will now examine three of Mrs Eden's conclusions with a view to begging the question of the Judiciary, "is this just?"

One

Section 119 requires that the diversion is in the interest of all parties owning the land the diverted path will cross, the homeowner and the landowner. This is a legal requirement. At the outset, the Estate endorsed the map showing the proposal and remained supportive of the proposed change throughout. As the Inspector acknowledged, the Estate made no representation to the contrary at the Local Public Inquiry.

Mrs Erica Eden, MIPROW, is the only individual in over 10 years of the life of this Application who could not agree that exchanging a 300m cross-field path across an arable field for a 100m field edge path was not expedient and in the landowner's interest. There is a euphemism which covers this situation, "a no brainer". The County Council is required by law to be mindful of the necessity of being sensitive towards agriculture. The Consultant brought in by DCC's Officers agreed that the proposal was in the landowner's interest but the fact went unrecorded. This is no place for gamesmanship or inconsistency.

In her Order Decision FPS/X2600/4/6 dated 1 August 2007, Mrs Eden appears to have had no difficulty accepting Norfolk County Council's proposition: (6) "The Council believes that the existing Footpath has a significant adverse impact on the privacy and security of Meadowley and the Applicants say that the diversion would improve their security. The Council say that it is preferable for agricultural purposes to have a headland path rather than a crossfield path and it would be of economic benefit to Mr Lawrie not to have to reinstate the line of the footpath when growing crops". Mrs Eden chaired that Inquiry. The Planning Inspectorate proudly boasts of

its training courses "to ensure that they (the Inspectors) are acting consistently" but fail to recognise inconsistency when it is there, staring them in the face.

Two

At the Local Public Inquiry I estimated that the path B-C is unusable for 2½ months of the year. That excluded the time walkers instinctively choose not to walk on young plants. I later had an opportunity to check the length of the path's unavailability. In October 2009 the Connaughtons were out of the country. When they left, the maize, which for a number of months prevents one activist having sight of her much beloved view of Eggardon Hill, was standing tall. When they returned on 2 November 2009, the crop had been harvested and the field left wet and deeply furrowed to the extent that it was beyond recreational use. The field remained in that state continuously through to 13 March 2010 when it was tilled – a period of 4 months either sodden, flooded or frozen. I would challenge any claim of use of this stretch of path over the 4 month period of unavailability. Mrs Eden has a habit of ignoring inconvenient truth. "I was not convinced the existing path would have been unusable at any time", she announced in her Decision Document to anyone believing she could still lay claim to any crumb of credibility. My own statement that the path was unusable for 2½ months in the year was ignored. There are civil servants paid good money by the public to identify this and other glaring idiosyncrasies. For as long as those entrusted with this work are colleagues or associates of the individual under review, serious distortions will continue to pass unchallenged.

Councillor Coatsworth whose Division this is and who declared the Inspector's previous conclusion "unbelievable", said so again in his formal complaint of Mrs Eden's conduct to the Quality Assurance Unit. This complaint was copied to the High Court and DEFRA, also accompanying those of Oliver Letwin and Dorset CID, telling London of serious malpractice in Dorset. Presently the Chairman of West Dorset District Council, Councillor Coatsworth had been the Chief Examiner in Rural/Environmental Studies and Agricultural Science for 17 years, originally for the East Anglian Examinations Board and latterly the London and East Anglian Examinations Board. "As someone who has regularly walked the Mappercombe Estate field during the winter for over 25 years in all kinds of weather, I can assure the reader that these ploughed fields are unwalkable when wet and the cultivated soil very

difficult." These are not errors of judgement but are indicative of wilful intent to pervert the course of justice.

The CID put to Mrs Eden the question: "How can Mrs Eden say that the existing path is accessible 365 days a year when in winter it is a boggy mess to walk diagonally across the sometimes flooded field? The proposed route is safer and certainly more accessible". Mrs Eden insisted she did not say the existing "path is accessible for 365 days of the year" but stood by her "conclusion that I was not convinced that the existing path would have been unusable at any time".

Three

The central conclusion of Mrs Eden was "I would conclude that it was not expedient to confirm the Order because the effect on the public would be more detrimental than the effect on the Applicants arising from not diverting the path". Instinct might lead a reader to believe this fallacy to be true but instinct is no substitute for hard evidence. In his complaint, Councillor Coatsworth challenged the Eden conclusion. "My complaints regarding her temper, the way she broke her own rules in a most public way and her favouritism to one side and hostility to the other demonstrate the extent to which there are doubts about the validity of the conclusions she has drawn."

Two individuals told the Inquiry that they personally had no problems in walking through private gardens. One was Hawkins, the other Mrs Ramage. Both had their dispositions recorded in the Decision Document. Mrs Ramage "does not feel discomfort or embarrassment when walking Footpath 32, or that she is invading the privacy of the residents". All the objectors known to me take a political slant on this diversion. To me, the emphasis should be upon function. There is no place for politics in this matter: it should be inadmissible.

Setting aside citizens Hawkins and Ramage, we have on record Mrs Rosemary Bramah, a person authorised to speak on behalf of the Ramblers' Association, having told Mrs Eden her members do not like walking through private gardens. The wider public share the view of *Daily Telegraph* journalist Brian Jackman as put to the Inquiry. He helped pioneer environmental journalism, is a keen walker and wrote the first official guidebook to the Dorset Coastal Path. "Like all walkers I am jealous of my rights to roam and would fight tooth and nail if I thought they were being

diminished. But equally, I have always shied away from using any path such as the one in contention because, regardless of its official status, walking through someone's garden makes me feel like a trespasser."

Councillor Coatsworth said that with the exception of the small number of known opponents, local people who had an opinion supported the diversion. They will point out that the Authorities had no difficulty in supporting the Corfe Farm diversion application which was identical in almost all respects, not least being in the same Parish. The local, positive attitude is bolstered by the knowledge that the taking of the path through Wallhayes was a wrongful designation or, to use the phraseology of the opposition, it was "filched". Credit has been given for the manner in which the appellants established a comprehensive consultative process in coming to the local solution. Once the intention spread into the broader hierarchies, the real opposition came into play; they wanted more.

Walkers often frequent the local pub at lunchtime. A straw poll was conducted there about attitudes vis-à-vis taking a diversion round a person's home or going through. "If you had a choice of two paths of similar amenity which took you where you wanted without undue inconvenience, would the fact that one went through a private garden affect your choice of footpath?" Their spokesman said all seven would avoid someone's home "like the plague". They would not cherish being in the same position. The matter was not left there but was concluded with reference to the ubiquitous Mrs Ramage. "Mrs Ramage said she would have given the same answer to the question as it was phrased but that this did not deal with the circumstances of this particular case." The Inspector did not take the opportunity to say that it did.

Whereas Mrs Ramage was being afforded high visibility by Mrs Eden, the former Bridport police inspector, Inspector Thomas, complained that this high visibility appeared to be to the exclusion of others, supporters of the appellants. In his complaint to the Inspectorate, he observed how little regard had been taken of Councillor Shakesby's submission (Chairman of DCC's Roads and Rights of Way Committee) and even less to that of Councillor Coatsworth. "I am frequently appalled", he wrote, "that the evidence of two senior County Councillors has been treated in this fashion by an unelected official of the State who has driven a coach and horses through the democratic processes in Dorset."

Both Councillors told the Inquiry that the proposed diversion would be advantageous to the public. Councillor Shakesby: "I believe that the diversion is substantially as convenient to the public, in some respects the diversion is more convenient and in particular, there is evidence from walkers who are embarrassed at the prospect of walking through someone else's garden and are unwilling to do this. The diversion will remove this impediment". Councillor Coatsworth told the Inquiry that he represented "the needs, priorities and aspirations of my electors" and that it was his duty to come to a balanced decision as to what is right. He said he believed "the proposed diversion is substantially as convenient or perhaps more convenient to most reasonable people than the existing route… put simply, taking the path out of the garden makes it more likely people will use it". Neither of these heresies was afforded space in the Decision document.

A Mr Morrissey who has a home in Nettlecombe is a Lloyds broker, an expert in drawing balances and assessing risks. He drew up a matrix analysing the relative merits of convenience of the two routes in question, which he submitted to the Inquiry. For example, under *distance*, he found the paths to be the same length, under *going* he found the advantage lay with the new, under *obstacles* (that is stiles and gates) he observed 3 on the present path and 4 on the new. As to *availability*, he found the new path to be permanently available while the present path suffered considerable restrictions. Morrissey concluded: "On balance, these paths could be described as being of equal convenience". In the Decision Document, there is no mention of either Morrissey or his expert opinion.

Morrissey featured in the evidence put before the Local Public Inquiry by the County Council. This is a partial submission from that document:

"There is no one within my walking circle who, when offered a choice of two paths offering the same level of amenity would not, instinctively, choose the one that does not trespass upon the privacy of others. There is in fact a distinct feeling of unease associated with intruding into other people's homes and gardens. If it can be avoided it should be and this leads me onto my second point; is sufficient attention being given to the rights of Mrs Best and her family? It seems to me that there is a balance to be struck here. Finally, the path which leads to Wallhayes garden passes through a ploughed field which is distinctly less convenient than the two existing alternative routes and I should have though that it was also the least sensible

option…" "It seems that we have a system which actively solicits the views of objectors and yet does not necessarily assess the weight of local support behind Mrs Best at what is for her a very distressing time." Of this valuable note of local support, the Inspector chose to be entirely silent.

There was other quality evidence supportive of the appellants but, as was so often the case, it was suppressed to one degree or another. There is the case of the Hallett evidence. The Hallett evidence is of the purest kind. He did not know and had not met the Appellants until the first day of the Inquiry. He is a keen recreational walker and an ex Footpath Officer of the Parish of Chideock. His letter of introduction is included here for reference. He made a statement to the Inquiry and answered questions arising. It was positive support for the appellants but the Inspector has an unfortunate knack of putting down inconvenient truth. "When the additional length is considered alongside the fact that a significant proportion of the walk would be on roads then I think the recreational purpose would be affected detrimentally when compared with walking across a field and garden." This attempt to devalue quality evidence is unworthy of anyone put in a position of responsibility. The "additional length" is 10 metres. A significant proportion of the walk is not on roads. An additional length of 100 metres of field edge path is provided as a safety measure to take walkers off the parallel road. It has been established that Well Lane is more convenient and the preferred route to the equivalent length of pathway with its 3 gates. The Inspector's preferred field has been established as a bog for a good part of the year and the Inspector does not appear to wish to register the public's preference not to go through people's gardens.

The only truly independent evidence relating to this matter is that supplied by Dorset CID. In an interview with Mrs Eden, DS Broadhurst said: "From the evidence I have seen and read, I would certainly not agree that the effect on the public would be more detrimental than the effect on the applicant of her diverting the path. I have visited the site on 29 May 2007. I took the Decision document and 'walked the course' with an open mind. My personal opinion is that the proposed diversion seemed to make sense, if anything making it easier by not having to cross a ploughed field. I am aware that the subject of this proposed diversion had been considered in the relevant District and County Committees by democratically elected Councillors. In total, 85 per cent of Council Committee members voted for the diversion to

Southside Cottage.
Blideock Dorset
DT6 6JW.

31st August 2005

Dear Mr. Connaughton,

We have not met, but I would introduce myself as a keen casual walker who on Bank Holiday Monday accompanied by my wife, happened upon the village of Nettlecombe during a morning ramble.

Having walked through Nettlecombe some weeks ago with friends, we were retracing our steps and came across the path which runs through your garden and on which said path a notice of intended re-direction was displayed at the time.

We were surprised to find the notice still there, and being unsure whether the path had been re-directed, and not wanting to trespass on your property, we spoke to a gentleman in the street, who turned out to be a villager, to enquire whether the path still took its original route or not.

He informed us at length that the order was indeed still pending and in fact the attempt at re-direction on your part is being strenuously resisted by certain parties. We thanked him for the information and proceeded on the line of the existing path through your garden and then

CONT.

across the field at the rear, to the lane beyond.

Now, being an ex-footpaths officer for the parish of Blideock, and having some experience of re-direction orders and the workings thereof, I took it upon myself to walk the existing path as it stands, and then walked the line of the suggested redirected path.

Frankly, having done so, I see the benefits of re-direction as being (a) privacy in your property which in the 21st century we all yearn, (b) most importantly, in these sad times of ever increasing criminal activity against property, more security for you and your family, and (c) the ceasing of the need for the farmer who works the field beyond your garden, to constantly re-instate the line of the path within 14 days as the law requires, after each sowing and harvesting of crops.

Turning to the suggested re-direction route, I found this to be completely acceptable and to be of no inconvenience to walkers such as my wife and me, and I feel sure fellow ramblers and indeed the ramblers association would agree.

I hope you do not feel I have intruded, and I write in a spirit of interest as a walker and country lover who likes to see common sense prevail in these matters. Incidentally it was the villager to whom I spoke who gave me your name.

Yours sincerely. John Halliday

proceed. Set against these figures, the decision of the Inspector stood out as perverse".

These same points were transmitted by Dorset CID to Ashley K. Gray at the Planning Inspectorate, concluding: "I determined from the evidence that has been made available to me that the Inspector's report appears to have been both selective in the use of evidence and misleading in her assertions".

What this decision reveals is the careful selection and suppression of evidence. The injection of essential balance invalidates a Decision upon which legal judgements were based. This goes beyond the idea that the Inspector was entitled to make the conclusions that she did, moving into new territory acknowledging the appellants' rights and entitlement to justice. The consequence of all this is to set aside the burden of 4 negative legal findings and levelling the playing field. The idea that the Inspector had an automatic entitlement to come to the conclusions that she did is shown to be false logic insofar as the conclusions revealed here are patently nonsense. The concept is undeserving of support since it appears to encourage those so inclined to put trust in their own belief in their unaccountability and untouchability particularly in an environment where there is no monitoring system worthy of the description.

The matter of the Wallhayes diversion thereafter became the responsibility of the County Council, it is their lead. Officers could not, by convention be engaged overtly in opposition to Wallhayes. Although Mr Mair admitted his officers remained opposed to the Wallhayes Application, they were obliged not to adopt a position contrary to that established by the Council's Executive. Mr Mair wrote to Wallhayes' solicitors to inform them that he would represent the Council's and by association Wallhayes' position. That was a strange turn of events.

8

THE LAW

The Appellant's relationship with his legal team was as though on the parallel course of a twin track. The legal team dealt with pure law while I monitored the recording of bias among the Planning Inspectorate and supporters. Bias by itself is not a criminal offence. The criminality arises through the deliberate employment of biased means to justify ends. [The offence becomes a criminal offence when a Government appointed official wilfully takes a preferred position in order to achieve a result sympathetic to her and her colleagues' sensibilities, something that is achieved at considerable financial loss to an individual looking to the Inspector for a fair, impartial and independent tribunal.]

I have written this Section as a self-acknowledged amateur, a simple soldier drawing upon a sense of natural justice and an instinctive commitment to do that which is right. I have had the experience of going through the whole ambit of the High Court, two preliminary snapshot decisions, a Hearing and an Appeal where I acted as litigant in person. I was told that Judges' considerations were confined to matters of Law. That was not the case. I saw DEFRA appointees put to the High Court information upon which the Courts could not and should not have relied. It seems the hoodwinking of the Judiciary was achieved through the blind insistence of Judges (and CPS) that individuals such as the Government Inspectors were "entitled" to come to the conclusions that they did. That is a reasonable supposition subject to it also being part of a concurrent consideration of the appellants' rights.

DEFRA's sense of how to behave is contained within para 9(ii) of Advice Note 19. The problem is that it is pure rhetoric. In the case of "equality of arms" between the parties, "each party must have a reasonable chance to put their case and must not be put at a substantial disadvantage in relation to another party".

Central to the Wallhayes experience is an indefensible Decision, yet the whole range of options of complaint exclude examination of the Decision. The Planning Inspectorate cannot reconsider an Order on which a Decision has been issued despite the Inspector having given inadequate reasons for her Decision. That can only be achieved following a successful High Court Challenge. The illogicality revolves full

circle in the Planning Inspectorate's insistence that the Courts had declared their Inspectors sufficiently "independent". "There was also", they said, "the safeguard of challenging an appeal decision in the High Court". The access to the High Court and achieving equality under the law can, in this case, be seen to be a cruel myth.

The Judges had a substantial volume of evidence from credible witnesses of a badly flawed Decision and the CPS refused to include an evaluation of the Decision as part of their consideration whether a criminal act had occurred. The attempts by the Appellants to ask questions of what to them appeared to be a fraudulent Decision were frustrated by DEFRA. DEFRA ruled that the only access to their Inspector would be through Judicial Review, which they then successfully opposed in the High Court. The insult to the injury arose at the Appeal Court where the reasons given for denying a Judicial Review, so essential if we were to ask questions relating to the Inspector's Decision, were among those questions we wanted answered at Judicial Review. Who would defend the Judicial Review procedure as a fair and just component of this process? By what means may error be exposed? "…if it was important that there should be an effective means of detecting error by use of judicial review, reasons might have to be disclosed." R v. MoD Ex parte Murray. Fairness required of a decision making body. Queen's Bench Divisional Court, TLR 17 December 1997.

The earliest complaint of wrongdoing outside the Planning Inspectorate was put before the Local Ombudsman. They declined to consider the complaint because the appellants had gone to court, which they were obliged to do. The Local Ombudsman has little by way of power. He or she cannot investigate a case against a Decision whose merits are in dispute, moreover there are no powers to alter a bad Decision. The local MP thereupon put the general complaint to the Parliamentary Commissioner for Admission, only to be rebuffed because the Appellants had been to Court, again, an integral part of the challenge process. Similarly, the Parliamentary Ombudsman has no power to question the merits of the Decision or to make alterations. There is a Council on Tribunals but an approach there would be nugatory since, once again, they are not concerned with the merits of the Decision and have no powers to make an alteration.

The Inspector's Decision should be founded upon multiple, balanced conclusions. Common sense dictates that the intention is that the conclusions arise

from discussion held during the course of the Local Public Inquiry. There is scope for the unscrupulous or incautious Inspector to draw into his/her Decision one or more matters which had not had the benefit of public discussion during the Inquiry. There is evidence that Inspector Eden had done so on more than one occasion. For example there is the matter of the infamous third point of termination, originally a concept of the DCC Rights of Way Officers' Consultant, a former Devon County Council officer and former colleague of Mrs Eden. Logic and language do not allow for a single line to have three endings. Discarded during the course of democratic discussion at a DCC Roads and Rights of Way Committee Meeting, the idea of a third point of termination to FP32 was resurrected in Mrs Eden's Decision without having had the benefit of discussion at the Inquiry. As a consequence, the Appellants, elected members and members of the public were deprived of their right to speak. Setting aside the financial deterrent of an appeal to the High Court, any request for clarification of this and other matters could still not be satisfied, for it is apparent that short of a Judicial Review no one has the right to challenge a Decision, fraudulent or otherwise.

Among the recurring clichés connected with this business, "we can understand you being disappointed with our decision" is prominent. It is never disappointment, always outrage at being fed nonsense. Another is reference to the Inspector "being entitled to reach the decision that she did", because it is entirely insensitive to the rights and entitlement of the Appellants. That is how the High Court consideration began and how the Crown Prosecution Service (CPS) brought the matter to a conclusion. CPS had argued that after failing four legal reviews, a jury was not going to be persuaded to convict an Inspector for anything less than serious misconduct. The Appellants take the view that if the facts of the matter had been put to a jury, they would have felt the same sense of revulsion experienced by the Appellants.

The High Court procedure began with two short, preliminary reviews by single judges reading the evidence, from which they drew their Judgements. It should be remembered that the Appellants' aim, at great expense, was merely to persuade the Court to agree to a Judicial Review because there was no other course open for the review of an execrable Decision. While not a claimant in the proceedings, Dorset County Council maintained support for its Order and its support

for the grounds advanced in seeking to have the Decision reached by the Secretary of State's Inspector quashed.

Sir Michael Harrison in the High Court of Justice, Queen's Bench Division, Administrative Court, gave an opinion in January 2007:

> "In my view, the Inspector was entitled, as a matter of law, to find that the diversion contained a termination point not substantially as convenient to the public, and there was no arguable error of law involved in the Inspector's reasoning leading to that conclusion. Nor was there any arguable breach of natural justice in the Inspector's consideration of that issue. In any event, the Inspector would have decided that it was not expedient to confirm the Order because the effect on the public would be more detrimental than the effect on the applicants from not diverting the path."

Sir Michael Harrison arrived at this conclusion from evidence put before him by the Inspector. Examining the evidence in the round, it does not support the idea that "the effect on the public would be more detrimental than the effect on the applicants from not diverting the path". The Inspector had fabricated evidence, selected evidence to suit a predetermined position, suppressed important evidence that did not and, had behaved in such an undignified manner as to bring her and those who employed her into disrepute.

We had faith in British justice and believed that eventually natural justice would win through. Zermansky solicitors of Leeds announced their having come under the instruction of the Ramblers' Association in support of DEFRA. There appeared to be no overt involvement, they, apparently, being content to maintain a watching brief. A further substantial investment had to be made in order simply to turn up to put the case. DEFRA deployed a strong legal team in defence of their nominee. At the end of the day, 19 June 2007, nothing had been achieved to affirm my faith in the judicial system.

Mr Justice Walker agreed that the Inspector had applied the wrong test. He also agreed, contrary to Sir Michael Harrison, that the error had led to a breach of natural justice in the Inspector's subsequent exploration of the issues to be decided by her. I, as a novice, believed there to be sufficient justification to approve Judicial Review so that the whole matter might be re-examined in its entirety, beginning with

answers to questions which had been deliberately withheld. Having come to those two conclusions, Mr Justice Walker decided that the error did not taint her conclusions and that she was still entitled, as a matter of law, to draw the conclusions that she did.

Mr Justice Walker's principal conclusion was:

> "…the claimant has to overcome the hurdle identified by Sir Michael Harrison when noting that in any event the Inspector would have decided that it was not expedient to confirm the Order because the effect on the public would be more detrimental than the effect on the applicant of not diverting the path."

A two-part submission to the Court by County Councillor Coatsworth, the elected representative, warned the Court that the Inspector's evidence could not be trusted. The Wallhayes case had been the second to be heard in his area of responsibility by Mrs Erica Eden over a short period. Both Decisions generated multiple complaints of bias requiring answers.

Bearing in mind what County Councillor Coatsworth had to say, it is unfortunate that his communication with Mr Justice Walker had no impact upon the Court's decision. "In all this", he told the Court, "there is something wrong. The evidence shows this to be so yet I find difficulty in getting those in authority to either listen or respond. Officers and officials are not inviolate and must be called to account otherwise the course of justice is perverted, as, to my mind, it most certainly has been in the West Bay Road (Pierces) and Wallhayes cases".

The Rt Hon Oliver Letwin MP provided corroboration for what Councillor Coatsworth had said. He had seen four letters in which the correspondents cast doubt "upon the fairness and impartiality of the Inspector and hence the validity of her Decision". He mentioned how the subject of Rights of Way in his constituency of West Dorset is controversial, involving strongly held sentiments "as well as delicate matters of public policy in relation to the environment. It is accordingly important that there should be public confidence in the impartiality with which all proceedings associated with such matters are conducted".

"Under circumstances in which not only a respected County Councillor but also other members of the public with knowledge of the local area who attended the Inquiry have raised severe misgivings about the impartiality of the Inquiry, I believe

that it is only through a process of Judicial Review that these misgivings can either be allayed or validated – and public confidence in the system of Inquiry thereby be re-established." The subject is a matter of Law but both these seemingly valid interventions proved nugatory. Counsel for the Appellant asked the Judge whether he had read the evidence. He said he had.

Following the decision of the High Court to refuse permission, the Applicant has 7 days in which to apply for a Court of Appeal Hearing. The theory is that the Court of Appeal then has an opportunity to consider the application for Judicial Review and the reasons for refusal put forward by Mr Justice Walker and, if mindful, grant permission for the Judicial Review application to proceed. This meant that we were continuing to pursue legal, technical reasons as to why the decision was wrong at the expense of developing the bias argument. The fact of the matter is that an appeal to the Court of Appeal can only be made in relation to matters put before Mr Justice Walker. Herein lay a predicament. While it was certain that the Judge would not permit Counsel to broaden the issues in dispute, the Decision was unsafe and could be seen to be unsafe. In order to prevent a miscarriage of justice therefore, I believed the best course of action was to endeavour, as a litigant in person, to put to the Judge evidence of malfeasance and bias, which the Judge would certainly not accept from learned Counsel. I had seen litigants in person favoured at the Local Public Inquiry more than they deserved, so I had some optimism that the same formula might work for me, although I certainly would not be seeking the favour of the judge – merely the agreement to a fair hearing. Then, by mutual agreement, I dis-instructed Counsel and went into court to face Lord Justice Collins.

Lord Justice Collins had in his bundle of evidence the carried forward statements of Councillor Coatsworth and The Rt Hon Oliver Letwin MP, a Representation outlining the passage of events signed by the three appellants and new, corroboratory evidence whose arrival had been subsequent to Mr Justice Walker's Judgement. In theory, the copy of Dorset CID's letter to the Planning Inspectorate was therefore inadmissible. Law cannot envisage or provide for every contingency. What needs to be observed during the course of the following paragraphs is the significance of the Dorset CID letter and the potential impact its contents have upon the Judgement in the Court of Appeal. Arguably, the police evidence serves to challenge the declaratory position as stated by Lord Justice Collins insofar as what

should be inadmissible becomes unarguably admissible, if only to avoid a miscarriage of Justice.

The Judge said that even though he had sympathy for the Appellant, it did not mean that the earlier court decision was wrong. Lord Justice Collins emphasised that the purpose of the hearing on the day was about whether Mr Justice Walker was wrong or not. I responded by saying that Mr Justice Walker was wrong in that he based his ruling upon a flawed Decision. The Judge disagreed, telling me that I was assuming the Decision was flawed in determination. It was, and can be proven to be so. I said that if the Decision was wrong, so by implication must be the Judgement from which it flowed. The Judge did not demur.

Turning his attention to the Appellants' three-page Representation, the Judge said it raised matters that were not within the Application for Judicial Review or within the scope of the Application for Permission to Appeal that Judicial Review. The Judge then turned his attention to the four grounds for which Judicial Review had been sought:

1. On the proper construction of Section 119, the Inspector could only confirm the Order;
2. If the Inspector was entitled to overturn the Order she erred in her approach;
3. That error was a breach of natural justice that affected the final decision;
4. The Inspector's convenience/detriment analysis and general conclusions in this regard were incorrect.

The Judge agreed that the first three points were arguable. I said that Mr Justice Walker had failed to appreciate that the Inspector's errors had infected her final judgement and that the Judge failed to see that the termination findings affected whether the path was more or less convenient to the public, but Mr Justice Walker had reasoned that:

1. The Appellant would have to overcome the fourth hurdle on the merits;
2. The convenience issue was correct;
3. That the overall effect of the public's enjoyment had to be taken into account with the diversion;

4. Finally, the Inspector was correct to consider the path as a whole and she took into account that the new path would be near roads and there were a number of stiles and these impediments were the same if the path went from C to I or C to A [That is what was said but is unintelligible]

Similarly, Lord Justice Collins appears to confuse the issues when he said that whilst the Inspector found that the new termination point was point F and perhaps that would not be as convenient as point A, she did go on to consider whether it would be less convenient to the public overall. She said that the new path would be on roads, with more stiles, and there would be a loss of continuation and there would be an aspect of needing to avoid the football pitch at certain times. Lord Justice Collins believed the previous Judge correct to point out there is a distinction to be made between the Inspector's discussion at paras 75 and 83.

75. "…..In weighing the factors that affect convenience I find that the proposed surface would be no less convenient but, against that, the character of the additional length on roads, the stiles, the exit at F, the loss of continuation from point E and the use of the football pitch leads me to conclude on the balance of probabilities, that the path would be substantially less convenient to the public in consequence of the diversion."

83. "I think the new 110 metre length of path C-D when compared with the existing 356 metres across the garden and field represents a reduction in the amount of footpath and consequently of the views that are available on what is essentially a path used for leisure. I think that, taking everything into account, the diversion would have a detrimental effect on the public's enjoyment of the path as a whole."

Lord Justice Collins concluded by saying that he saw no grounds why Mr Justice Walker was wrong. He had willingly accepted what the Inspector had told him to be true.

The Dorset Police investigation into the allegation of Mrs Eden's abuse of public office, one of only a small number of truly Independent commentaries, all supportive of the Appellant, began on page one of their letter to the Planning Inspectorate:

Dorset Police

DORSET POLIC
WESTERN DIVISION HEADQUARTEI
RADIPOLE LANE, CHICKERE
WEYMOUTH DT4 9W

Your reference:
Our reference:
If telephoning please ask for: DS 528 Broadhurst
Direct dial: 01305 226432
Fax: 01305 226440
Email: steve.broadhurst@dorset.pnn.police.uk

18th October 2007

Ashley K. Gray
The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
BRISTOL
BS1 6PN

Dear Mr Gray,

I have been asked to write to you by Mr Connaughton to update you regarding an investigation into an allegation of abuse of Public Office.

Background

In February 2007, I was first approached by Mr Richard Connaughton (RC) regards an allegation of abuse of public office.

RC lives at a private dwelling at Wallhayes, Nettlecombe near Bridport and in 1998 first applied for the diversion of Footpath 32 which went through the Wallhayes grounds.

Support from local Ramblers and District and County Councils were agreed and in 2004 the Dorset County Council (DCC) Public Path Diversion Order relating to Wallhayes, Nettlecombe, went before the Secretary of State for Environment, Food and Rural Affairs (DEFRA) for confirmation.

DEFRA appointed an inspector, Mrs Erica Eden, who declined to confirm the Order.

RC subsequently submitted an application for Judicial Review to the Administrative Court, firstly to Sir Michael Harrison and thereafter to Mr Justice Walker.

The Application for Judicial Review was unsuccessful at both stages, as a result of which a submission was submitted to the Court of Appeal and is awaiting consideration.

Investigation

A detailed set of papers concerning this enquiry have been forwarded to the Crown Prosecution Service for consideration as to whether any charges should be brought against Inspector Eden or DEFRA.

It seems to me that the Court's judgements are based upon the evidence put before it in a decision document written by Inspector Eden. I have read that document in depth, relating its claims to what could be seen on the ground and am concerned that it does not give a true representation of the facts pertaining to this case.

Sir Michael Harrison made four points, which went on to lay the foundation for Mr Justice Walker's consideration.

1. The Inspector was entitled as a matter of law to come to the conclusion that she did.
2. There was no arguable error of law involved in the Inspector's reasoning leading to her conclusion.
3. Nor was there any breach of natural justice in the Inspector's consideration of that issue.
4. The Inspector would have decided it was not convenient to confirm the order because to do so would have a more detrimental effect upon the public than upon the appellants.

The Secretary of State is required by law to nominate an Independent Inspector to consider such applications. It seems to RC and also to me, that Mrs Eden was identifiable with one side of this argument. This would not have been a problem had the Inquiry over which she presided been conducted fairly and impartially and not subject to so much controversy. The Judge would understandably assume that the evidence before him and upon which he made judgement had originated from an independent tribunal and represented a fair, impartial, balanced consideration of the facts.

However, the evidence I have seen does not appear to corroborate this. It seems biased and some issues that I have been made aware of do not appear to have been given due gravitas.

Some examples

Witnesses will say that the Inspector lost her temper at an open meeting and was shouting at the DCC's Head of Legal and Constitutional Affairs, as a result of which she was declared *persona non grata* in the County of Dorset. This is denied by the Inspector, who says she was raising her voice so that others could hear. The Chairman of West Dorset District Council and the County Councillor for Nettlecombe Ward, present during the Inquiry, said: *'My complaints regarding her temper, the way she broke her own rules in a most public way and her favouritism to one side and hostility to the other demonstrate the extent to which there are doubts about the validity of the conclusion she has drawn'.*

Police Constable Poole who lives within the community has stated, *'It looked as though either the Inspector was working to a personal predetermined end or had been so instructed by DEFRA'.*

Former Police Inspector Thomas has stated *'...I am drawn to the inescapable conclusion that almost exclusively, only evidence in support of the Decision has been included and that other, perhaps more compelling evidence has been disregarded or more ominously, misrepresented'.*

Witnesses state that the Inspector made it clear that walking the route would be restricted to one person representing each side. Yet those against the footpath were present in larger numbers, which was accepted by the inspector.

Perhaps the most serious point is what has been described as the inspector's invention of witnesses to support her desired intention of declaring Point A to be a point of termination. There is no evidence these witnesses ever existed.

Sir Michael Harrison's suggestion that *'the Inspector would have decided that it was not convenient to confirm the order because the effect on the public would be more detrimental than the effect on the applicants from not diverting the path'*. However this was based on what I believe to be a biased Decision document.

I have read Mr Justice Walker's Judgement. Again this relies upon the evidence put forward and does not appear to have included a balanced view, albeit RC's legal representative was present.

The local MP, The Rt Hon Oliver Letwin MP, wrote directly to the then Secretary of State, DEFRA, suggesting that the Wallhayes Inquiry, described as 'outrageous', be set aside and another reconvened. That advice was not taken. In the letter to Mr Justice Walker from Mr Letwin, *'...the correspondents clearly casts doubt upon the fairness and impartiality of the Inspector and hence the validity of her decision'*.

The issue which presently prevents this matter proceeding to Judicial Review is Mr Justice Walker's Issue Four. *'Here the claimant has to overcome the hurdle identified by Sir Michael Harrison when noting that in any event the Inspector would have decided that it was not expedient to confirm the order because the effect on the public would be more detrimental than the effect on the applicant of her diverting the path.'*

From the evidence I have seen and read, I would certainly not agree that the effect on the public would be more detrimental than the effect on the applicant of her diverting the path.

I have visited the site on 29th May 2007. I took the Decision document and 'walked the course' with an open mind. My personal opinion is that the proposed diversion seemed to make perfect sense, if anything making it easier, by not having to cross a ploughed field.

I was aware that the subject of this proposed diversion had been considered in the relevant District and County Committees by democratically elected Councillors. In total, 85 per cent of Council Committee members voted for the diversion to proceed. Set against these figures, the decision of the Inspector stood out as perverse.

In conclusion, I determined from the evidence that has been made available to me that the Inspector's report appear to have both selective in the use of evidence and misleading in her assertions. Whether that was criminally so remains to be seen.

Whilst complaints have been made about the Inspector's decision, there appears to have been no independent review of this decision within DEFRA. It seems clear to me that there are unanswered questions concerning the conduct of any internal enquiry. Surely this cannot be right and I feel as though a Government department should be more open and receptive to questions and complaints from members of the public.

Det Sgt Steve Broadhurst
Weymouth CID

Copy to:
Simon Holdsworth
Partner
Thring Townsend Solicitors
Midland Bridge
Bath
BA1 2HQ

"It seems to me that the Court's judgements are based upon the evidence put before it in a Decision document written by Inspector Eden. I have read that document in depth, relating its claims to what could be seen on the ground and am concerned that it does not give a true representation of the facts pertaining to this case."

That letter was seen by Lord Justice Collins but not by Mr Justice Walker, it having been written between the two court hearings with a view to the prevention of a miscarriage of justice.

The CID determined that the Inspector was identifiable with one side of the argument:

"This would not have been a problem had the Inquiry over which she presided been conducted fairly and impartially and not subject to so much controversy. The Judge (Mr Justice Walker) would understandably assume that the evidence before him and upon which he made judgement had originated from an independent tribunal and represented a fair, impartial, balanced consideration of the facts. However, the evidence I have seen does not appear to corroborate this. It seems biased and some issues that I have been made aware of do not appear to have been given due gravitas."

The Detective Sergeant supported his declared concern for what had happened by reference to evidence in the public domain:

- "My complaints regarding her temper, the way she broke her own rules in a most public way and her favouritism to one side and hostility to the other demonstrate the extent to which there are doubts about the validity of the conclusion she has drawn." Councillor Coatsworth
- "It looked as though either the Inspector was working to a personal, predetermined end or had been so instructed by DEFRA." PC T.J. Poole , resident of Nettlecombe.
- "I am drawn to the inescapable conclusion that almost exclusively, only evidence in support of the Decision has been included and that other, perhaps more compelling evidence has been disregarded or more

ominously, misrepresented." Former Bridport Police Inspector H. Thomas.

- "Sir Michael Harrison's suggestion that 'the Inspector would have decided that it was not convenient to confirm the order because the effect on the public would be more detrimental that the effect on the applicants from not diverting the path.' However this was based on what I believe to be a biased Decision document." DS Broadhurst, Dorset CID.

DS Broadhurst referred to the Letwin idea put to Secretary of State DEFRA that it would be best to convene another Local Public Inquiry. "The advice was not taken. In the letter to Mr Justice Walker from Mr Letwin "…the correspondents clearly cast doubt upon the fairness and impartiality of the Inspector and hence the validity of her decision".

DS Broadhurst commented upon Mr Justice Walker's issue 4 where he said: "Here the claimant has to overcome the hurdle identified by Sir Michael Harrison when noting that in any event the Inspector would have decided that it was not expedient to confirm the Order because the effect on the public would be more detrimental than the effect on the applicant of her diverting the path. [Set against the evidence of those who spoke to the contrary, DS Broadhurst declared Mrs Eden's decision to have been 'perverse'.] "From the evidence I have seen and read, I would certainly not agree that the effect on the public would be more detrimental than the effect on the applicant of not diverting the path", said DS Broadhurst.

He took the Decision document with him when he walked the course on 29 May 2007. "The proposed diversion seemed to make perfect sense, if anything making it easier by not having to cross a ploughed field…. In conclusion, I determined from the evidence that has been made available to me that the Inspector's report appears to have been selective in the use of evidence and misleading in her assertions." There is a strong case to be argued that if Mr Justice Walker had similarly walked the course, his decision might well have been different.

What the Coatsworth, Letwin and Dorset CID letters have in common is their familiarity with the topic, awareness of the circumstances and the ground. They have all endeavoured to help Judges in courts in London's Strand understand what was happening some distance removed from them. Lord Justice Collins' decision that Mr

Justice Walker was not wrong is open to challenge. He appears to have attached no weight to the advice emanating from Mr Letwin and Councillor Coatsworth in Dorset, preferring exclusively the advice of the Inspector. There is an apposite IT truism 'garbage in, garbage out'. Dorset CID attaches little value to that which the Inspector told the Judge. Mr Justice Walker had not seen the CID letter. Lord Justice Collins had. It was not a letter of Zinoviev proportions. While technically ignoring the most recent evidence, not seen by Mr Justice Walker, was procedurally correct, the inevitable result was the feared miscarriage of justice. Which was the lesser evil?

The Dorset CID information suggests that the evidence put before Mr Justice Walker and upon which he made judgement, had not originated from an independent tribunal and did not represent a fair, impartial, balanced consideration of the facts, as required by law. Moreover, it bears repetition that the Police were of the view that "Mrs Eden was identifiable with one side of this argument".

Decision making only works if the decision is the identifiable product of balanced consideration. What is striking from the reading of paras 75 and 83 is the total absence of balance. We look for the pros and cons, yet all we are presented with here is that word with appropriate dual meaning, 'cons'. There is no weighing of factors, meaning the Decision is worthless. For example:

- "The proposed surface is no less convenient." Not so. The field edge and surface of the recreation ground are infinitely more convenient than traversing a 300-yard-long ploughed field. The DCC consultant supported that view.

- The Inspector discusses "the character of the additional length on road" as a negative, yet the stretch of lane G-H for example, is more convenient and more pleasant than the gated footpath D-H. That much is proven through observation of local use.

- Stiles are part of the character of countryside walks. The Appellants had in place a compensation arrangement with the landowners to the extent that one or more stiles could be replaced by gates. This fact was revealed at the Inquiry but deliberately ignored, as was evident from the Inspector's notes.

- The exit at F is a pre-existing exit of FP29 which had already had the benefit of the installation of a barrier close to the roadside. That barrier was in place long before the opening of the Inquiry. There is evidence to the effect that point A is more hazardous than point F.

- The point regarding the loss of continuation at point E is not understood since the effect of the diversion transfers the continuation to G. The footpath from E northward is not lost.

- No one of sound mind would propose that the use of a football pitch set in a six acre recreation ground could impede walkers.

- The reduction in the overall length of footpath (para 83) is not contrary to the law. One reason for opting for a diversion rather than an extinguishment was to put the field edge path in a position where walkers could use that path as a safety measure in preference to a parallel dangerous road. This was all discussed during the early liaison process and was regarded locally as a satisfactory quid pro quo.[12]

- Mrs Ramage's enjoyment of a particular view does not transcend the right of the Appellants to restore pre-existing levels of privacy and security to their home. This is a matter of subjective opinion, the walking of the course confirming no significant difference between the existing section of FP32 and the diversion.

There is nothing here that is positive: it is biased and valueless without mention of the benefits to be accrued from the diversion. These factors are laid out in the Decision Section. We would argue that it is a relatively simple matter to overcome the so-called *merits* which have been the subject of misrepresentation and economies taken with the truth. The idea that the diversion would be less convenient to the public is fallacious and can only be so represented after suppressing the weight of evidence to the contrary. Until the Decision is balanced, it cannot represent a serious point of view. If we simply start the balancing process with the introduction of one of a number of pros, it immediately moves the point of balance of a contrived and insidious Decision. In the matter of the public's enjoyment, there is a statement

[12] Lord Justice Collins' support for the Inspector's action in seeing the propinquity of the new path to the road as a negative is erroneous. It was a positive act which solved a long-standing safety problem.

signed by Christopher John Graham White, Solicitor, on 3 September 2007, which tells of the Ramblers' Association's District Secretary, Mrs Rosemary Bramah, telling Mrs Eden that "Ramblers don't like walking through people's gardens". That fact alone has a significant impact upon any consideration of public enjoyment and convenience of the path. The County Council's elected member told the Inquiry that *he* represented "the needs, priorities and aspirations of my electors" and that it was his duty to come to a balanced decision as to what was right. He said he believed "the proposed diversion is substantially as convenient or perhaps more convenient to most reasonable people than the existing route" (and, corroborating the fact that, for the opposition, the inconvenient truth that, other than a number of politically oriented exceptions the general public do not "like walking through people's gardens") so, County Councillor Coatsworth continued: "Put simply, taking the path out of the garden makes it more likely people will use it". The reason moderate voices such as this were not heard is due to the Inspector's exercise of a blatant regime of criminal suppression.

A number of hostile sources identified Wallhayes' difficulties with the absence of signage. Signage is not the Appellants' responsibility. It is true that signage might clarify the route but it does nothing to assuage the oft-expressed feeling of inconvenience and discomfiture, consistently expressed though largely unrecorded at the Inquiry.

No matter that the responsible parties can find solace in justifying the Inspector's behaviour, the inescapable fact is that this is an extreme example of rough justice. The Member of Parliament, a senior local politician and the County's CID had separately warned the learned judges that the Decision was flawed.

To the County Police's warning, we can add those of the former police Inspector responsible for Bridport and the policeman who lives in the community. Who, believing himself to be of sound mind, considers himself a better judge of the facts than these three impeccable sources who insist something is very wrong but no one will listen? No effort had been made by the Planning Inspectorate to present a balanced determination. Their off-hand dismissal of the Dorset CID letter telling them of their institutional problems is beyond the author's experience.

What the Judges had done through their deliberations was to conduct a virtual Judicial Review but using solely the one side of the argument with which the Inspector had been identified. She teased out a catalogue of negatives with which to frustrate the reasonable Application of the Appellants. Moreover, the solitary Inspector repudiated the Decision of the specialist Committees of both the District and County Councils. There was no apparent flaw in the reasoning of those Committees, nor did there appear to be any persuasive or material facts with which the Committees were unfamiliar. A Government Official must not overturn rational conclusions that the local, elected Committees were entitled to make. The law requires that the diversion must not be substantially less convenient to the public. It was a stated fact *ab initio* that the objectors would be satisfied with nothing less than a better path than the one being replaced – i.e. "net gainers". That is not the statutory test. The weight of the evidence within the Decision Section indicates that the Inspector's conclusions have been neither cogent nor compelling but contrived.

The Court of Appeal insists that its *raison d'être* is the examination of law. Yet there was only one issue to be determined, namely the Inspector's convenience/detriment analysis and the conclusions arising therefrom. This, therefore, is not a question of a finer point of law: it is a matter of opinion. The overwhelming weight of opinion indicates the Inspector to be more than wrong, criminally wrong. The prospect of a fair and proper deliberation became infected *ab initio* with the particular nonsense that the Inspector was entitled to come to the conclusions that she did. It is within the Decision Section that conclusions should be examined. Having read those, who of a sound mind is prepared to insist that the conclusions highlighted are anything other than wilful deception?

Lord Justice Collins gave as his reasons for rejecting the Appeal the same contentious issues contained within the Inspector's flawed benefit/convenience argument. The Appellants had arrived at this, their final Court of Call, to find access to a heavily ring-fenced Decision so well protected by procedure as to defy all initiatives to find reasonable answers. The Appellant was sent away by the Judge perplexed. The Judge cited as his reasons for not granting a Judicial Review those very issues for which answers had been sought. The duping of the Judiciary had been a simple matter. Mostly negative factors were put before the Judges, nothing

The Planning Inspectorate

4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

Direct Line 0117-372 8490
Switchboard 0117-372 8000
Fax No 0117-372 8139
GTN 1371-8490
e-mail: ruth.shelton@pins.gsi.gov.uk
www.planning-inspectorate.gov.uk

Det Sgt Steve Broadhurst
Weymouth CID
Radipole Lane
Chickerell
Weymouth
DT4 9WN

Your Ref:

Our Ref: FPS/Y1245/4/7

Date: 15 November 2007

Dear Det Sgt Broadhurst

ALLEGATIONS OF ABUSE OF PUBLIC OFFICE

Thank you for your letter, updating us on Mr Connaughton's behalf on the investigation you are conducting into alleged abuse of Public Office. The Inspectorate naturally takes such allegations very seriously, and I look forward to receiving further details about this investigation so that we may take any appropriate action. Could I request that you supply us with your complaints reference number, for our records. I can only repeat the offer made to you on 8 June 2007 that the Inspectorate will readily assist with any official investigation. Please contact me or Inspector Manager Peter Robottom to make arrangements.

I note your comments regarding the conduct of the Inspector at the inquiry and her subsequent report. I believe you are aware that this case has been reviewed by the Inspectorate's Quality Assurance Unit, and that an apology was offered for the inappropriate behaviour of the Inspector. We have not, however, found any evidence to support claims that the Inspector's report was flawed or biased in any way.

Whilst the Inspectorate can, and has, reviewed the actions of the Inspector and her report we cannot do so to the extent that you request. Only the Courts can overturn Inspectors' decisions, a course that you are aware Mr Connaughton is attempting to follow. I am sorry that you feel that the Inspectorate has not been open or receptive to questions and complaints. It is a reality of the way our planning system operates that we are unable to resolve all complaints to the satisfaction of the complainant, but we do assist where we can. I appreciate that these are your personal opinions on this matter and therefore outside your investigation into allegations of abuse of public office. Should you wish to pursue the issue of how we deal with complaints, it would assist me if you could write to the Inspectorate in your capacity as a private citizen.

Yours sincerely

Ruth Shelton
Head of Quality Assurance Unit
cc: Superintendent Colin Searle, Western Division

positive, in a Decision document which would have had greater utility had it been presented upon perforated paper.

The obligation of attendance at the High Court is disproportionate to the relief sought. Rocketing costs act as a deterrent to those seeking Justice. It need not be like this. There is no reason why Rights of Way issues could not be heard in lower tariff courts. There must be a more proportional prospect of success than is currently the case. In their Advice Note 19, the Planning Inspectorate talks piously to the effect that "each party must not be put at a substantial disadvantage in relation to another party"; advice that is studiously ignored. There can be no equality under the law for as long as reasons cannot be sought for the Government having come to one or more questionable conclusions. "…if it was important that there should be an effective means of detecting error by use of a Judicial Review, reasons might have to be disclosed." R v. Mod. *Ex parte* Murray. Fairness required of a decision making body. Queen's Bench Divisional Court. TLR 17. December 1997.

On 18 October 2007, Dorset CID wrote to the Planning Inspectorate's Ashley K. Gray, a Government official, advising him that after investigation, they had come to the conclusion that their Mrs Erica Eden's Decision could not be relied upon. This finding disassembled the Judiciary's insistence that Mrs Eden was entitled to come to the decision that she did. The evidence against the Planning Inspectorate's inspector was incontrovertible.

Yet nothing happened. The journey on to the Court of Appeal, which should have been avoided, went ahead as though there had been no police warning to the Planning Inspectorate. The Appellants decided to ask for sight of the Planning Inspectorate's letter outlining the reasons for having done nothing. Ashley K. Gray refused the request. "In our view, the correspondence is confidential, is not in the public domain and therefore it would not be appropriate to disclose it to third parties." Application was duly made to Dorset Police's Civil Disclosure Unit and Freedom of Information Office to secure the release of a copy of the letter held by them.

Dorset Police liaised with the Inspectorate's Quality Assurance. A new name emerged, Ruth Shelton. I read her letter to Dorset CID's Detective Sergeant Broadhurst. Ashley K. Gray's reluctance to release Ms Shelton's letter dated 15 November 2007 became immediately clear. The first paragraph openly solicited

further information "so that we may take any appropriate action" whereas the third regretted an impression that the Detective Sergeant had felt "that the Inspectorate has not been open or receptive to questions and complaints". Ms Shelton then continued in an apparently patronising manner: "Should you wish to pursue the issue of how we deal with complaints, it would assist me if you could write to the Inspectorate in your capacity as a private citizen".

Reference was made to the "review" of the case by the Quality Assurance Unit" and, that an apology was offered for the inappropriate behaviour of the Inspector". Ms Shelton refers here to her colleague's loss of temper and shouting at DCC's Senior Solicitor in a public place, thereby breaking her own rule that Inquiry matters must not be discussed outside the formal Inquiry. The apology was grudging and, given the weight of evidence, the banning order could not be denied. The Planning Inspectorate's curiosity could not be extended to consider the consequences of the Inspector's associated untruth to the effect that she had raised her voice so that all could hear. Then, the said Ms Shelton wrote in her letter to Dorset CID: "We have not, however, found any evidence to support claims that the Inspector's report was flawed or biased in any way". We, the injured parties, wish to know the manner in which such conclusions were reached.

The Dorset CID letter of 18 October 2007 concluded: "Whilst complaints have been made about the Inspector's decision, there appears to have been no independent review of the decision within DEFRA". Had there been, the issue and Mrs Eden would have been dealt with appropriately. "It seems clear to me", said the Detective Sergeant alluding to the in-house 'review' conducted by Quality Assurance, "that there are unanswered questions concerning the conduct of an internal enquiry. Surely this cannot be right and I feel as though a Government department should be more open and receptive to questions and complaints from members of the public".

The evidence presented by no fewer than nine complainants could not have provided more emphatic proof that the Inspector's report was flawed and biased. To suggest otherwise is patently nonsense and untrue. Ultimately it is the reputation of the Planning Inspectorate that suffers for, forthwith, on the basis of what has happened here, no one of sound mind will trust a Department that has behaved so unscrupulously.

9

VOODOO

In 2000 in Sierra Leone, a group of British soldiers was taken hostage by a gang of bandits. The SAS were sent in and completed a successful rescue. To a large degree, the failure of the gullible bandits had been attributable to their total belief in what they had been told by their witch doctors – that they were immune from British small arms fire. I want at the outset to highlight Advice Note 19 from the Planning Inspectorate's Rights of Way Section and pick up the linkage in due course.

Set out in your mind's eye four contiguous building blocks in a line. The one furthest to the left represents Rights of Way officials in County Countryside Access offices. The second represents Independent Inspectors on the Lord Chancellor's Panel. Third from the left represents the Rights of Way Section in the Planning Inspectorate, while the block on the far right represents the Secretary of State, DEFRA. Such a configuration is operationally legitimate in practice because the presence of the Independent Inspectors on the Lord Chancellor's Panel ensures that across the spectrum, the Policy Maker is not also the Decision Taker.

In 2000, while the SAS were in Sierra Leone, the British Government's Labour Party set out a landmark Act in Law – The Human Rights Act 1998 – Article 6 of which guaranteed all citizens a fair, impartial and independent tribunal. A year later, in one of those left hand – right hand hiatuses, the Government compromised Article 6.

The cause was the absence of visibility in a surreptitious, migratory, unannounced move which saw Rights of Way Officers replace the Lord Chancellor's Independent Inspectors. It had not been a total takeover because today, of the 11 Inspectors who undertake Rights of Way Casework, 9 have previously held Rights of Way related posts. What the transition had achieved was to empower Secretary of State DEFRA as both Policy Maker and Decision Taker, an untenable juxtaposition because it is his policy that is an issue.

In the Wallhayes case, the substitution of an Independent Inspector (one of whom had said earlier: "I cannot see this application failing at Public Inquiry") by a

political appointee of the same mindset as those on the bricks to her left and right. She alone effectively reversed the functions of local advisor and executor insofar as the well nigh unanimous decision by elected executives for the diversion to proceed was overturned to the advantage of advisors with whom the Inspector was associated.

Research conducted to ascertain how and why this change came about has generated little more of an excuse than 'experience'. This does not work because although, for example, an Officer dedicated to the management of Devon's Definitive Map does have experience of that parochial chore, it cannot translate easily and fit into an environment where the most senior judges in the land appear unable to challenge such an individual's Decision. Adopting a Qualities Approach and examining 12 Qualities deemed desirous in a Judge or Inspector, those expected to be evident might include: fairness, impartiality, independence, honesty, being apolitical, ability in the law, intelligence, clarity of expression, even-temperedness, courtesy, patience and decisiveness. Setting these qualities against the Wallhayes experience, there is an unavoidable conclusion that the baby had been thrown out with the bath water.

The Planning Inspectorate, which has no standing jurisdiction of its own, explained how Mrs Eden and her cadre were selected and trained prior to their meteoric elevation from obscurity to prominence. The Inspectorate is responsible for its own recruitment, subject to the principles of the Civil Service Recruitment Code and caveats. There was an imposed caveat requiring aspiring Inspectors to be members of a professional body, the most obvious of which being the Institute for Public Rights of Way Officers (IPROW). At the Assessment Centre, Mrs Eden and colleagues were required to complete a written test and conduct a mock hearing. It was at this early stage that successful recruitment was confirmed, before candidates underwent 'intensive training' – all of two weeks, from 15 July to 1 August 2002.

"The training course", explained the Planning Inspectorate, "introduced the Inspectors to, among other things, the Inspectorate's procedures, available guidance and gave them instructions and practice at conducting Inquiries and site visits and preparing decisions". There is therefore no reason why there should be high expectations of these junior civil servants trawled from the Counties to write a fair and balanced Decision document. The Inspectorate tells how Inspectors' professional development and training courses help to maintain standards. They are

also, significantly, in receipt of the partisan advice and advice notes from IPROW and the Inspectorate's Rights of Way section, of which Advice Note 19 is an example. I asked the Inspectorate for details of the legislative instrument used to compromise a basic legal understanding of accountability under which the Lord Chancellor's Panel of Independent Inspectors had been phased out. There was none. "The disbandment of the Panel was a direct consequence of the House of Lords judgement in respect of R-v-SSETR *ex parte* Alconbury Developments Ltd and others (May 2001) which found that salaried Inspectors taking decisions – even on proposals made by Government Departments was lawful." That is to misunderstand what was said.

The Alconbury Case was a straight planning matter unconnected with Rights of Way. Although the Planning and Rights of Way processes are identical, the end game is not, insofar as the former is concerned with transient policies while the latter is in perpetuity. What the Law Lords said (24) was: "There really is no complaint about *the* Inquiry conducted by an Inspector or about the safeguards laid down for evidence to be called and challenged for representations and objections to be heard". There is nothing contained in those words to justify the wholesale disbandment of the Lord Chancellor's Independent Panel, to be replaced by a cadre of former Rights of Way Officers carrying their doctrinal baggage. A wider meaning of their Lordships' briefest of statements was extrapolated further: "Given that the Courts found that an Inspector who was employed by the Government was sufficiently 'independent' and there was always the safeguard of challenging an appeal decision in the High Court, the administrative decision was taken by senior management of the Planning Inspectorate with the agreement of the Lord Chancellor's Department to disband the Lord Chancellor's Panel". It was the Wallhayes experience that there were no safeguards embodied in the challenging of an appeal decision in the High Court, a conclusion with which the Court on Human Rights concurred. The Planning Inspectorate insisted the Lord Chancellor's Panel "was disbanded some years ago in the light of case law. As far as I am aware, you are the first person to question that decision", said their Mr Steer.

What we are saying therefore is that Independence is a condition which falls into two tiers. The Inspectors must be independent of other groups – e.g. the Rights of Way Interests and the Executive, the Secretary of State. Neither was the case. An Independent individual or organisation is not dependent upon, or subject to the

control, power or authority of another: they are not subordinate. The Inspector is the nominee of the Secretary of State, DEFRA. The Inspectorate cannot be Independent for it has no standing jurisdiction of its own. As to the matter where it appears that the European Court offered comfort to both sides in the Bryan v. United Kingdom case, while the European Court was not satisfied that the Inspector represented an independent and impartial tribunal it did, nevertheless, believe the Article 6 requirements had been met with an available independent planning Inspector. The Court believed it to be the right to appeal to the High Court and the broad grounds of appeal which provided the necessary safeguards and therefore dismissed the claim. This argument has popped up in various forms throughout this Study. It is perfectly arguable in the Wallhayes case that this historic decision does not reflect the subsequent politicisation of the Inspectorate or that there were any safeguards at all open to the appellants by approaching the High Court. The legal validity of the 1995 Bryan case lapsed in 2000 when the then independent inspector was replaced by others who were manifestly not independent. There is, in addition, a more compelling legal argument, as put to the Select Committee on Environment, Transport and Regional Affairs by Cambridge University's then Professor Malcolm Grant.

"This finding (the European Court's) is unsatisfactory. If the initial hearing was, by definition, conducted by a tribunal which lacked the requisite independence from the Executive, it is impossible to understand how that defect can be corrected by a right of appeal to a body which does not have the power to re-hear the matter afresh… If the threat to the Inspector's independence stems, as the Court found, from his or her proximity to the Secretary of State, then appeal to the High Court on a point of law offers no escape from the violation." Professor Grant's statement to the Commons is dated 21 May 2006. From that date, therefore, since the Commons was told the Eden-style Inquiry was illegal, nothing appears to have been done subsequently to put the system right. Violation has continued unchecked and the number of people with grievances has increased in tandem. The public has a right to know why people are continuing to be put to inconvenience and cost by virtue of having what appear to be illegal procedures foisted upon them. A sensible next step would be for the Attorney General to ask the Court of Appeal for a ruling whether the independence of Inspectors from the Rights of Way Fraternity and the Executive is sufficient. Is it proper for the policy maker also to be the decision taker? Why, also,

were the appellants subjected to a procedure which the convening authority must have realised was illegal? This family requires an answer from Government. In what manner can the Local Public Inquiry they suffered be described as fair? From the description of the Inspector's conduct, how can that be described as impartial? We wish Mrs Eden's Independent status to be justified.

Understandably, such apparent underhandedness seemed to conflict with the promise enshrined in Article 6 of the Human Rights Act 1998 guaranteeing citizens an independent and impartial tribunal. In an example of calculated dishonesty, the Planning Inspectorate's Rights of Way Section turned its attention, in Advice Note 19, to persuading its new protégés that they need have no moral reservations. They, in turn, appear to have accepted this example of political voodooism without remonstration. This is para 10:

> On (iv), (the right to an independent and impartial tribunal), an Inspector is independent and impartial for the purposes of article 6(1). It was held in *Bryan v UK [1995] 21 EHRR 342 that "…there is…nothing to suggest that, in finding the primary facts and drawing conclusions and inferences from those facts, an Inspector acts anything other than independently".* The judgment by the European Court of Human Rights recorded that:
>
> - the Inspector is in no sense connected with the parties to the dispute or subject to their influence or control;
> - the Inspector's findings are based exclusively on the evidence and submissions before him;
> - the Inspector has a duty to exercise independent judgment;
> - the Inspector is required not to be subject to any improper influence; and
> - it is the stated mission of the Planning Inspectorate to uphold the principles of openness, fairness and impartiality.

The approach of the European Court was fully endorsed by the House of Lords in *Alconbury* (paragraph 24 of the judgment). The *Alconbury* case has been applied in recent cases in the Court of Appeal including *R (oao Whitmey) v Commons*

Commissioners [2004] All ER 376) and R (oao Trailer and Marina (Leven) Ltd) v SSEFRA and English Nature [2004] EWCA Civ.1580

The European Court of Human Rights' judgement applied to one historic case. To suggest to naïve Inspectors that what was said there, so carefully phrased, is of continuing, universal validity, explains why there is an apparently zero regard for accountability. Advice Note 19 is their licence, if necessary, to behave badly. Who would believe that in every case, "the Inspector is in no sense connected with the parties to the dispute or subject to their influence or control"? To do so would be a failure to understand why Wallhayes has become an issue of such importance, an obligation to do that which is right.

Similar responses in rebuttal come from both Dorset and Cambridgeshire County Councils, the former going so far as to insist that Human Rights "are qualified and not absolute rights". Jonathan Mair's difficulty in balancing two interests is evident when he wrote: "The County Council believes in this regard the Section 119 Highways Act and the opportunity to appear before an independent person ensures that balanced and proportionate decisions are made and that Section 119 is compatible with convention rights". One is entitled to wonder where he had been for the four days of the Inquiry. This had not been a fair inquiry and anyone prepared to claim that Mrs Eden had been strictly impartial and independent could not have been fully attentive.

Cambridge County Council fell within our ambit of interest in connection with the Mear case. Understandably, the matter of a fair, impartial and independent tribunal came to the fore. The Council's Chris Capps stated: "It is settled law that where a public authority has taken a decision which can be subjected to the scrutiny of the courts or tribunals, either through Judicial Review or as provided by a particular statutory provision, the Article 6 requirement for a fair and public hearing by an independent and impartial tribunal established by law is satisfied". It is evident from the observation of our Eden Project, certainly since the process was politicised, that such an aspiration does not work.

It was a reasonable request to return to this academic city and ask the Council for their source. Capps replied: "The Council cannot provide you with legal advice on the matter", which is not what was requested. Mr Capps was accordingly asked to

answer the question and a number of others connected with the Mear case. His response was interesting and identical to that of the Planning Inspectorate's *modus operandi* in closing down a difficult debate. "Any further e-mails or letters from you will be read and filed, but neither acknowledged nor answered." The time for clarification of this matter is overdue since there is a reasonable suspicion that many Local Public Inquiries similar to the Wallhayes case have been illegal in their constitution and execution.

Somerset County Council should not be excluded from comment. The first enquiries relating to fairness, impartiality and independence in relation to the Herrick case were received with untruthful answers. When, *en passant,* this was conveyed to their legal department, the mindset reaction was to chastise the messenger rather than deal with the official concerned. The Council's procrastination with the associated delay imposed upon the Peppard case was appalling.

There are three basic conclusions:

- An Inquiry conducted by an Inspector sourced from the Planning Inspectorate lacks the essential independence from the policy maker.
- The Policy Maker cannot also be the Decision Taker.
- The Wallhayes experience reveals that the restricted nature of Judicial Review means the Appeal to the High Court did not guarantee the appellants a fair hearing as required by law.

10

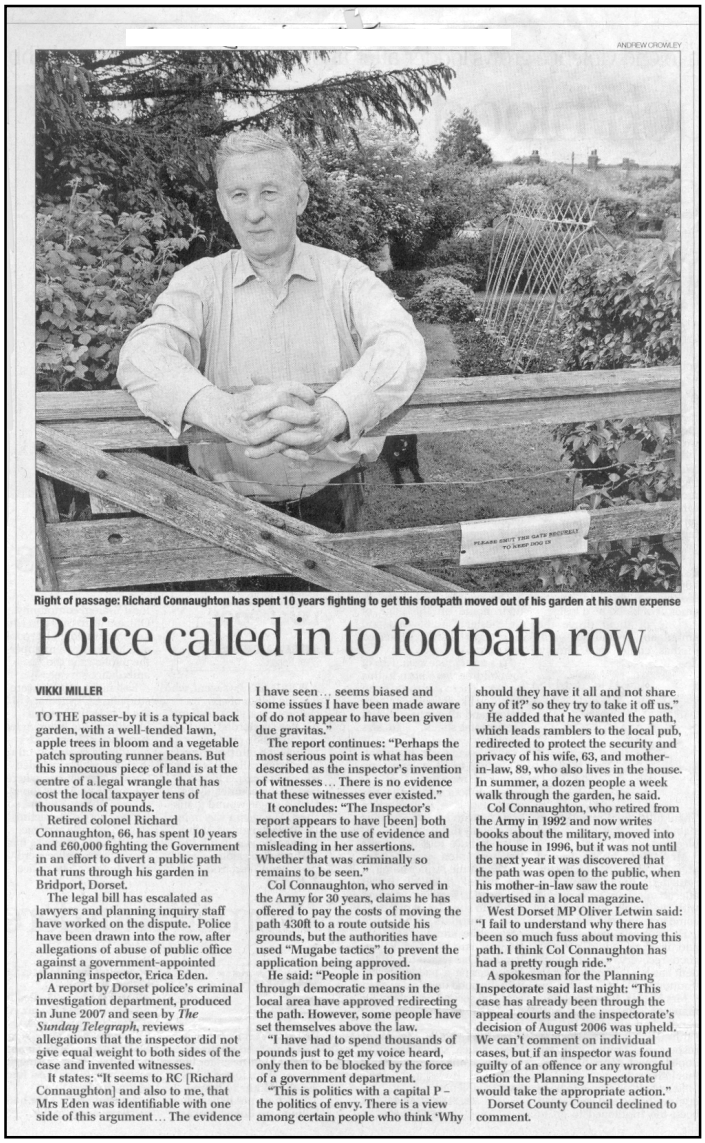
INTERVENTION

Apropos the Dorset case, two of Mrs Eden's colleagues had come forward to give her unqualified, unquestioning and undeserved support. Now, sequentially, another colleague would enter the fray on her behalf, again calling into question the Department's objectivity, fairness and impartiality. We were left bemused, wondering who could be in charge, how the great weight of evidence against the Inspector could so consistently be ignored. If one party refuses to play then there can be no meaningful dialogue. There can be no better example why birds of a feather in the same Department must not be entrusted with the monitoring of complaints arising from the Department's conduct.

The next step facing the Appellants following DEFRA's success in the High Court in preventing the Application proceeding to Judicial Review was the Court of Appeal, the court of last resort, short of continuing the process in the Lords or Europe. The difficulty facing the appellants was the issue that such matters are meant to be determined purely on points of law. They had already been rebuffed in the Courts on the grounds that the Inspector was entitled to come to the conclusions that she did. The fact that she did so improperly had no effect on DEFRA's monopoly of the law.

In order to gain the initiative, there appeared to be nothing to be lost in going public by releasing Dorset CID's letter of 18 October 2007 to the Inspectorate's Ashley K. Gray, outlining problems and inconsistencies with the Inspector's Decision. Dorset CID had copied this letter to the Appellants' solicitor, which the appellants reluctantly used to attempt to break the impasse. The reluctance stemmed from the fact that the author, as the first to complain, hands the tactical advantage to his opponents who were bound to respond. Unbeknown to the appellants, the article discussed here set in train two distinctly separate initiatives to neutralise the effect of the article or, at best, to secure advantage. The appellants did not seek the agreement of Dorset CID to release the article. The article below was published in *The Sunday Telegraph* on 1 June 2008.

Two letters to the editor, copied to the appellants, supported the thrust of what had been a factual article. It will be recalled how Peter Browning of St Austell told the editor: 'We were left with a deep sense of outrage at the manner in which this same Inspector conducted the Public Inquiry into an alleged footpath across our land, not only in the way in which she allowed (if not encouraged) the normal rules of evidence to be breached, but by the invention of "evidence" in her report after the close of the Inquiry'. John Bolton of West Bay Road, Bridport, told the editor how the article left him with a sense of *déjà vu.* 'As the name of Erica Eden appeared, I knew that I had indeed been here before. With something approaching incredulity, I progressed to the report of Dorset Police's CID in which the lady's report was described as "both selective in its use of evidence and misleading in her assertions".' He told how Mrs Eden had presided over the Pierce Inquiry, ruling out relevant evidence in support of the Pierce case. Neither of the complainants were known to the Appellants.



ANDREW CROWLEY

Right of passage: Richard Connaughton has spent 10 years fighting to get this footpath moved out of his garden at his own expense

Police called in to footpath row

VIKKI MILLER

TO THE passer-by it is a typical back garden, with a well-tended lawn, apple trees in bloom and a vegetable patch sprouting runner beans. But this innocuous piece of land is at the centre of a legal wrangle that has cost the local taxpayer tens of thousands of pounds.

Retired colonel Richard Connaughton, 66, has spent 10 years and £60,000 fighting the Government in an effort to divert a public path that runs through his garden in Bridport, Dorset.

The legal bill has escalated as lawyers and planning inquiry staff have worked on the dispute. Police have been drawn into the row, after allegations of abuse of public office against a government-appointed planning inspector, Erica Eden.

A report by Dorset police's criminal investigation department, produced in June 2007 and seen by *The Sunday Telegraph*, reviews allegations that the inspector did not give equal weight to both sides of the case and invented witnesses.

It states: "It seems to RC [Richard Connaughton] and also to me, that Mrs Eden was identifiable with one side of this argument… The evidence I have seen … seems biased and some issues I have been made aware of do not appear to have been given due gravitas."

The report continues: "Perhaps the most serious point is what has been described as the inspector's invention of witnesses … There is no evidence that these witnesses ever existed."

It concludes: "The Inspector's report appears to have [been] both selective in the use of evidence and misleading in her assertions. Whether that was criminally so remains to be seen."

Col Connaughton, who served in the Army for 30 years, claims he has offered to pay the costs of moving the path 430ft to a route outside his grounds, but the authorities have used "Mugabe tactics" to prevent the application being approved.

He said: "People in position through democratic means in the local area have approved redirecting the path. However, some people have set themselves above the law.

"I have had to spend thousands of pounds just to get my voice heard, only then to be blocked by the force of a government department.

"This is politics with a capital P – the politics of envy. There is a view among certain people who think 'Why should they have it all and not share any of it?' so they try to take it off us."

He added that he wanted the path, which leads ramblers to the local pub, redirected to protect the security and privacy of his wife, 63, and mother-in-law, 89, who also lives in the house. In summer, a dozen people a week walk through the garden, he said.

Col Connaughton, who retired from the Army in 1992 and now writes books about the military, moved into the house in 1996, but it was not until the next year it was discovered that the path was open to the public, when his mother-in-law saw the route advertised in a local magazine.

West Dorset MP Oliver Letwin said: "I fail to understand why there has been so much fuss about moving this path. I think Col Connaughton has had a pretty rough ride."

A spokesman for the Planning Inspectorate said last night: "This case has already been through the appeal courts and the inspectorate's decision of August 2006 was upheld. We can't comment on individual cases, but if an inspector was found guilty of an offence or any wrongful action the Planning Inspectorate would take the appropriate action."

Dorset County Council declined to comment.

The Planning Inspectorate's Mr Martin Steer set himself the task of persuading the Press Complaints Commission (PCC) to prevail upon *The Sunday Telegraph* to remove the online version of the article shown above. 'The Planning Inspectorate made no approach direct to *The Sunday Telegraph* itself', insisted Steer. Mr Steer lodged a formal complaint to PCC under Clause 1 (Accuracy) of the PCC's Code of

Conduct. The PCC revealed there to have been another complainant quoting the same clause. The PCC insisted that they 'did not rule on either of the complaints it received in regard to the coverage of 1 June 2008… Following those complaints, the newspaper voluntarily took remedial action without recourse to the Commission for a decision'. Mr Steer said, '*The Sunday Telegraph* decided to remove the article in question and expressed regret to the PCC for the distress caused to Erica Eden by its previous publication'. The appellants' exclusion from this process had been total. It was a case of the squeaky wheel getting the oil. Had the appellants seen the Planning Inspectorate's letter to the PCC they would have intervened with an injection of truth.

One consequence of commentator Steer's bald assertions was his total reliance upon those words his colleague Mrs Eden had selected to best represent her case. Not having been present at the Inquiry, he appears to have decided that veracity was simply what his singular colleague insisted to be true. He is on record as having said that Mrs Ramage was treated no differently at Mrs Eden's Inquiry than anyone else. That is not true and he, not having been there, was in no position to have said so. What the dozen or so complainants said to the contrary must therefore be wrong; perhaps part of a wider conspiracy against the reputation of Erica Eden, MIPROW. In the round it mattered not a great deal. The Planning Inspectorate was judge and jury. It mattered not what professionals had to say: for the Planners, this was an accountability free zone, protected by their own *cordon sanitaire.*

It is reasonable that the opposition should be offered the right of reply to an article which had come down in support of one side. Dorset County Council declined to comment. The article reveals that the Planning Inspectorate did accept the opportunity to insist that they would have taken action against an Inspector found guilty of an offence. It would have been wise for the Planning Inspectorate to have left their response at that point but they, and another, continued the process, with the result that the dual intervention succeeded when logically it should not have done.

The Appellants asked the Press Complaints Commission (PCC) for sight of the Planning Inspectorate's evidence in support of their allegation of inaccuracy. The PCC refused to assist, recommending the answer be sought from the Planning Inspectorate. The Appellants had a copy of the Steer e-mail of complaint to the PCC dated 11 July 2008. In view of the fact that the complaint questioned the accuracy of an accurate article, it was unacceptable that the Planning Inspectorate should target

the PCC directly with a request that they "may be able to use its powers to persuade the *Telegraph*'s online news archive to remove from its website a story which we believe to be distorted, and therefore misleading, contrary to Clause 1 of the Editors' Code of Practice". On 17 September 2008, I told Steer how the Planning Inspectorate had "abused our laws, misrepresented facts, condoned unfettered untruthfulness and no one cares".

Steer drew to the PCC's attention three examples taken from Dorset CID's letter to one of his colleagues as proof of distorted information appearing in *The Sunday Telegraph* on 1 June 2008:

- "It seems…me, that Mrs Eden was identifiable with one side of the argument… The evidence I have seen… seems biased."
- "the inspector's invention of witnesses… There is no evidence that these witnesses ever existed."
- "The Inspector's report appears to have [been] both selective in the use of evidence and misleading in her assertions."

"These comments", wrote Steer to the PCC, "were taken from a report of an incomplete investigation and, in the context of the article, seemed designed to elicit sympathy for Mr Connaughton". The three quotes selected by Steer were taken from an aforementioned letter – not a report – addressed to one of Steer's colleagues. The letter, written by a Detective Sergeant, a person demonstrably impartial and independent in a way that his Mrs Eden was not, had I believe as its purpose, a warning to the Planning Inspectorate that if they continued as they were, the result would be a miscarriage of justice. The gratuitous libel did not pass without notice: "The investigating officer appears to be known to Mr Connaughton" and "the comments seem designed to elicit sympathy for Mr Connaughton". The Dorset CID letter did not impugn "Mrs Eden's professional integrity" – she had done that by herself, assisted by the careful selection of evidence provided by kindred spirits. The evidence is compelling:

(1)

- In respect of Mrs Eden being identifiable with one side of the argument and "seems biased": "I am drawn to the inescapable conclusion that

almost exclusively, only evidence in support of the Decision has been included and that other, perhaps more compelling evidence has been disregarded or, more ominously, misrepresented". – Former Bridport Police Inspector H. Thomas

- "Her (Mrs Eden's) method, however was sickeningly biased in favour of your opposition… I was disappointed that despite a number of facts in favour of your application appearing to be substantially proven, they were apparently totally ignored." – PC T.J. Poole (the third, separate, adverse comment on Mrs Eden's performance from serving or former police) and the third such complaint ignored by the Planning Inspectorate.

- "My complaints regarding her temper, the way she broke her own rules in a most public way and her favouritism to one side and hostility to the other demonstrate the extent to which there are doubts about the validity of conclusions she has drawn." Conclusions the Judiciary and Mr Steer insisted in her defence she was "entitled" to make. – County Councillor R.W. Coatsworth

(2)

- The Inspector did invent a witness. She was overzealous in the embroidery of the tapestry established to bolster the case for the preferred Point A. There is no mention of this witness in her notes. There is mention of Mrs Eden having previously invented "evidence" at a Local Public Inquiry which she chaired at St Austell, information of which was conveyed to the Editor, *Sunday Telegraph*, in an e-mail from a Mr Peter Browning on 3 June 2008.

(3)

- The first bullet point attests to Mrs Eden's proclivity towards cherry-picking desirable evidence and sidelining inconvenient truth. Dorset CID's letter confirms the trends and tendencies in that direction.

In winding-up, Mr Steer said: "In addition and consequent to my contention that the *Sunday Telegraph* article is distorted and misleading, I believe that the Code

should err on the side of protecting the rights of the individual (as cited in the preamble), Erica Eden in this instance, rather than serving the public's right to know". Mr Steer has not come close to the provision of sensible evidence that the *Sunday Telegraph* article was distorted and misleading. What we have here is disorientation, irrelevance, froth, bluster and a touch of intimidation. The bureaucrat's first duty is to the public, not in cobbling together an unconvincing case in defence of an errant colleague. There is here a bounden duty to protect the victims from the excesses of an Inspector clearly intent upon having her own way, irrespective of her duty and responsibilities.

Steer wrote to the appellant: "You will note that *The Sunday Telegraph* has decided to remove the article in question and expressed regret to the PCC for the distress caused to Erica Eden by its previous publication". All but the cerebrally impaired will register a breakdown in the logic and facts provided by the actors in this particular Act. Steer did not contact *The Sunday Telegraph.* Steer did not make a case that *The Sunday Telegraph* article was inaccurate. Writing in general terms, this observer of the bureaucracy at work is dumbfounded by their unchecked exercise of self-interest and incompetence. Now, bringing these people under control is a laudable political ambition.

The PCC insisted that they had not ruled on either of the complaints arising from the article 'Police Called in to Footpath Row'. There would appear to be an excess of zealousness here. The obvious question arising is why, with so many pairs of hands disengaged, did *The Sunday Telegraph* decide not only to remove the article but also to apologise to an undeserving Mrs Eden? Perhaps the answer to this question and another which follows lies in the analogy of shit on the sole of a shoe, something to be rid of expeditiously so as to move on.

Report No. 77/08 on the PCC's Record reveals:

COMPLAINANT NAME:

A Woman

CLAUSES NOTED: 1

PUBLICATION: The Sunday Telegraph

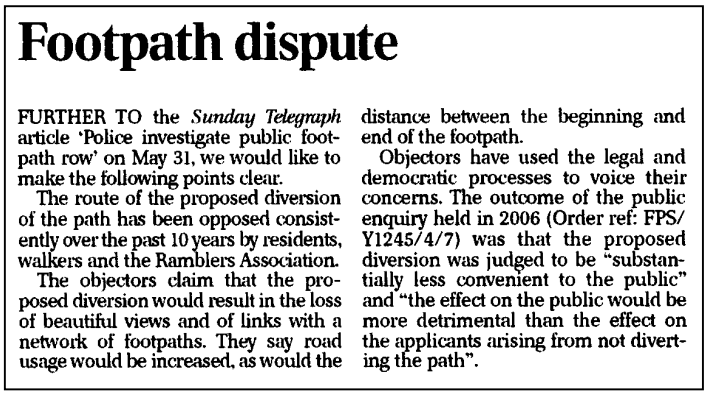
COMPLAINT:

A woman complained that an article which reported on a public footpath row in Bridport, Dorset contained inaccuracies.

RESOLUTION:

The complaint was resolved when the newspaper published the following clarification in addition to making a note of the issues raised by the complainant on its internal records: [In fact the note of the issues raised went beyond the newspaper's internal records].

On 17 August 2008, *The Sunday Telegraph* published a hanging chad of an anonymous article claiming parentage to the article of 1 June 2008. The appellants had been kept entirely in the dark on both developments. The PCC was asked for a résumé of how this state of affairs had come about: "I am afraid that the complainant requested anonymity in regard to this matter and agreed precisely what would be released publicly… the specific details of the complaint under Clause 1 cannot be revealed without the complainant's consent". The residual unknown is how it came about that the obsessive Mrs Ramage was able to apply leverage on the Editor. The appellants had just cause to resent anonymity in cases such as this. In 2001, an objector, the self-same Mrs Ramage, had applied to West Dorset District Council to grant her anonymity: "I would prefer my name and address not to be included within the circulated papers". Had that request not been granted, it would have been noted that the woman who had succeeded in her quest for anonymity, which therefore applied to all, resulted in the number of objections being distorted due to the said woman accounting for no fewer than three separate, anonymous objections.



Footpath dispute

FURTHER TO the *Sunday Telegraph* article 'Police investigate public footpath row' on May 31, we would like to make the following points clear.

The route of the proposed diversion of the path has been opposed consistently over the past 10 years by residents, walkers and the Ramblers Association.

The objectors claim that the proposed diversion would result in the loss of beautiful views and of links with a network of footpaths. They say road usage would be increased, as would the distance between the beginning and end of the footpath.

Objectors have used the legal and democratic processes to voice their concerns. The outcome of the public enquiry held in 2006 (Order ref: FPS/Y1245/4/7) was that the proposed diversion was judged to be "substantially less convenient to the public" and "the effect on the public would be more detrimental than the effect on the applicants arising from not diverting the path".

The request to the PCC for anonymity was pointless. The rhetoric bore its own unmistakable signature of the ubiquitous Mrs Ramage. She too claimed the article of 1 June 2008 had been inaccurate under the PCC's Clause 1. It is fair to observe the lack of curiosity and due diligence within the PCC because no attempt

was made to argue a case that the article of 1 June 2008 had been inaccurate. The rule is that explicit logic should be set out without breaks in sequence – i.e in a rational manner. In no circumstances does the 17 August 2008 snippet offer any evidence of inaccuracy in the 1 June 2008 article. What we have done so far is to point out in a dispassionate way the nonsense contained in the Ramage intervention.

The appellants regarded as odd Mrs Ramage and the Planning Inspectorate both making objection to the PCC under Clause 1 (Accuracy) without either having found it necessary to present evidence to that effect. The second obvious question was answered by Mr Steer: "As far as I am aware, our only relationship with Mrs Ramage was when she made representations on the diversion order and appeared at the Inquiry".

Mrs Ramage wrote how: "objectors (i.e. her people) have used the legal and democratic processes to voice their concerns". It is true that bad law allows a solitary individual "identifiable with one side of the argument", to come among a community and overturn the almost unanimously expressed wishes of the District's and County's democratically elected representatives, but that should not be confused with democracy.

Dorset CID reported how their examination of the evidence revealed that the Inspector appeared to have been selective in the use of evidence. One pertinent statement was put to the Inquiry by Mr Roy Harding, an inconvenient truth which, in the Decision document, was ignored. There is neither mention of his name nor what he said: "For me, the issue is one of Justice. It was unjust for DCC to route this FP through the garden of Wallhayes in 1951 without any consultation process – indeed it is laughable to think that such a thing could be done today – DCC came to this village in 2005 and held an Open Forum in this Hut (the village hall) in which opponents and supporters of the application were given time to put their points of view, many did including myself. The Committee subsequently went away, deliberated and came forward with the proposed amendment (to make the Order). They righted a wrong after hearing the evidence for and against and nothing has changed since except that the detractors (Mrs Ramage and fellow activists) cannot accept an honestly achieved position that does not accord with their wishes".

The Appellants asked Mrs Ramage for sight of the correspondence between her, the PCC and *The Sunday Telegraph.* She refused: "I would ask you not to communicate with me about it (the footpath) again". We wanted to know whether the approach to the PCC had been a joint venture.

The first reaction to the article came in a telephone call from near Honiton, the late Pongo Blanchford. 'Do not use your Colonel rank', the man advised. 'You don't know who you are up against.' I had not used my rank since 1992 when I started my second career. The appellants knew what he meant. They had experienced the high level of organised activity against them, the small-mindedness and malice of class warriors who engaged in small but annoying acts: leaving gates open so that the dog escaped into the surrounding countryside and scraping mud from their boots down the drive. The aggravation caused by intrusion such as this is easily dismissed as inconsequential by those who intrude. The vast majority of walkers are embarrassed walking through someone's home. There are a few, a small number, including neighbours from hell, who are impervious to the calculated distress which they cause.

The objectors are correct to say that they have *used* the legal processes, but to insist that what they and the Planning Inspectorate did was *democratic* represents a serious misunderstanding of the meaning of Liberal Western Democracy. The model enacted here is known as Centralised Democracy, typically to be seen in the People's Republic of China. The Government exercises absolute control from the Centre down through subordinate Authorities to the grass roots. One instrument of control is the Department of Propaganda whose propagandists are found at every level. In our case, the role of propagandist is not confined to Officers but includes those sympathetic to the aims of the Officers.

It is a useful exercise to reveal the factual activities of Mrs Ramage, the self-declared advocate of democracy, in opposing the Appellants' best efforts to restore pre-existing levels of security and privacy to their home. Among the papers issued for the first Hearing of this case at WDDC on 30 April 2001 were seven anonymous submissions from local people. Councillor Coatsworth warned the Committee to treat their evidence with caution. At a later date, an anonymous individual at WDDC recommended that the anonymous letters should be examined because they exaggerated the strength of local opposition. The WDDC Rights of Way Officer

produced the originals of the seven local letters, three of which had been written by one person – Mrs Ramage.[13] It was Mrs Ramage who requested anonymity.

The Appellants had two courses open to them, either to apply for an extinguishment of the wrongly designated stretch of path through their home or to apply for a diversion. The diversion was more attractive since it would be mutually beneficial to appellants and public. Before applying for a diversion, the Appellants sought confirmation from the Ramblers' Association that the proposed diversion was not substantially less convenient for their members. The meeting was held in a RA member's house in Nettlecombe, at the end of which, the Appellants had been given written and verbal agreement that the RA agreed the diversion was not significantly less convenient to their members. The RA would renege on that agreement. When asked why, the Footpath Secretary of the West Dorset Group said: 'I was got at by Sue Ramage'.[14]

In June 2004, Mrs Ramage wrote an article *Which Way to Go?* which appeared in the June 2004 issue of the Parish Magazine. The DCC Roads and Rights of Way Committee had rebuffed her best efforts and those of her small group of associates by making the Order which would steer walkers around the garden rather than have them pass through. It was a clever piece of writing with the appearance of a matter-of-fact account but in reality it advertised the next steps to deny a family living in the community their rights: 'So what happens next? According to the County Council, this Order to divert the footpath will be publicly advertised, giving people the opportunity to object to that Order. If objections are received it is likely that a Public Inquiry will be held to determine whether or not the Order should be confirmed'. Mrs Eden had her entrée and came to her perverse decision.

On the first day of the Inquiry, Mrs Ramage gave her evidence to Mrs Eden. The policeman living in the community said she had lied to the Inspector and believed that having done so, everything else she had to say should be heard with circumspection. "I did not mean to lie", she wrote.

PC T.J. Poole who lives at Home Farm at A had been on night duty prior to the day of the walking of the course. Next morning he heard voices below, through

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[13] Councillor Streets also attracted attention at this Meeting and in subsequent dialogue with the Monitoring Team for having made economies with the truth.

[14] She also said she had been told by higher authority that she had given the wrong answer.

his open upstairs bedroom window. He knew the purpose of the gathering but was surprised by the number who had assembled. "I heard the Inspector say on Day 1 that walking the course would be confined to the Appellant and one opponent." He alleges that he heard the voices of two people whom he recognised as Mr Streets and Mrs Sue Ramage. Streets allegedly said to Ramage: "They will attempt to divide us. We must keep together". There was no 'they'. Mr Connaughton was the sole representative of the appellants. Mrs Connaughton is shown in the Decision document as having walked the course. She did not. She had been so sickened by what she had seen at the Eden Inquiry, anathema to every value she held, she was unable to continue.

The intensity of the Ramages' desire to have their own way in securing passage through another family's home, their use of all necessary means, few of which were laudable, represents the central conundrum of this episode. The Ramages lived in a two-up, two-down cottage close to the village pub. They had a friendly relationship with the elderly Mrs Rosemary Best. When the Ramage family outgrew their home, Rosemary Best was keen to encourage young people to stay in the village to bolster the numbers at the village school, under constant threat of closure. She owned a cottage one hundred metres or so from her home, then a holiday let but affording her the option of down-sizing at a future date. Mrs Best offered her cottage with its considerable development potential to the Ramages, something they grasped enthusiastically. "It was not so much a matter of the value of the cottage" recalled Mrs Best, "but rather what the Ramages said they could afford". Had Mrs Best not shown the Ramages such kindness and generosity, they would have been long gone before they could turn their attention towards Mrs Best's home. Unusually, Rosemary Best had selected her own neighbours, something which would leave her with over a decade of misery.

On 7 August 2000, Rosemary Best wrote to the Ramages: "As the disagreement concerning an alleged right of way through Wallhayes continues its course, I feel bound to write to you both, in the hope that it might be possible to avoid the legal process and resultant ill-feeling and bad publicity which at present seems unavoidable and which would be so much to be regretted in a close-knit community such as ours. As you know, I have lived here with my husband and family for almost

40 years, always on excellent terms with everyone and we have served the community to the best of our ability. I do not know what I have done to deserve such hostility".

The discovery of strangers in her garden had an extremely negative effect upon Mrs Best. She became increasingly reclusive and agitated when left at home alone. She did not deserve this torment, her last years overshadowed, previous happy memories of family destroyed as she became a virtual prisoner in her own home.

Her *cri de coeur* proved unproductive. The family went on to expend tens of thousands of pounds in a fruitless attempt to secure justice and with it their home. The opponents paid nothing. At the Local Public Inquiry, Mrs Ramage said to Mrs Eden: "If they don't like it, they should go!"

11

NO CASE TO ANSWER

This Report began with an analogy of a corridor of closed doors. Throughout the course of analysis, it has been possible to identify intervention in the due process by those supportive of Mrs Eden's position. We saw the Government intervene at *The Sunday Telegraph* with the Press Complaints Commission, to remove a factually correct article, and we also saw the Secretary of State, DEFRA, conduct a U-turn on his earlier decision to receive a delegation from Dorset to hear their allegations of malfeasance within the Department. He therefore closed the penultimate door still open for the potential exercise of unbiased review.

"I *know*", wrote the Head of Specialist Casework Branch, Martin Steer on 16 July 2009, "that the Secretary of State for Environment, Food and Rural Affairs suggested to your MP, Oliver Letwin, that the best course of action for you now would be to make a fresh application for a diversion order, taking into account the tests which must be applied (as enumerated in Erica Eden's decision on 4 August 2006)". There was nothing wrong with the original tests which were applied. Mr Steer appears well briefed – who briefed whom? – a clumsy way in which to add credence to the theory of conspiracy. At every juncture there is a smoking gun. MP Oliver Letwin wrote how he had recommended that the Secretary of State should convene a new Inquiry but: "He appears to have been assured by his officials that there was no need for such action".

Opponents have intervened directly with the Decision Maker in their own interests. For example, there have often been examples of irrelevant Nonsense Letters being drafted for their superiors' signature.

The Right Honourable Oliver Letwin MP had led the liaison with Secretary of State DEFRA. As explained earlier, we had a twin-track approach to the achievement of justice. My task had been to achieve recognition of the bias and criminality associated with the Wallhayes case. Dr Letwin confirmed he was aware that DEFRA was also aware of this situation and the developments with Dorset CID.

Non Intervention is also a form of Intervention. For example, Dorset CID informed the Planning Inspectorate of the view that aspects of the Eden Inquiry had been conducted improperly. This was an example of the police acting properly within their responsibility for crime prevention, making the proposition to the Planning Inspectorate that if they did not put their house in order, there would be a miscarriage of justice. The Planning Inspectorate ignored the message in the police letter, a consequence of which was the resultant miscarriage of justice at the Court of Appeal. They chose to justify their inaction by describing the CID letter to them as a "report of an incomplete investigation". Dorset CID found just cause to refer the matter to the Crown Prosecution Service (CPS), the last remaining door left open to offer an equality of arms. The first of two questions to be asked is whether those representing Mrs Eden would feel emboldened to intervene with CPS to the advantage of Mrs Eden and, if so, would CPS's Government independent lawyers absolve the Government's Independent Inspector of a criminal act? The answer is 'yes' on both counts.

In response to our request put to Mr Martin Steer for "an indication of the cost incurred by the public by virtue of the decision to protect your colleague Mrs Erica Eden, MIPROW", he replied: "The invoiced cost of engaging a solicitor to help us prepare a statement to the Crown Prosecution Service Was £2397.75". There were also "considerable administrative costs… co-ordinating gathering evidence and working with the solicitor and Erica Eden in writing Mrs Eden's statement". Mrs Eden led her dedicated co-workers a merry dance. The end result will be seen to lend validity to the aphorism, "garbage in, garbage out". In particular, the fashioned response to Dorset CID's Question 5 is an example of the classic answer assembled by a Committee. What was the function of the solicitor in that Committee?

Dorset CID investigated the alleged Misconduct in Public Office of Mrs Erica Eden MIPROW, sending their full advice file to CPS on 15 October 2008 with additional papers added subsequently. What follows is a rare public insight into the workings of CPS.

In the New Year 2009, questions began to be asked of the status of the CPS response to Dorset CID. There would be no response for 5½ months when, on 2 April 2009, Roger Hall, Deputy District Crown Prosecutor wrote to me. The oddest aspect of this letter was the inclusion of the Attorney General's Ruling (number 3 of

2003) indicating what factors should be considered in cases of alleged Misconduct in Public Office and whether bad faith played any part in such an allegation. The elements of the offence of Misconduct in Public Office are:

- A public officer acting as such, who,
- Wilfully neglects to perform his duty and/or wilfully misconducts himself
- To such a degree as to amount to an abuse of the public's trust in the office holder
- Without reasonable excuse or justification.

Wilful misconduct includes consideration of the manner in which the Inspector reserved her hostility, misrepresentations and poor judgement entirely for those who spoke on behalf of the appellants. County Councillor Coatsworth told CPS in his letter of 12 April how he intervened in the Wallhayes case "and other matters in what I consider to be the public interest without supporting any particular position or person and this I have done as fairly as I could in this case". This leads to what might be properly considered to amount to an abuse of the public's trust in the Inspector. Among those factors which the County Councillor/Chairman of West Dorset District Council put to CPS and which qualify in this category are: "The Report was full of conclusions not based on the evidence given". Similarly, there was the matter of judgement. "I and others stated that it [the path] could not be used at all times because of the cultivation of the land, the wet nature of the soil… spraying of fungicides and harvesting. Nevertheless, Mrs Eden declared that it was available throughout the whole year." Mrs Eden consistently ignored inconvenient truth, preferring that which accorded with where she ultimately wished to go. Her partisan behaviour was emblematic of her preference, conducted without reasonable excuse or justification by one who was supposedly impartial and independent. It is difficult to envisage in what manner CPS could ignore Councillor Coatsworth's stark observation to them that: "I have never seen any public proceedings to match these in terms of spiteful repression of one side and favouring of the other". While CPS agreed that certain elements had been made out, "I am not satisfied that her conduct was *serious* misconduct as required by this offence".

I argued that since Mrs Eden was employed as a *de facto* judge, there could be no latitude for malfeasance of any kind. CPS agreed that as a statement of principle,

DORSET County Council

Office: County Hall, Colliton Park
Dorchester, Dorset DT1 1XJ
Telephone: 01305 or 01202 224192
Fax: 01305 or 01202 225130
Minicom: 01305 267933
Email: r.w.coatsworth@dorsetcc.gov.uk
Website: www.dorsetforyou.com

Home: 2 Beaumont Avenue Bradpole
Bridport Dorset DT6 3AU
Telephone: 01308 422923
Mobi

Date: 12th April 2009
Your ref: RH/VG
My ref:

R. Hall Esq
Crown Prosecution Service
Dorset Area
Ground Floor
Oxford House
13-19 Oxford Road
BOURNEMOUTH
BH8 8HA

Dear Mr. Hall

Subject Mrs. E. J. Eden

I am Ronald Coatsworth, a member of West Dorset District Council for 33 years, representing the Bradpole Ward. My current office is as Chairman of Council. I am also the Dorset County Councillor representing the Bride Valley Division and as such chair the Health Scrutiny Committee and the Western Crime and Disorder Reduction Partnership. I have been a County Councillor for 8 years. Mr. Connaughton has given me a copy of your letter to him of 2nd April.

My involvement with Mrs. Eden started in the District Council when I was a member of a committee asked to consider the diversion of a footpath through a garden of a house in West Bay Road Bridport. The family concerned was the Pierces. After a thorough examination the committee, who were very familiar with the facts, the geography and the local people involved, came to a carefully considered conclusion to divert the footpath. I was appalled when Mrs. Eden subsequently overturned the decision which the local people considered to be in the public interest.

Regarding Wallhayes, my position as a County Councillor is to take decisions in this and other matters in what I consider to be the public interest without supporting any particular position or person and this I have done as fairly as I could in this case. You referred to several incidents in your letter to Mr. Connaughton and perhaps I could say how I viewed them bearing in mind that individually they may seem small by themselves but the sea is made up of small drops of water and taken together all these incidents do make a big lake at least.

I will start with the incident which certainly puts matters into perspective easily but which is not referred to in your letter. To give some background, I spent my active career years teaching Rural and Environmental studies and Agricultural Science and I was a chief examiner for CSE, CEE and GCSE in these subjects for 17 years. I also walked the fields during various sporting activities around Powerstock for many years in all weathers. The question arose as to the accessibility of the footpath to users. I and others stated that it could not be used at all times because of the cultivation of the land, the wet nature of the soil (mud that clogged in such a way as to make walking through the field sometimes impossible during the winter rains) spraying of fungicides etc. and harvesting. Nevertheless, Mrs. Eden declared that it was available throughout the whole year. I was very surprised when I read this judgement. Were my words and those of others wrong? What was the motivation behind this finding? I had given my opinion in good faith and was experienced in these matters and yet I was ignored. What was the justification for the decision – was it wilful, based on ignorance or what? I still puzzle about this and cannot understand why a person in an elevated position of public trust such as Mrs. Eden could have come to this decision and it causes concern about the general thrust of her conclusions.

Similarly I could never understand Mrs. Eden's position regarding the number of people entitled to accompany her on her walk of the site. I heard her say "one from each side" in the hall at Powerstock – it stands vividly in my memory. How can a Government appointed Inspector not agree this was not the case? It was, to my mind, an abuse of the process in which Mrs. Eden was involved and if she could not remember what she said then it may be she should not be doing the job. Her mistake in this matter must also cast doubt upon her other conclusions in the report.

Regarding the allegation of Mrs. Eden's loss of temper again, at the beginning of the proceedings she loudly proclaimed that she was not to be approached or talk to anyone outside the meeting of the enquiry. Mrs. Eden did not obey her own rules when she approached the Council solicitor to complain in a loud voice outside the proceedings of the enquiry but in a public place – whether this was wilfull or just temper I will never know but it helped to undermine my trust of this holder of the office of an Inspector, something I had never felt before. The Chief Executive of Dorset County Council has asked that Mrs. Eden not act as an Inspector in Dorset on future occasions.

I could continue especially about Mrs. Eden's attitude to the Counsel acting for Mr. Connaughton and find your idea of it being just a perception of Mr. Connaughton rather challenging. In my long career both in teaching and previously in the army, I have never seen any public proceedings to match these in terms of spiteful repression of one side and favouring of the other. The report was full of conclusions not based on the evidence given and the suggestion that a fence would cure the problem for Wallhayes is particularly ludicrous. It would isolate the garages and outbuildings making them very susceptible to crime and there is a real fear of rural crime in areas such as Powerstock. Mrs. Eden could not have taken into consideration the Crime and Disorder Act 1997 which puts an obligation on all public bodies to take the prevention of crime into account when making any decisions. I can provide an official who can remind Mrs. Eden of the relevance of the 1997 Act if necessary. Early in the proceedings when I was being cross-examined by the representative of the Ramblers Association I had drawn the attention of the enquiry to the provisions of the Crime and Disorder Act.

Earlier I gave the example of lots of drops of water making the sea and I hope this letter may lead to the conclusion that there is at least a large murky lake of inappropriate behaviour in this case which needs attention and that you will re-consider your decision.

Yours sincerely

Ronald Coatsworth

RONALD COATSWORTH
Member for the Bride Valley Division

they could not take issue with this contention but in law, it did not work like that. "The legal definition of misconduct (which is the same as misfeasance) requires proof to the criminal standard that the misconduct is not merely 'of any sort' but "is to such a degree as to amount to an abuse of the public's trust"… "case law makes it clear that misconduct has to be such that it injured the public interest and did so to a degree which demands condemnation and punishment". The Inspector's persistence in making statements that were not only untrue but could also be seen to be untrue cannot be interpreted in any other way than as a breach of the public's trust. Councillor Coatsworth explained to CPS how in his first encounter with Mrs Eden in West Dorset, he was "appalled when she overturned a decision against an elderly couple", a decision which local people considered to be in the public interest. The evidence is replete with similar examples injurious to the public interest and requiring condemnation and punishment.

Despite having been in CPS hands for 5½ months, the initial response from CPS dated 2 April 2009 seemed hurried and, in parts, incoherent. The CPS officer regarded as positive the unavoidable conclusion that the proposed diversion would be in the interest of the appellants, "one of your main concerns" said CPS, and which rather obviously, had been supported by Mrs Eden. There was then indulgence in the examination of single issues, minor issues which quite rightly would be ignored if they stood alone. The Deputy District Crown Prosecutor, Mr Hall, admitted that the Inspector's rules for the walkabout "appeared to have restricted this to one from each side" – which she denied – adding that "I do not believe that the Court would consider that amounted to serious misconduct". Again, considered separately, was her denial that her crude, loud, uncontrolled outburst in a public place against the County's senior solicitor did not amount to serious misconduct. For this specific act of what therefore can only be described as 'minor' misconduct, Mrs Eden was barred from taking any further Inquiries in the County of Dorset.

The Prosecutor, who had not seen the ground, also sounded positive in relation to the Inspector's assertion "that your problems could be solved by fencing". Councillor Coatsworth, who *had* seen the ground, told the Prosecutor that "the suggestion that a fence would cure the problem of Wallhayes is particularly ludicrous". Councillor Coatsworth drew on the analogy of droplets of water such as the collection of items referenced above, "making the sea and I hope this letter may

lead to the conclusion that there is at least a large murky lake of inappropriate behaviour in this case".

I found the Prosecutor far too easily swayed in support of Mrs Eden. It seemed to me not so much a case of evaluating the criminal[15] content with a view to taking further possible action but rather casting the facts in such a way as to avoid taking any action whatsoever. How refreshing it would be if just one Government official would be prepared to accept that a member of the public has the capacity to be truthful, even if that means by implication that their associate who is under examination, is not.

By way of an illustration, there was the matter of the unnamed witness, where my account had been arbitrarily dismissed. The Prosecutor said I had no recollection but "Mrs Eden does appear to deal with that specific issue", and that is what he preferred. The evidence to the contrary is precise. "The Inspector quoted witnesses giving evidence in support of Point A. Mr Connaughton will state that at no stage during the Inquiry did anyone say that walkers parked their vehicles at A." Although parking at A is difficult, no one was claiming that the occasional walker might indeed do so. The point is that at the Inquiry, no one said walkers park at A. "When asked who the witnesses were, Mrs Eden believed them to have been Mr Streets of Beaminster." There could hardly have been a poorer choice. Streets would not have had that level of local knowledge. He confirmed in writing that he was not Mrs Eden's witness. "The witness never existed", insisted the core evidence. "There is supporting documentary evidence to that effect. The Inspector had lied. Mrs Eden had allowed herself to be carried away in the spinning of her web of deceit." Apparently this had not been the first time Mrs Eden had invented "'evidence' in her report after the close of the Inquiry".[16]

The Prosecutor was not satisfied that the untruthfulness, deceit and misrepresentation brought to his attention was "serious misconduct" as required by this offence. What the Prosecutor had laid out in what was initially believed to be his draft decision was far removed from the essential, proper foundation upon which to

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[15] It seems to me as a novice that the higher test of criminality can be extreme. For example, blocking a footpath is a criminal act.

[16] Mr Peter Browning of St Austell to Editor, *The Sunday Telegraph,* 3 June 2008.

build a sensible, valid decision. It was decided to have a meeting to discuss matters arising, in Weymouth Police Station, attended by a Detective Sergeant of Dorset CID.

That meeting was held on 14 April 2009. We examined the Prosecutor's letter of 2 April 2009 as well as the Dorset County Council letter from Councillor Coatsworth[17] dated 12 April 2009. As a result of that meeting, the Prosecutor agreed to re-examine the evidence.

It was at the 14 April meeting that Mr Hall, the Prosecutor, told me of a discussion he had had with parties representing Mrs Eden's interests. They had "given an undertaking that she would chair no further meetings, would retire, and was unwell". This was no invention. It happened. It was clearly an attempt to plea bargain (an attempt to plea bargain by those associated with the Inspector) and was, by implication, an admission of guilt.

After a month had passed and no indication of the result of Hall's review had been forthcoming, I wrote to him on 27 May 2009. With reference to the proposed 'arrangement', I told the Prosecutor that Mrs Eden "does not deserve a dignified exit. To permit this leaves her victims exposed and perpetuates the widely held impression that Mrs Eden and peers are untouchable and unaccountable". I concluded with reference to the worst case scenario. "Finally, I wondered whether Mrs Eden has already been advised that she will not face criminal proceedings. If that is the case, when did that happen?" I was not favoured with the benefit of a reply. Later, the reason became apparent.

Meanwhile, concurrently, I was in correspondence with the Planning Inspectorate's Kay Sully. My correspondence with her terminated when the Inspectorate's Martin Steer took over the correspondence. It had been Mr Steer who intervened on behalf of his colleague Mrs Eden following *The Sunday Telegraph*'s factual publication of events at Wallhayes. That intervention had been improper and

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[17] Councillor Coatsworth is on record describing his relationship with officials who refused to listen. This meeting in Weymouth with CPS and CID present was our last chance to find justice. We had learnt our lesson when dealing with officials, even though the Deputy District Crown Prosecutor might be assumed to be neutral. Nevertheless, I served the Coatsworth letter on the Prosecutor, witnessed by a Detective Sergeant. After all, the Prosecutor had insisted that Mrs Eden's conduct had not been seriously wrong. The Coatsworth letter proved to the contrary. CPS could not avoid responding to Councillor Coatsworth at Dorset County Council. That was the theory. They did ignore the Coatsworth letter, neither acknowledging nor addressing the concerns of a Councillor who had witnessed the progress of this scandal from the beginning. What is extraordinary in relation to this specific case is the manner in which the CPS acted as a Court, albeit one without licence. The manner in which they marshalled facts was poor and signs of comprehension woefully inadequate.

economical with the truth insofar as the newspaper article was not inaccurate and did not wrongly impugn Mrs Eden's integrity, matters upon which Mr Steer was not qualified to comment.

What Steer had to say cast a serious question over any claim CPS might wish to present as being an impartial Department. His letter arrived during the interregnum when CPS had agreed to review their conclusion the in light of their misinterpretation of the facts. "The Crown Prosecution Service", he wrote, "has decided that the Inspector has no case to answer in respect of your allegation of misconduct". I asked Steer when CPS had come to this unlikely conclusion. He said, "3 April". Thus, CPS announced that Mrs Eden had no case to answer, eleven days before we had the Weymouth meeting where we pointed out a significant number of unsustainable CPS decisions which Hall agreed to review.

This is not how Departments should behave. I did not believe what Steer had told me. We asked Steer for sight of the written statement from CPS absolving his colleague from wrongdoing. "Ideally we would indeed have something in writing from CPS", he wrote on 23 July 2009, "and that is why we requested it. But a clear oral statement from a senior CPS lawyer to our own lawyer that there was no case to answer has had to suffice. The legal advice we received was that this was sufficient assurance – and the Planning Inspectorate has accepted that advice. If you wish to take issue with how the CPS conducts business, I suggest you take it up with them".

This had been an absolute betrayal. The fact is that having advised Mrs Eden that she had no case to answer, a decision founded upon incomprehension, there was no possibility of reversing that decision. There is no precedent of internal reviews overturning bad decisions. In my experience, the aim of such inquiries has been confined to the exculpation of Department and colleagues.

Almost four months later, I received a letter from Crown Advocate Locke telling me he had received the Eden file from Hall on 29 July and would give his view by 17 August 2009. Having taken almost four months for the file to move from Bournemouth to the Complex Casework Unit in Eastleigh, the judgement on this complex case would be available within a fortnight. But Hall had already absolved Eden of blame.

In his letter of 18 August 2009, John Locke said there was no evidence in the file of misconduct. He rehearsed the usual argument that the business had gone through the courts, ending with the conclusion and cliché, "her reasoning was sound and the decision was one that on the evidence she was entitled to arrive at". This idea that Mrs Eden was entitled to do as she did had thus come full circle. No consideration had been given to the appellants' entitlement – i.e. to a fair, impartial and independent tribunal. The link between the case and the law was crafted by the Government Inspector. The warnings implicit in the CID letter to the Planning Inspectorate had been overlooked. Moreover, Mr Locke appeared unable, in the time available, to find reference in the evidence to what are admittedly three matters which, although well documented, should not have taxed a complex casework unit.

I drew lawyer Locke's attention to the evidence he claimed he could not find and told him why, in my view, his response had failed to justify taking no action against Mrs Eden. He passed the file to the Head of the Wessex Complex Case Unit. Mr Harris promised a reply within 10 working days. I do not believe they should restrict themselves in this way.

It was perfectly clear from the Harris response that he had only the remotest idea of what had happened and what the issues were. Mr Harris wrote that: "I have also read Mrs Eden's statement dated 29 July 2008". In that statement, Mrs Eden wrote: "At the Inquiry Mr Mair, the County Council's Solicitor and Head of Legal and Democratic Services made the case for the Order", meaning that he led the Appellants' case. In his letter to me of 10 September 2009, in which he expressed satisfaction "that the decisions of Roger Hall and John Locke were correct and that they accord with the Code for Crown Prosecutors", Harris, the third Government lawyer to examine the case, revealed a crisis of comprehension in that he was firmly of the opinion that Mair "was opposing your (i.e. my) application".

The truth is that had Mr Mair opposed my application, he would not have suffered the rudeness and bad manners of a Government Inspector shouting in his face in a public place. In their veiled apology to Dorset County Council's CEO, the Planning Inspectorate said that Mrs Eden was "one of our more experienced Inspectors and has a great deal of expertise in handling such Inquiries". If we examine the roll of those wronged by the Inspector during the course of the Inquiry – me, Mrs R.E. Best, Graham Stothard the former litigator, Counsel to the Appellants,

Councillor Coatsworth, West Dorset District Council, Dorset County Council's senior solicitor, and Mr Hallett of Chideock – they all have one thing in common: they all supported the Order.

What the Appellants undeniably have to their advantage is *prima facie* evidence of a contrived Decision, laid out in such a way as to be comprehended by the most challenged of minds. What they went on to discover to their disbelief was that no party within the complaints machinery was empowered to discuss the Decision. DEFRA refused to do so without Judicial Review and the Courts denied Judicial Review, quoting as their reason a number of the very issues intended to be the subject of questions to be put to the Inspector. The importance of the CPS in their requirement to investigate the alleged criminality of the individual is that they could obviously not avoid the fullest examination of a Decision which the Rt Hon Oliver Letwin MP, the Chairman of West Dorset District Council and Dorset CID had identified and reported to be seriously flawed. A crime has to be examined *totus porcus*, there can be no 'no go' areas. Yet that is what CPS did, arguing that their remit did not permit the assessment of the correctness or otherwise of Mrs Eden's Decision. The elements of Mrs Eden's Decision which collectively constituted a criminal offence were her untruthfulness, her contrived judgements, her suppression and selection of evidence and misrepresentation. All this is on the record, arguably sufficient to convince any jury of the defendant's guilt. If there is a view that the jury would acquit, let us examine the new evidence, paras 27-35, put before Dorset CID and PCC in Mrs Eden's signed submission of 29 July 2008. What we see here is behaviour that is entirely emblematic of a zero accountability environment in that a number of the statements are profoundly untrue.

For example, Mrs Eden's submission that she dealt with interruptions firmly – "I did not allow interruptions" – is untrue. Hecklers were allowed unrestrained attacks upon Councillor Coatsworth while he was giving evidence and Counsel for the Appellants had to ask those heckling her to desist, only to suffer rudeness from the incompetent Inspector, believing her authority to have been usurped. Evidence in support of this statement can be found in Councillor Coatsworth's complaint dated 14 October 2006: "While I was giving evidence, I was constantly heckled by, mainly I think, members of the Parish Council (who had decided not to give evidence) and their friends who were all seated at the back of the hall on the (left) side. I was called

arrogant and shouted at in terms of: "How could you know that?" to give but two examples. I simply ignored the rudeness but when Counsel for Mr Connaughton suffered the same fate and protested that she wished to be heard in silence (a not unreasonable request by someone who was, perhaps, more at home in the High Court) she was roundly scolded by the Inspector on the grounds that only she (the Inspector) could say what was to be allowed at 'her' Inquiry. The impression Mrs Eden leaves of her valiant struggle to maintain order is illusory. As DCC CEO said in his letter to the Planning Inspectorate dated 22 November 2006, "there is evidence from a number of people at the Inquiry that she did not manage the process at all well". While there was the case of one individual from the right hand side giving 'advice' to Mrs Eden, he was not a supporter of the appellants. I saw one example of yobbishness but that was between sessions in the Inquiry Hall. The identity of that individual in that incident has already been declared. I am unaware of anyone associated with the Appellants being involved in any disruption, which was evident only among those with whom Mrs Eden had empathy.

The claim that my statement had not been circulated to the Inquiry on 22 February is untrue. Reference to Mrs Eden's Notes reveals that I gave my evidence to the Inquiry read verbatim from my notes on Day 2. What is more, due to the tortuous progress and time taken with Mrs Ramage on Day 1, I was able to amend my original submission overnight by removing reference to the wrongful designation. Political bonding, sterile Ombudsmen, with the Complaints Process and Courts in their bag, why bother with truth when Who Lies Wins? Evidence is rarely entirely elusive. In this case, the Inspector's own Notes incriminate her, prove that her assertion – of which this is one of many – is untrue. Avoidance is invariably a simple matter of not engaging in dialogue, not listening, not responding but, if dialogue proves to be unavoidable, the solution adopted is to write and talk in riddles. The papers she circulated with her statement were not those I presented to the Inquiry.

There is an issue with regard to Evidence which I will pick up at its proper place. The evidence Mrs Eden said had not been circulated to the parties was an Appellant-sourced Dossier of Representations. Copies had been sent for information to the County Council and the Planning Inspectorate. The County Council Officers took from the dossier the statements they required and incorporated them into the

evidence in support of the Order. It was their lead. The Dossier of Representations was never part of the Appellants' submission. I did not have a copy at the Inquiry.

What I did have on my desk was a ring folder entitled 'The Eight Year Siege', a record of every stage of this evolving scandal. It was a proper reference document complete with endnotes showing the sources of every key statement made and the identity of the individual involved. I had taken it to the Inquiry in the event that I should require an *aide mémoire.* All files originating from Wallhayes on the matter of Rights of Way had pink covers.

The Inspector wrote in her defence to CID/CPS describing this volume as "an account of his efforts to stop the path running through his garden, which he planned to publish as a book". That was absolutely untrue. To date, not one individual in the review process, despite the availability of cogent and compelling evidence to the contrary, would accept that there was any truth other than that enunciated by the Inspector. The improper allegation of there being a book in the offing is rather different to the many other unfathomable untruths tied to an unyielding Decision. What I want of those in Government who have protected Mrs Eden is the evidence for her allegation. CPS might consider why this litany of untruthfulness is not injurious to the public interest to a degree which demands condemnation and punishment.

The folder on my desk therefore was quite different from that in the Inspector's possession. There had been no attempt to identify documents which would form the bundles of evidence to be used at the Inquiry. We are told there was no requirement in law. That is not so. Since 2000, the Government promised citizens the right to a fair hearing under Article 6 of the Human Rights Act 1998.

The Inspector discovered that the opposition did not have a copy of my Representations folder. Neither had I. The pink file on my desk was clear for all to see. She told my Solicitor to make sufficient copies for all who required a copy of the 100+ pages in the document. The Solicitor moved to pick up my Eight Year Siege document. I told him it did not form part of the evidence and that I did not want my copyright work being released to the General Public. He said to me "you must". I looked towards the Inspector for support. I was met by a frigid, hostile look.

The original Eight Year Siege document came into the hands of the ubiquitous Mr Streets. After flicking through the document, he said "I'm in here" and accordingly sat upon it, refusing to move. Of course he would be there since he was one of the leading activists opposing the application. He did not say, as the Inspector insisted, the work was "libellous". I have written a dozen published books. Truth is not libel. Streets had insufficient time to determine whether he had been libelled. Nor did other objectors on the Inspector's side claim, as Eden insisted, that they had also been libelled. Councillor Coatsworth said to me at the end of the Inquiry: "Streets looked very pleased with himself when he left". The false report of multiple claims of libel levelled against me by opponents came from an Inspector instrumental in placing my work, irrelevant to the Inquiry, in the domain of the general public, against my strongest expressed wishes. It had been a clear case of subversion to capitalise on what had happened. Her notes are absolutely silent on the alleged matter of 'libel'. What the Inspector did confide to her notes was: "Happy to hold original so can take legal advice whether potentially defamatory". So much for impartiality.

My Solicitor returned from Bridport with the photocopies of the 'Eight Year Siege'. A mini tantrum followed the Inspector's damning recognition that the document in her hands was not the same as those reproduced at great cost in time and money. She told my Solicitor to return to Bridport and photocopy sufficient 'Representations' for my opponents. Dutifully, that is what he did. On his return, the Inspector circulated copies of this document among the opposition, a document which was not intended to be part of the evidence, and insisted I return for a second time as witness to answer questions arising from those who opposed me. We were consistently kept on the defensive.

The Inspector told how Vice-Chairman of the Parish Council, Chris Bunney, queried my allegation of impropriety among some members of the Parish Council on the matter of the footpath. I said that was true and was thoroughly documented. Moreover, shortly after the Inquiry, the Chairman and Clerk of the Parish Council resigned, having been accused by former police inspector Thomas of having been too close on this matter. In her statement, the Government's Inspector speculated why not one of the Parish Councillors wanted to give evidence to the Inquiry in person. She answered her own question, as follows: "It seemed to me that this was because of

concerns that Mr Connaughton might take legal action and/or apply costs against them". Is this really a representation of the quality of justice? The truth is quite different. Para 8e of the Minutes of the Powerstock Parish Council Meeting for January 2006 reveals: "The question of whether or not to send a further written submission (to the Inquiry) was considered. (Note: In discussions after the meeting, the Council's representatives decided that no purpose would be served by making further representations and that their comments would be confined to statements already made)".

When the dossier came before Mr I.R.B. Harris, Head of the Complex Casework Unit, he found in front of him a dodgy decision from colleagues, upon which Mrs Eden had been unjustifiably assessed as having no case to answer. From the reading of the evidence, he determined that there were three aspects of Mrs Eden's behaviour which gave rise to my complaint. First, the denial that she had initially restricted the walking of the course to 'one from each side'; second, that she lost her temper with the County Council's Solicitor; and third, took account of questionable 'evidence' which had been received by the Inquiry. That assessment was simplistic to the extent of being valueless. The role of devil's advocate can be taken beyond the realms of possibility.

"With regard to the site visit", said Harris, "Mrs Eden claims that she said that at least one person from each side should accompany her and denies saying that only one person from each side should accompany her" (10 September 2009). His colleague, Roger Hall, reported (2 April 2009) that from his review of the evidence, "There are a number of people who confirm that she appeared to have restricted this (walking the course) to one from each side". County Councillor Coatsworth wrote to CPS (12 April 2009) where he touched upon this subject. "I could never understand Mrs Eden's position regarding the number of people entitled to accompany her on her walk of the site. I heard her say 'one from each side' in the hall at Powerstock – it stands vividly in my mind."

With regard to the alleged loss of temper, I have read the CPS preamble of reasons and justifications but do not consider this can in any way excuse the Inspector for the extraordinary behaviour I witnessed in the Inquiry hall. Dorset County Council does not routinely ban Government Inspectors from operating in the County *ad infinitum* without just cause. This factor should have been considered if only to be

dismissed with the mass of other valid points. I saw Mrs Eden shouting in the face of Dorset County Council's Senior Solicitor. I have already recorded why this gave me cause for concern. He was not opposing my application as supposed by CPS but was acting as my lead lawyer. For Mrs Eden to state that she raised her voice so others might hear, tells us a great deal about Mrs Eden and what she is prepared to consider to extract herself from a corner. She had lost it. She was out of control; a dreadful advertisement for the Planning Inspectorate. The Planning Inspectorate thought so too and issued a veiled apology.

Mrs Eden is alleged by CPS to have told them that only one objector had referred to parking at point A and that she could not remember the person's identity 'several months after the Inquiry'. Mrs Eden would have been thoroughly familiar with her Decision document, it having taken 4½ months to complete. Her document was dated 4 August and the first of the questions put to her was dated 6 September. It is untrue to say several months had elapsed. Vague mention of 'witnesses' or 'supporters' are neither acceptable nor compelling evidence given the consistent reference to named individuals throughout the Decision document. There is no reference to the witnesses in the notes. The original fraternity document states: "Mrs Eden had allowed herself to be carried away in the spinning of her web of deceit". The 'witness(es)' and supporters did not say what she attributed to them. I heard every word in this shameful Inquiry.

Mrs Eden was not responsible for the absence of rules of evidence and procedure. She was guilty in allowing too much latitude to the opposition – e.g. Mrs Ramage showing her photographs to selected individuals; the discovery from the Decision document that the Ramblers' Association had put certain unseen evidence before the Inquiry; for the chaos involving the pink documents and the casual invention of evidence as an instrument in achieving the desired conclusion.

In her statement to Dorset CID, Mrs Eden recounts how she saw a familiar name on the file, the name of the person employed by Dorset County Council as independent consultant on the Wallhayes case. "She had worked for Devon County Council during some of the time that I worked there (Eden worked there 1989 to 2002). I do not recall exactly when she left, probably in the late 1990s. While I think that she called in to the Devon County Council office *on a couple of occasions*, when I would have passed the time of day with her, I have had no other contact with

her since she left." According to Dorset County Council, their consultant worked for Devon County Council Rights of Way 1990-1999, an overlap with Mrs Eden of 9 years.

The implication of CPS confining itself to the review of a narrow set of three factors is the comfort it takes in concluding that in law, Mrs Eden's behaviour was insufficiently serious to argue that she had committed the criminal offence of misconduct in public office. "A charge of misconduct in public office should be reserved for cases of serious misconduct or deliberate failure to perform a duty which is likely to injure the public interest." That is precisely what this case is about. How many times has the word 'untrue' been used against Mrs Eden and shown to be proven? How many strikes before she is out?

Dorset CID put five questions to Mrs Eden through her legal team. After receiving her answers, the police went ahead to put the case before CPS. An abbreviated form of questions and answers are as follows:

Q1. "What happened when Mrs Eden is accused of losing her temper at a public meeting?"

A1. "I did not lose my temper and repeat that I only spoke loudly to Mr Mair in the hall so that other parties could hear what was passing between us."

[Councillor Coatsworth reported that in view of Mrs Eden's unacceptable behaviour, "The Chief Executive of Dorset County Council has asked that Mrs Eden should not act as an Inspector in Dorset on future occasions". The Planning Inspectorate's Quality Assurance Department apologised to CEO DCC for their Inspector's inappropriate behaviour.]

Q2. "What arrangements were made about how many people could walk the course? It is alleged that she said only one from each side, but this was later changed."

A2. "I did not say that only one from each side could accompany me." Incontrovertible evidence reveals that she did.

Q3. "Who are the unnamed witnesses who supported her desire of declaring point A to be a point of termination?"

A3. "…My best recollection was that Mr Streets, an objector had referred to the first point… After such a long time I cannot recall anything further about who said what."

The answer should have been contained within her notes. Streets denied the witness had been him.

Q4. "In what way would diverting the path be detrimental to the public? From the evidence I have seen and read, I would certainly not agree that the effect on the public would be more detrimental than the effect on the applicant of her diverting the path. I have visited the site on 29 May 2007. I took the Decision document and 'walked the course' with an open mind. My personal opinion is that the proposed diversion seemed to make perfect sense, if anything making it easier, by not having to cross a ploughed field. I am aware that the subject of this proposed diversion had been considered in the relevant District and County Committees by democratically elected Councillors. In total, 85 per cent of Council Committee members voted for the diversion to proceed. Set against these figures, the decision of the Inspector stood out as perverse."

A4. "I explain in paragraph 94 of my decision that the order could not be confirmed because the new termination point would not be substantially as convenient as the existing one… I understand that the District Council had originally refused the application [which is true but after protest, the District Council changed its position, voting 7:1 to support the Application. Mrs Eden took deliberate action to suppress news of the District Council's shift of opinion]. The County Council's Roads and Rights of Way Committee Decision was made contrary to the advice of their Officers and the Consultant [the Officers are advisors, the executive decision resting with the Councillors]. In the context of that, 17 objections to the diversion [most, null and void due to nepotism, interest and politics] including from the

democratically elected Parish Council [they were not democratically elected], I cannot accept DS Broadhurst's view that my Decision stands out as perverse."

Q5. "One final point which has not been covered in the letter but seems to me to be the most important is, how can Mrs Eden say that the existing path is accessible 365 days a year when in winter it is a boggy mess to walk diagonally across the sometimes flooded field? The proposed route is safer and certainly more accessible."

A6. "I did not say that the existing 'path is accessible for 365 days of the year… I stand by my conclusion that I was not convinced that the existing path would have been unusable at any time." !!

The Dorset CID sent their full advice file to CPS on 15 October 2008. Mr Harris's letter closing the final door to justice was dated 10 September 2009. CPS had held the files for eleven months. At no time did the Appellants have any confidence in the management of the case or have the comfort that the issues were fully understood. The Harris decision for doing nothing was inexcusable. Of his three simple points; one of his own colleagues had determined the Inspector *had* laid down conditions for walking the course; that the Inspectorate apologised for Mrs Eden's shouting in a public place; and thirdly, the evidence against Mrs Eden and her conduct were entirely safe, corroborated and capable of being presented as admissible evidence. In the light of this evidence, to advise Mrs Eden that she had 'no case to answer' was gravely injurious to the public interest and the worst possible indictment of CPS. Fit for purpose?

* * * * * * * * *

The homecoming soldier found his lifetime's principles and values challenged. For him, Paradise had been Lost. For the first time, he encountered a new sub species of invertebrates apparently without either a moral compass or moral courage, their vocabulary limited to the repetition of two words, 'we want'. They are the militant minority among walkers, the majority of whom, by their actions, confirm with an idea in Tobias 4: "Do to no-one what you would not want done to you".

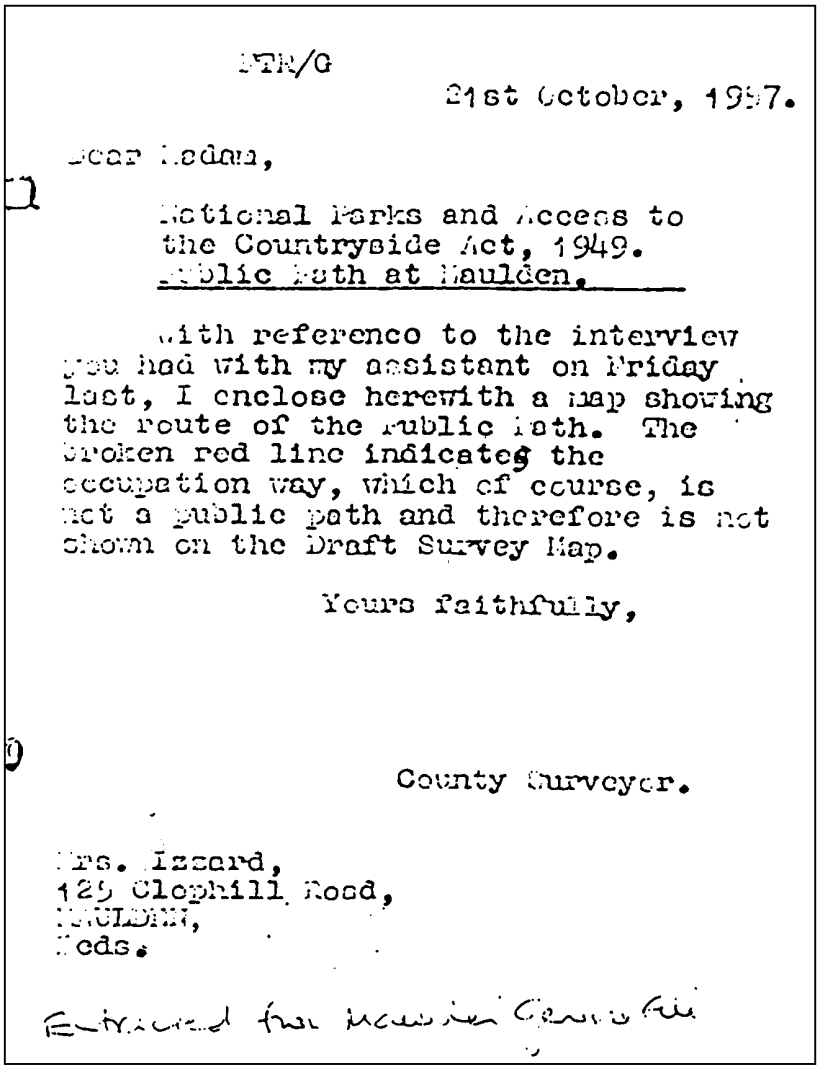
The concept of fairness, enshrined in law and embodied in manifestos is, in truth, meaningless rhetoric. There is nothing to be commended among applicable,

negative adjectives: insidious, unjust, manipulative, corrupt, politicised and dishonest. We now return full circle to our point of entry, where we expressed the opinion that evil will persist for as long as good men do nothing.

12

FULL CIRCLE

It behoves he or she who identifies bad process and bad law to recommend an alternative solution to that found wanting. The origin of this problem of abuse is the creativity which flowed from The National Parks and Access to the Countryside Act, 1949. What we shall do here is examine a final case study involving the Bowers family of Maulden, Bedfordshire, with a view to consolidating lessons and trends already identified. Seventy-one year old garage owner Alan Bowers' attention was attracted to the then ongoing saga affecting the Herricks and the similarities between his case and their case. A methodical man, he kept a diary of events.



ETR/G

21st October, 1957.

Dear Madam,

National Parks and Access to the Countryside Act, 1949.
Public Path at Maulden.

With reference to the interview you had with my assistant on Friday last, I enclose herewith a map showing the route of the Public Path. The broken red line indicates the occupation way, which of course, is not a public path and therefore is not shown on the Draft Survey Map.

Yours faithfully,

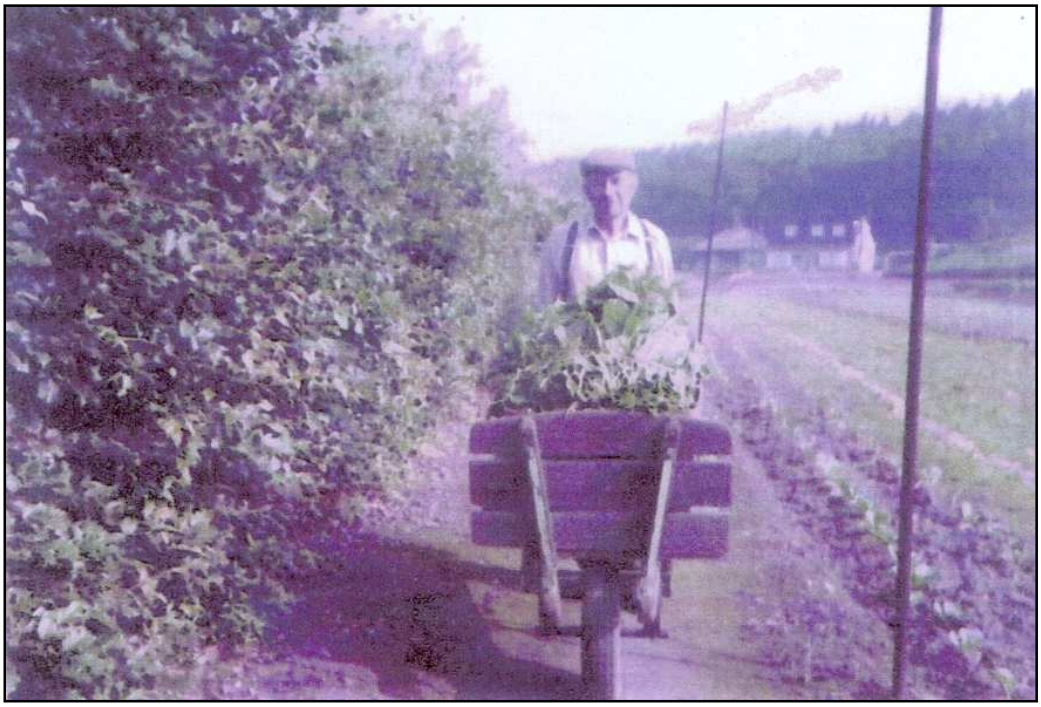
County Surveyor.

Mrs. Izzard,
125 Clophill Road,
MAULDEN,
Beds.

Extracted from Maulden Council File

At the time the Definitive Map was being prepared locally on 21 October 1957, the County Surveyor responded to an enquiry from Mrs Izzard of 125 Clophill Road, Maulden. He told her that the path running due south from 125a Clophill Road was an "occupation way, which of course, is not a public path and therefore is not shown on the draft survey map".

This path ran 180m down the side of a narrow field in which there were allotments. Mr Cecil Sharp, owner of the land for 40 years, used this garden path for the collection of produce grown in the field.



Photograph shows Mr. Cecil Sharp owner of the land for over 40 years showing the purpose of the path (Collecting produce grown on the land). Occupational Path

Photograph taken in about 1982

In 1989, Alan Bowers, then occupying 125a Clophill Road, next door to Mrs Izzard, purchased the field in question. In response to the Solicitor's Search, Bedfordshire County Council (BCC) advised that there were no Rights of Way across this land, the nearest being Bridleway 24 some 50 yards to the west, but which converged to a point outside the then Bowers' house.

In 1994, the Bowers applied to build a house at the southern extremity of their field. They received planning permission: "there was no mention of the path". Soon after the builders began work, the Izzards complained to the County Council, a Conservative Council, that "we were digging up the so called path". It was at this point that the manoeuvring against the Bowers became evident. The County's Rights of Way Officers advised the Bowers to apply to Mid Bedfordshire District Council (MBDC) to have the 'path' extinguished under the Town & Country Planning Act, on

the basis that they had permission to build on the site. "Would BCC object?" asked the Bowers. They said in a letter they would not object.

"I then applied (to MBDC) to have the path extinguished; they said they could not extinguish something that did not exist and referred me back to BCC. BCC then informed me that if I agreed that the path existed there was a good chance that it would be extinguished. I would not agree to this, so they said "we will have to confirm it as a path so that MBDC could extinguish it." It was in that manner therefore that a previously non-existent path was improperly added to the Definitive Map being drawn through the centre of the Bowers' new house. "Why have you done this?" asked Alan Bowers. "The fact the path now passes through the middle of your house would add greater strength to the case for extinguishment", they replied.

The act of building the house, the fact that a profit could be seen being made from the property is, rather like inheritance, anathema to certain political classes, the politics of envy. Building their house can be identified as the Bowers' source of misfortune since the profit which accrued was less than the resultant outlay on legal expenses to protect the new home. Earlier, Dorset's Senior Rights of Way Officer expressed his unease with the act of diversion: "It can add tens of thousands of pounds to the value of a property". It can also replace value wrongfully taken away.

MBDC agreed to extinguish the path and made the essential Order followed by advertising what they had done. There was the standard reaction. Seventeen objections were received, "8 of which were from one family (my old next door neighbour). The other objectors were from national organisations and from people not connected with the path". BCC remained true to their undertaking not to object. The 17 objections meant there had to be a Local Public Inquiry which convened at MBDC on 9 February 1999. MBDC, the Parish Council and Bedfordshire Police Authority supported the application. Without prior notification, BCC, who had confirmed to MBDC that they would not object to the Order, reneged on that promise. Also present was the Bowers' near neighbour and an activist by the name of Clarke from Bedfordshire Rights of Way Association. The Inspectorate accordingly refused to confirm MBDC's Order.

It was at this point, on 14 September 2000, that the Elected Members of the County Development Control Committee allegedly unanimously intervened to put the

advisors, the Officers, in their place. They supported the MBDC initiative to extinguish the path through the Bowers' property. A number of objections from a near neighbour and Mr Clarke of the Bedfordshire Rights of Way Association ensured that, once again, the matter became the subject of a Local Public Inquiry. Allegedly, Mr Clarke produced a letter from BCC insisting upon their objection to the Order. Someone was not telling the truth. The Inspectorate found in favour of the activists, apparently leaking the news to them ten days before informing the Bowers and those who had supported them. When the Elected Members assembled to consider the apparent sleight of hand, they "agreed that the Minutes of the meeting held on 14 September 2000 did not reflect the true wishes of the members".

On 24 January 2002, the County Development Control Committee instructed the Council to extinguish FP 28 running through the Bowers' house. MBDC added their support. Then, as a result of a meeting held in camera, the Development Control Committee had an apparent change of mind and refused to proceed with the extinguishment.

Consideration had been given to, and questions asked why, with a bridleway in such close proximity, was there so much insistence on driving a footpath through someone's home where a path had not pre-existed? Safety reservations could be resolved by the creation of passing places along the line of the existing Bridleway. These refuges were subsequently put in place. Alan Bowers received a copy of a letter from the Officers to the Elected Members to "come back to the Officers at a later date to propose that they create another path through my property. This was because they had allegedly received a complaint from the Open Spaces Society that they would consider taking legal action against BCC if they pursued the option of upgrading the bridleway". A Mr Brawn allegedly revealed to Mr Bowers that, at a private meeting called by the Officers on 17 March 2002, "the members of the Committee were advised that, if they continued to pursue the extinguishment of the path (on behalf of the Bowers) they could be subject to legal action being taken against them as individuals – the members of the Committee under these circumstances decided to revoke their previous decision".

On 19 September 2006, the Bowers received a letter from BCC stating that they had received a letter from "a member of the public" asking that they arrange the removal of any obstructions on the new path now aligned along the side of the house,

enacting, in effect, the Kidner role against the Herricks. Section 64 of the Countryside and Rights of Way Act 2000 introduced new measures – s.137ZA – permitting unauthorised obstructions of the highway removed. BCC gave the Bowers until 3 November 2006 to remove all fences, trees, bushes, buildings and walls which could be deemed to be obstructing the public's 'right of way'.

Alan Bowers received a summons to appear at the Magistrates' Court, Bedford on 9 August 2007. The action had been initiated by Clarke, the Bedfordshire Rights of Way Association through BCC. In court, Mr Bowers argued that his appearance was premature since BCC had not processed his application to them to extinguish FP 28. Their solicitor allegedly said they had no intention of doing so. The magistrates heard the submissions, declared the matter to be too complex for them and referred them to the Circuit Judge who remanded Bowers to appear before a judge at Bedford Crown Court on 2 November 2007. Three councillors and a former councillor accompanied him to Court to support his case. They were allegedly denied the opportunity to speak on behalf of a defendant who was similarly denied the examination of the Council's Officers. His request that the Judge visit the site was refused. The Judge ordered Bowers to pay £1000 costs and issued him with an enforcement order to remove the "obstructions" within 120 days.

It was evident that the Officers were coming under pressure "by various people and pressure groups". Writing to Herrick, Bowers observed: "It would appear Beds County Council have been terrified of organisations such as the Open Spaces Society and other groups". Undeterred, Bowers, using the Wildlife and Countryside Act 1981, made an application to BCC, as suggested by BCC Rights of Way Officer Martin Brawn, to delete the contested footpath from the Definitive Map. Meanwhile, there were allegations that BCC Minutes were being stringently edited. One Councillor is alleged to have said: "Some of the objecting organisations had sufficient funds to take legal action against BCC if they attempted to remove the path". To which Bowers said he replied: "In that respect the one with the most money calls the tune". A reflective Bowers told the Council Officers: "It had been a long and lonely battle". [As he later explained to Herrick: "Over the years I have found that there are many organisations that you can go to for help if you wish to impose a Right of Way but there is no one to turn to in our situation, only legal people, which as you know can be very costly".] An Assistant Director at the BCC

meeting believed him to be exaggerating. He turned on the man, pointing his finger at him. "You should try it, seeing your wife crying every night".

The life of BCC was drawing to an end, to be replaced by a Unitary Council, Central Bedfordshire Council (CBC). On 5 March 2009, the BCC's County Development Control Committee met for the last time. The Bowers were not informed of the meeting. Their principal supporter on the Committee was absent due to a hospital appointment, of which the BCC were previously aware. The Officers advised the elected members not to process the October 2004 application to extinguish the path. According to Bowers, the Officers refused "to call certain Officers and Members as witnesses to be held at Court on 20 April 2009 and also refused to supply certain documents requested of them". The Court ordered them to do so.

In Court, Councillor Alan Carter, a supporter of the Bowers, spoke of the obstruction he had faced from within the Council in achieving a resolution to the problem. Allegedly he pointed to an Officer sitting in Court, a Mr Brawn, saying that the relationship between him and Mr Clarke of the Bedfordshire Rights of Way Association "seemed too friendly" and he referred to correspondence between the two parties.

There are layers of Access-aligned Organisations working actively with Country Access offices in County HQs. For example, Somerset CC indemnified against costs their own chosen Champion, sponsored in addition by the cash-rich Open Spaces Society and Ramblers' Association, in a private action against the Herrick family's home. Bowers revealed the depth of insidious victimisation, collusion and communication that can exist between the Officers and the Organisations co-opting Officials as willing means to an end. "I was told they did not want a precedent created, that my case had attracted so much publicity, it had to be won, otherwise the future of footpaths through people's gardens would come under undesirable scrutiny". He therefore heard in Bedfordshire almost to the word what had been said in Dorset in the Wallhayes case.

Bowers recounts how he was always led to believe that BCC were trying to help him apply to extinguish or have the path deleted. When he attempted to do so, "they put obstacles in our way, even to the extent of lying and destroying documents".

The obstruction to which Bedfordshire Rights of Way Association and the Officers objected was a line of established trees, one up to 30ft high, all mature shrubs and bushes, a double stable block, shed, brick wall and post and rail fence which, if all were to be removed, would deny the Bowers freedom of movement around their home and necessitate the erection of a high fence on the FP side. There are strong similarities between this case and that of the Pierces.

Reassembling on 30 April 2009 for the Judge's decision, Alan Bowers heard the Judge declare him guilty of the offence. He now had a criminal record. He was fined £5000 with £9000 costs and threatened that every day on which the non-existent path was not open for public use would generate a daily fine of £250. "I remember staring at him in disbelief, but he would not look at me." Judges do not enjoy administering bad laws, of being party to the stitching-up of the innocent. On 13 August, Bowers had an informal meeting with his Judge in Bedford Magistrates' Court. The Judge halved the fine of £5000 and reduced the payment of the fine to a more manageable £300 a month. As he took his leave, Bowers handed the Judge a copy of his Diary of Events 1989-2009 saying: "If you read it, I believe it could help you make better judgements in the future because I believe you have treated me as a common criminal and all I have done for the past 20 years is to stand up for my rights".

The strong odour arising from the Bowers case is due to it having placed the burden of proof upon the defendant not the prosecutor. It probably would not occur to a Judge how devious and dishonest some Authorities can be, how reliant they are upon a Cheats' Charter. At present, an individual can make a spurious claim against anyone he wishes, forcing the local authority to spend thousands of pounds investigating and prosecuting, more often than not taking the line of least resistance which may be the line which they are predisposed to take. If the defendant has no better proof to the contrary, he is bound to lose. Even if he does win, he will be many thousands of pounds out of pocket while his tormentor, the Champion, risks not one penny, whatever the outcome. It stinks. The abused public give up complaining as such complaints fall on deaf ears. Maulden is close to Alconbury, a case subjected to considerable liberty-taking.

Where is the discussion or examination into the allegation of collusion between Officers and Ramblers, of alleged intimidation of elected Members? It is

incumbent upon the Council to prove that the occupation way was a highway and how and when that came about. From this should follow an order for modification. It appears Bedfordshire County Council ignored proving that a highway existed. Allegedly, BCC only interviewed those who favoured the creation of the footpath. They did not interview the owner or previous owners, one of whom had owned the property for forty years. It is understood that BCC paid the legal expenses of the people they interviewed while the owner and previous owners were responsible for the payment of their own legal expenses. There appears to be a serious problem with legal procedure and process.

We see in the Bowers case a Magistrates' Court which felt unequal to coming to a decision. It was referred to the County Court because it was a criminal case, the result of which was not reassuring. The High Court is opposed to the hearing of facts. Moreover, in declaring that Government Inspectors have an entitlement to come to the decisions they do, there appears little prospect that the party seeking justice will achieve that aim. Certainly, that strange statement removes the High Court from consideration as a court of reason in the event issues of impartiality or independence of the Inspector arise. There will be frequent occasions when a fair judgement can only follow on from a site visit. The High Court's Judges appear immobile.

We come therefore to the question of the type of tribunal that is required to introduce fairness, impartiality and independence to what is presently the scandalous malpractice of interested parties openly engaged in depriving citizens of their rights. It is preferable that decision-making resides with elected members on Specialist Committees rather than upon one individual Inspector brought in from outside. Local democracy needs to be strengthened. For other business, what is required is a tribunal established under the rules of a court, a court of competent jurisdiction. We should look seriously at a body *au fait* with the treatment of evidence. County Councils are Administrative not Judicial bodies and the leadership of Countryside Access can be weak and inadequate. There is insistence in full equality of parties under the law and not simply the mouthing of meaningless rhetoric. Money must not be used as a weapon – it must not be wasted. We want to see statements of truth and the origins of documents properly certified. The Law is constantly being broken. That must cease. The burden of proof has to reside with the Authority. The

documents they have lost, that have disappeared, focuses the burden of proof on the person claiming it: missing documents cannot disprove the case. What is the answer? The answer is Land Tribunals.

Written in the early draft of this document, before this section was written, a pattern of 4 Principles had emerged as representing the *modus operandi* of a good proportion of Rights of Way officials. It would be beneficial to set the Bowers' experience against those Principles.

1. *The drawing out of procedures and responses over time with the aim of physically and mentally exhausting homeowners.* The Bowers' case has run since 1989, over 20 years. "My solicitor warned me", said Bowers, "that the officials would move the business around and around; that nothing would happen".

2. *The crucifixion of homeowners by the appalling costs arising from the defence of their homes.* "I have calculated that the whole affair has cost me in the region of £70,000 and 20 years of heartbreak, all because of a jealous neighbour and vindictive and devious council officers", said Bowers. "I could not afford any more Justice. My resources had been exhausted. I put my hands up in surrender".

   There is another example of this principle from near neighbours, the Mear family at Wood Farm, Waresley, near Sandy in Bedfordshire but within the auspices of Cambridge CC. The Council intervened in a private access dispute between the Mear family and near neighbours, the Leaches. The County Council allegedly spent over £345,000 in support of the Leaches' case and, as a consequence, lifted the Mears' costs upward to in excess of £½ million. In his Judgement, the judge said: "To some extent it can be said that Cambridge County Council have been fighting the battle of the Leaches".

   These two cases, their propinquity, represent the tip of an iceberg, its substantial bulk hidden below the surface.

3. *The practice of identifying, steering and following one or more Champions or kindred spirits (frequently a close neighbour) towards a collective, desired goal.* There is evidence here of too close a relationship between

the Council Officers and the Bedfordshire Rights of Way Association and also an activist near neighbour. What a former soldier finds revolting is how it seemed preferable to the Authority to sacrifice the Bowers in order to appease and therefore avoid the threats and sanctions of the 'Organisations'. The Organisation most consistently engaged against homeowners is The Open Spaces Society, their presence evident in the Bowers, Connaughton, Herrick and Pierce cases.

4. *The absence of proper, functional monitoring machinery means officials operate in a climate of impunity where the truth is all too often optional.* The study of the Bowers' case confirms the impression applicable substantially throughout the land that Country Access Officers are out of control. Bedfordshire was another Conservative Council with a radicalised element operating from within. Members had not been exercising their proper authority as Decision Makers, appearing far too content to take the easy path by allowing the advisers their way. In the Defendant's skeleton argument, there is evidence of the intimidation of Members in respect of the delay in processing Mr Bowers' third application to extinguish the footpath. It is on record that the County Solicitor warned Members that they could be "personally surcharged" if this took place.

One is struck by Alan Bowers' description of his relative isolation while his wife's health began to deteriorate seriously in direct proportion to the activities of the hunting pack that pursued them. The Council Officers, members of Countryside Access, supported by their professional association The Institute for Public Rights of Way Officers (IPROW), are present in every County in the land. They are, by definition, on one side of the fence. The same can be said of the Planning Inspectorate's Inspectors who, generally, are recruited from the pool of Officers. Of the Inspectors, the inference and reality are that they still behave and react according to a mindset, just as they did prior to their appointment. As Dorset CID remarked, the Planning Inspectorate's Inspector Eden MIPROW who chaired the Wallhayes Inquiry, "was identifiable with one side of the argument". Inspectors can often draw support from kindred spirits in organisations such as the Open Spaces Society, The Ramblers' Association and The British Horse Society. One or more of these

Organisations is invariably associated at any one time with the current vogue of presenting to amenable Countryside Access representatives requests for the addition to the Definitive Map of rights of way where previously none had existed. This is at the heart of the Bowers' case.

"Rights of Way officers exist to upgrade rights of way. That is what they do", said Wiltshire farmer Malcolm Read. "That is how they interpret the words of the Act, which say that the Definitive Map should be kept under review…(but) it is necessary for the surveying authority to have discovered new evidence which shows that additional rights exist". Remarking on this licence to behave improperly, the Bowers' solicitor said: "It really is time that this piece of legislation was repealed". Many of the Organisations' applications relate to people's homes, not *their* homes, other people's homes. In fact, so rampant is this practice, that applications can be packaged in six or more, meaning that the defence of such initiatives is extremely difficult.

Alan Bowers received a letter from his solicitor advising him of a very rare local success: "Although successful, his costs have been considerable and I regard it outrageous that he should have been put to this expense". One who was not so fortunate was a Suffolk man who had Erica Eden as his Inspector. She and her colleagues are neither Independent nor Impartial, as required by Law, yet no one in Government has interceded to stop the Law being serially broken. "My client had a very strong case to seek a judicial review", said his representative, "and I remain confident that such a review would have been successful, however my client could not afford the financial risk of not being successful and in particular the cost to both his and his wife's health… (Judicial Review) may be available on paper, but in reality it does not exist". The journey to the High Court is a path from inequity to impecunity.

The Rt Hon Oliver Letwin MP wrote to the High Court Judge advising him that he had had sight of four separate complaints which cast doubt "upon the fairness and impartiality of the Inspector and hence the validity of her Decision". The impact of the letter was zero. After the Judge had rejected the Wallhayes Judicial Review application, the Wallhayes barrister asked the Judge whether he had read the evidence. He said he had. Mr Bowers told of when he appeared before the Judge in Court in November 2007: "When I produced a letter of support from Nadine Dorries

my MP, he totally disregarded it and never even read its contents, he also did the same with a letter from my doctor expressing concern over the health of my wife".

The Law has been so manipulated as to be of advantage to one side. Action has been so blatant as to replace Independent Inspectors on the Lord Chancellor's Panel with essentially political appointees drawn from the ranks of the Rights of Way fraternity. What this has in fact achieved is to have the Secretary of State DEFRA acting as Policy Maker and Decision Taker, a situation which is contrary to the concept of natural justice.

The *Farming News* reported County Councils' frequent misrepresentation of evidence, "hiding of evidence, taking of witness statements in private and (as occurred in Dorset) the surreptitious altering of maps and documents in County Councils' keeping as well as other misdemeanours". Follow-on work and documentation associated with the National Parks and Access to the Countryside Act, 1949, is dreadful. An application made by this appellant to Dorset CC for sight of the Survey Cards relating to his property was met with the response "there are none". It is time that the burden of proof is shifted from the appellant to the official custodian of documents, for the County Council to prove the case rather than a citizen who is denied the wherewithal with which to succeed. County Councils should be obliged to state on what evidence a path was first recorded as public. In addition, s.31 of the Highways Act 1980 should be repealed since there should be no presumption of dedication: nothing less than evidence will suffice.

Inspectors are, in general, mentally and politically opposed to matters which detract from their chosen purpose of extending the writ of Countryside Access. That point seems not to be recognised in the High Court where the Judiciary insist that Inspectors are *entitled* to come to the conclusions that they do. Appellants are further constrained due to the Judiciary's unreceptiveness to evidence of fact, evidence which could indicate that perversion of the course of justice had occurred. This situation cannot continue. There is the matter of proportionality under the law. We have seen in this Section how a Magistrates' Court felt unable to adjudicate the Bowers' case and how the High Court is unequal in its dispensation of Justice. The solution is an Independent court or Tribunal, the Judges appointed to which will need to recognise they cannot be seen to reach a completely fair decision without conducting a site visit. The most urgent requirement is to stand down the present cohort of Inspectors.

Article 6 of the Human Rights Act underlines the reality that they are neither Independent nor are they instinctively inclined to be impartial. There has to be a break-clean, away from the jurisdiction of Secretary of State DEFRA and preferably a return to the Lord Chancellor, thereby confirming the Inspectors' independence from policy. A new cadre of Inspectors is required, which will take some time to work-up.

If the political insistence upon fairness and local democracy is to be seen as anything other than rhetoric, then reform must embrace the Rights of Way world. The Wallhayes application to restore pre-existing levels of privacy and security through a diversion was met by instant objection from the Officials who feared the creation of a precedent. Yet officials are advisors. The executive authority in a Council, the decision-makers, are the democratically elected members. Eighty-five per cent of the voting members of the County and District specialist committees voted in favour of the Wallhayes diversion. The Officers had appointed an independent consultant, a former Rights of Way Officer from Devon, to present the Officers' case, yet the elected members were not persuaded by her argument.

There were objections from among the public, which meant a Local Public Inquiry had to be held. Secretary of State DEFRA nominated as his representative Inspector Erica Eden MIPROW, a former colleague of the Officers' independent consultant. The details of the conduct of that Inquiry appear elsewhere in the Report. Suffice it to say that so demonstrably perverse was the Inquiry that it was referred to Dorset CID. A letter was sent from Dorset to the Government's Planning Inspectorate, drawing attention to factors inconsistent with the Inspector's decision. The Inspectorate was as dismissive of the CID's warning as the Quality Assurance were of the myriad complaints of their colleague's performance at the Inquiry. Secretary of State DEFRA agreed to meet a Delegation from Dorset to hear their concerns. Two days prior to the due date, the meeting was cancelled. There was an abiding impression that Secretary of State DEFRA and his bureaucracy were too close, too close for a healthy democracy. Despite being the subject of police inquiries, Mrs Eden continued to be allocated to Inquiries. "I find it abhorrent that the Inspectorate can see fit to appoint an Inspector to hear a hearing as to all intents and purposes Judge and executioner, whilst under investigation. In no other walk of life would this be considered acceptable", said Nicholas Willcocks, who represented an unsuccessful client before Mrs Eden. Contacting the police, "they strongly

inferred, that whilst they considered there was a case to answer, they doubted any prosecution would take place as they would expect Eden to retire upon the case being presented to CPS and following such the CPS would adjudge that to pursue the case following her retirement would no longer be in the public interest". Such a conclusion neglects to consider Mrs Eden's victims and their considerable losses.

An account of CPS eccentricities appears in Section 11. There were four questions outstanding to be answered prior to the CPS account being concluded. Those four questions were put to the Deputy District Prosecutor, Mr Hall:

- On 14 April 2009, at Weymouth police station, Mr Hall told the undersigned that parties representing Mrs Eden had "given an undertaking that she would chair no further meetings, would retire and was unwell". We wish to know the identity of the parties which gave that undertaking.
- After having examined Mr Hall's reasons for insisting that Mrs Eden's misconduct "had not been serious", he undertook at that 14 April meeting, a review of the evidence. Why did it take almost 4 months for the review files to move from the CPS Bournemouth office to the Complex Casework Unit in Eastleigh?
- Why did Mr Hall not declare at the 14 April 2009 meeting that on 3 April he had told Mrs Eden's legal representative that he had decided Mrs Eden had "no case to answer"? [Realistically, having given that undertaking, there appeared to be no prospect of overturning a flawed decision. CPS then compounded their negligence by their delay in conducting the promised review, meaning that a proper examination of Mrs Eden's conduct was now decidedly out of the question.]
- Finally, why, having been served with a letter from County Councillor Coatsworth dated 12 April 2009, in which a number of serious allegations were made to him of Mrs Eden's conduct and concern expressed at the conclusions Hall had reached, did he not reply to Councillor Coatsworth? If the Chairman of West Dorset District Council and County Councillor for the Division under review tells CPS that he had "never seen any public proceedings to match these in terms of spiteful repression of one side and

favouring of the other", should that not have served as a wake-up call; that this was a serious matter?

There was a reply but it fell significantly short of the only possible, honest response of an unqualified *mea culpa.*

The homeowner has very little opportunity with which to secure justice. That he has to consider bankrupting his family to achieve the basic right to defend his home is intolerable. One of the few avenues open to him, in theory, is the Ombudsman. Bowers attempted this route but, like the rest of us, was rebuffed. He first complained to the Ombudsman when BCC had promised him support at an Inquiry only to renege on that promise without warning. The Ombudsman told Bowers BCC was entitled to change its mind. In 2000 there was another Inquiry at which it appeared there might have been improper behaviour. The local MP, Jonathan Sayeed, undertook to write to the Local Government Ombudsman on the Bowers' behalf. The Ombudsman regretted his inability to help as he could only investigate events which had occurred within the past twelve months. Another request to the Ombudsman in 2006 was diverted into the hands of the Inspector involved, who said he was unable to help. Mr Bowers accepted the offer of his new MP, Nadine Dorries, to write a letter to the Parliamentary Ombudsman on his behalf. It appears that the Ombudsman confined his inquiries to looking into the behaviour of the Inspector.

Mrs Mear's scope for calling Cambridge CC to account narrowed down to objecting to the Cambridgeshire County Council's Accounts 2008/2009. "I know it is most likely to come to nothing", she said, "but I had to give it a go, everything else fails". If she should succeed, her next step would be to approach the Ombudsman for redress. The public should not have to abide an organisation that has such stringent terms of reference that it appears continually to be giving reasons why it cannot or will not assist citizens in genuine need. To tell an individual who has been given the run around by the authorities for over 10 years (Connaughtons), over 20 years (Bowers) or over 30 years (Peppards) that they can only investigate matters which have occurred within the past 12 months is, under the circumstances, absurd. Similarly, to refuse to consider an application for help because the party had been to Court, not because they wanted to but because it is part of the process, is equally absurd. It is as important to address bad regulation as bad law.

Am I obsessed? If obsession includes holding as important such values as abhorring dishonesty, untruthfulness, abuse of office and authority, bullying, intimidation and malice then yes, I am obsessed.

Our family has travelled the entire journey described in this Report on the Fraternity. Along the way, we encountered anarchy within the national and local governments, dysfunctional courts, were subjected to bad and denied access to good law, specifically Article 6 of The Human Rights Act which promises citizens a fair, impartial and independent tribunal. We encountered single issue, politically inspired, avaricious Organisations targeting, terrorising, bankrupting members of the public while demanding rights of access to others' property, invariably in association with sympathetic Council employees. We complained that this was not how it should be, not how the civilised behave. We said so. No one listened. This Report, this protest, is the inevitable consequence arising from the continuous obstruction we faced from sources as improbable as CPS. This evil must be stopped, for evil is what it is. The time has come for good men, and women, who have done nothing to change their ways.