



# The Planning Inspectorate

An Executive Agency in the Department of the Environment and the Welsh Office

Room 15/01  
Tollgate House  
Houlton Street  
Bristol BS2 9DJ

Direct Line (0117) 987 8896  
Switchboard (0117) 987 8000  
Fax No (0117) 987 8769  
GTN (1374) 8896

County Solicitor and Deputy Clerk  
Avon County Council  
PO Box 11  
Avon House  
The Haymarket  
Bristol BS99 7DE

Your Ref: DS/WC/17/15

Our Ref: FPS/F0100/7/28

Date: 10 AUG 1995

Dear Sir

## WILDLIFE AND COUNTRYSIDE ACT 1981 SECTION 53 AND SCHEDULE 15

### COUNTY COUNCIL OF AVON DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER NO. 4 1993

1. I refer to the above named Order submitted by your Council to the Secretary of State for the Environment for confirmation which I have been appointed to determine in accordance with the provisions of Paragraph 10(1) of Schedule 15 to the Wildlife and Countryside Act 1981.

2. I held a Public Local Inquiry into the Order at Wrington from 23rd to 26th May 1995. I inspected the routes unaccompanied on the 22nd May and inspected them accompanied immediately after closing the inquiry.

3. The effect of the Order if confirmed without modification would be to modify the Definitive Map and Statement for the area by:

1. Re-designating as a bridleway the public footpath numbered AX16/31 from Point A through Point B to Point C shown on the map accompanying the Order.
2. Re-designating as part of a bridleway to be numbered AX16/33a the section of public footpath AX16/33 between Points D and E on the map accompanying the Order.
3. Re-designating as part of a bridleway to be numbered AX16/32a the section of public footpath AX16/32 between Points F and G on the map accompanying the Order.
4. Adding a bridleway to be numbered AX16/33a between Points E and F along the route shown on the map accompanying the Order.

5. Adding a bridleway to be numbered AX16/32a between Points G and B along the route shown on the map accompanying the Order.

4. At the beginning of the Inquiry there were 25 objectors to the Order including representatives of Congresbury Parish Council, the Ramblers Association and the Nature Conservancy Council for England (English Nature). Six objectors and ten interested persons gave evidence against the Order at the Inquiry. Avon County Council called five witnesses and eight interested persons spoke in support of the Order. In my determination of this case I have taken into account all objections and representations.

5. Avon County Council confirmed that all statutory requirements were carried out.

#### DESCRIPTION OF THE RIGHTS OF WAY AND SURROUNDING AREA

6. The routes concerned lie in the form of a rough T in King's Wood to the east of Congresbury and north-west of Wrington. Footpath AX16/31 begins in the west on the Wrington Road at Point A on the Order map. Signs read 'Footpath Woolmers' and 'District of Woodspring No Horse Riding'. The path runs along a metalled driveway to two houses: The Woodlands and Woodland Park. Here a sign reading 'Public Footpath' directs one behind The Woodlands and past another sign which reads: 'Public Footpath. This footpath (AX16/31) is designated "Public Right of Way for use of those on foot only". Please no horses, bicycles, motor cycles or other vehicles which spoil the pleasure of walkers. Thank you.'

7. The path runs beside a wall to the south about 2.2m high and through a gate 1.5m wide beside a stile. Here another notice reads: 'The Nature Conservancy Council has designated this public footpath (AX16/31) and the woods on both sides, from this stile to Woolmers, as an S.S.S.I. (Site of Special Scientific Interest). Horses, motor bikes and bicycles are not permitted to use the footpath'.

8. The path runs generally north-eastwards uphill and becomes a sunken lane up to 2.5m below ground level at its deepest and approximately 1.75m in width at its narrowest part. After about 500m, the path levels out and runs in a generally easterly direction through Urchin Wood. The path varies in width up to 4.0m wide until it reaches a barbed wire fence and stile about 300m west of Woolmers, with Ball Wood to the south. Woolmers is a group of buildings currently used to run a kennels and cattery. Here the path becomes asphalt and, for a short space, concrete. It passes through a gate, and continues eastward with Corporation Wood to the south and Lower Wood to the north until it meets Cleeve Hill Road (previously known as Plunder Street) by the property known as Woodside and the ruins of Corporation Cottage opposite Three Cornered Plantation. This is Point C on the Order

map. About 50m before the junction, the path crosses a filled in cattle grid and passes through another gate. Notices proclaim it to be a private road, the Congresbury Estate and restricted to public footpaths.

9. From the south, footpath AX16/33 begins on the Wrington road at Point D and goes north for about 100m along a partially made up road as far as a locked gate and stile, where it enters Ball Wood. The way up to this point is known as Ball Lane, but was previously known as Piggy Lane or Quarry Lane. A sign reads: 'The Congresbury Estate. Warning Public Footpaths. Please keep all dogs on leads and restricted to public footpaths'.

10. The path continues northwards as an earth track about 2.0m wide between banks about 1.0m high. It diverges from AX16/33 and continues to rise, varying in width and quality, until it reaches a junction of tracks in an area known as The Ball. Here it levels out and after a short stretch along footpath AX16/32 separates to run north-east to meet AX16/31 at Point B. The section shown as E-F on the Order map is becoming overgrown.

## SUBMISSIONS OF THE PARTIES

### The Case for Avon County Council

11. An application was made to the County Council for a Modification Order on 19th July 1989 by Mrs V F Craggs. Twenty five user evidence forms were submitted together with a map showing the claimed bridleways. A further seven user evidence forms were submitted later. Eighteen people claim to have known and ridden the path for 20 years or more up until 1989. Six of these cover periods of 30 years or more. All submitted maps confirming the routes they had used and which are the routes shown on the Order map.

12. The user evidence forms show use of the routes as bridleways by members of the public from 1935 to 1989. Prior to 1989 few of the riders were stopped from using the routes by landowners/employees. Twenty two riders state that they were never stopped, three were stopped at Woodlands in about 1984-5, and four were stopped "recently" by the new owner of Woolmers. Two of the shorter term users were stopped at Cleeve Hill.

13. Most refer to notices at Woodlands, although few dates are given (1976, 1986 or recent). Seven saw no notices at all. However, riders state that they had used the route as of right and did not require permission of the landowners.

14. Twenty five forms state that there were no locked gates. Three forms describe the locked gate at Ball Lane in 1989. Four others mention minor obstructions at times in the past.

15. The applicant's claim is based on presumed dedication under Section 31 of the Highways Act 1980 (HA80 S31) by user evidence of 20 years of enjoyment of the routes as of right and without interruption. No historical evidence was submitted. However, the County Council carried out its own historical research in order to give a fuller picture of the background to the claim.

#### 16. Map and Documentary Evidence

16.1 A 1736 Survey map shows a route running approximately on the line of AX16/33 which may also be the unenclosed track shown on the 1782 Day and Masters map. These maps do not show a route on the line of AX16/31. The 1817 Mudge map shows a track from Woolmers running east to Cleeve Hill Road. It also shows entrances to the woods at Point A and Point D on the Order map but no routes thereafter. The 1822 Greenwood map only shows the above entrances. None of these maps indicates public or private rights.

16.2 The 1840 Tithe Map of Congresbury does not show any through routes. The 1903 OS map shows both routes as tracks, part enclosed, part unenclosed. Two gates appear to be shown at The Woodlands and three at Woolmers.

#### 17. Preparation of the Definitive Map

17.1 Records of the preparation of the Definitive Map which were handed over by Somerset County Council to Avon County Council in 1974 are regrettably sketchy. Fortunately the parish record cards have survived. They are written in pencil and unsigned but AX16/31, 32 and 33 are all recorded as public footpaths. The draft survey map confirms that they were recorded as footpaths on the draft map of March 1957, the provisional map of September 1966 and finally the Definitive Map.

17.2 A letter on microfilm dated 27th October 1954 states "I understand (Congresbury) Parish Council have now completed their survey of public rights of way and the maps and schedules will be submitted in the course of the next few weeks."

17.3 Objections to the draft map for the Parish of Congresbury were received by 16th February 1960. No queries on footpaths AX16/31, 32 or 33 were raised.

#### 18. Other Documents Produced by the Applicant

18.1 On 25th April 1952 the Weston Mercury and Herald printed a letter from Mr R D Harvey of The Woodlands. It was headed 'Congresbury Footpaths Survey, Mr R D Harvey replies to Mr P Parsons'. In it Mr Harvey stated "First, I confirm the following as the only Rights of Way I have recognised over my land at Congresbury Parish since 1924 (28 years). . .(4) the right of way (bridlepath) from the Wrington Road (Bench Mark 90) round the back of "Woodlands" to Woolmers and on through Corporation Woods to the road (Bench Mark 447.6) at Corporation Cottage."

18.2 At about the same time, on 1st May 1952, Bristol Municipal Charities, who owned the other half of the woods between Woodlands and Cleeve Hill, sent a letter to Mr E F Gosling, the Congresbury Parish Councillor in charge of the survey, who had left two footpath maps for them to peruse. The letter stated:

"(1) Footpath No. 31 from Corporation Cottage on the Cleeve-Wrington Road to road near Woodlands.

It is agreed by my Trustees that this is a bridle path as well as a footpath. It passes through my Trustees' Woods from Corporation Cottage to Stones, approximately 1000 feet immediately west of Woolmers.

(3) Your Footpath No.33 This is quite definitely a private path or track belonging to my Trustees, and has never to anyone's knowledge been regarded as a public path."

18.3 Bristol Municipal Charities also sent a letter to Mr Gosling on the 9th June 1952 referring to a meeting at Mr Harvey's residence, The Woodlands, on the 15th May. At this meeting were present Mr Harvey, his gamekeeper/porter, Mr Gosling, Mr Knight the Trustees' woodman, and the writer of the letter. In it he wrote:

"It was agreed between us that the only public rights of way which passed through my Trustees' woods at Congresbury are:

1. Footpath No. 31 from Corporation Cottage on the Cleeve/Wrington road to road near "Woodlands". It was agreed that this is Bridle Path as well as a Footpath.

It was agreed that your Footpath No.33 was not a public Footpath, but is only a Private right of way belonging to the Trustees."

18.4 A further letter dated 16th October 1952 was sent by Mr Harvey to Mr Gosling. It stated "I agree with your contention that the path marked in violet ink from A to B across Fern Ground (O.S.No.32, north of No.42) is the correct public footpath from my property to Woolmers . . ." Although this letter may appear to conflict with his description of the path through his property as a bridleway, on the 1903 OS map, field No.32 lies to the north of field No.43 and is shown as being rough, ie fern. It contains a path on its southern side which joins a footpath running down its eastern side. It is probable that Mr Harvey's letter refers to one of these paths, rather than to footpath AX16/31.

18.5 Three years later, on 15th August 1955, Bristol Municipal Charities sent a letter to Mr E P King which stated: "The public right-of-way from Plunder Street is a bridle path. Of course there are a large number of other paths and tracks, but they are not for the general public - in theory anyhow."

18.6 Finally, Bristol Municipal Charities have confirmed that when their remaining land was sold in 1958 to Tilhill Forestry and Co Ltd "the path within our woods, AX16/31, from Corporation

Cottage to approximately 300m west of Woolmers was noted as a bridle way".

19. The Making of the Order

19.1 A report was taken to the Planning, Highways and Transportation (Public Rights of Way) (Policy Implementation) Sub-Committee in November 1990. Members were advised that only part of AX16/33 was on the claimed bridleway. The sub-committee decided to make an Order to modify the Definitive Map and this was made on 23rd March 1993. It was advertised from 31st March 1993 to 17th May 1993. Twenty seven letters of objection and ten letters of support were received. The County Solicitor and Deputy Clerk advised members that the objections were duly made, were persuasive and challenged the basis of the Order, ie the 20 year rule. Nonetheless, the sub-committee resolved to refer the Order to the Secretary of State for the Environment for confirmation.

20. User Evidence

20.1 Mrs V F Craggs is the driving force behind the application for the Modification Order. She met with four to six people to decide upon the routes to be claimed. Riders have used many other tracks besides those claimed. She could have chosen any of them but selected the routes, the subject of the Order, to provide a circuit. She also helped several people to complete their user evidence forms. Mrs Craggs began riding the routes in 1948 when she was eight years old and stopped riding in 1974. She would enter the woods at Corporation Cottage, following the track down to The Woodlands, near where her old nanny used to live. Sometimes she would return via the Wrington road and Ball Lane. In the early days she would always ride with at least one friend, but as she became older would sometimes ride on her own. There were no gates at The Woodlands and she would often talk over the wall to whoever was in the garden. She can not remember any signs or obstructions forbidding the use of the way on any of the routes the subject of the Order. She rode the routes regularly in the Pony Club until mid to late 1950s: thereafter she would ride in the woods about six times a year.

20.2 Mrs Craggs produced letters from Mr C S Holder who lived at The Woodlands from 1969 to 1973, and Mr N A Toogood who lived there from 1973 to 1979. Mr Holder's letter confirms that there were a few occasions on which riders used the path but states that this was a rare occurrence. Mr Toogood writes that "the bridle path was frequently used by horses, people and indeed vehicles."

20.3 Mrs Craggs also produced a cutting from the Weston Mercury and Herald dated approximately 1968, which quotes Lieutenant Colonel F Towill, Secretary of Bristol Municipal Charities, as saying that the paths through the woods were bridle paths once used by pack horses to carry teasels. At the same meeting Miss Jean Day, who lived near the woods, said that the tracks through them were frequently used by horses and riders. Colonel Towill also claimed at a Parish Meeting on 6th May 1968 that some of the paths in the woods were bridle paths by ancient right.

20.4 Parish minutes of 5th August 1968 record that three members of the Parish Council Footpath Committee would meet "riders who had requested the bridlepath investigation." A further meeting on 2nd December 1968 recorded that one of the members "now had evidence that the path from Woodlands to Plunder Street, via Corporation Cottage had been confirmed as a bridleway in 1952. It was agreed to approach the Rural Council on the subject of having path 16/33 designated as a Bridleway to create a circular route for horse riders."

20.5 Mrs M Towill regularly rode the paths from 1958 until 1980. She became aware that she was riding The Woodlands to Corporation Cottage path as of right when her husband looked up the deeds of the Bristol Municipal Charities. She would ride intermittently, sometimes fifty times a year, sometimes ten. She rode throughout the woods, not only on the paths in question and was never challenged. She has no recollection of notices but remembers the locked gate at Corporation Cottage in about 1980, and a wire fence in Ball Lane in approximately 1965. The wire fence was removed after a few days and was probably put up to protect stock.

20.6 Mrs A Carter rode throughout the woods from 1946 to 1963 and again from 1967 until the present. She also rode with the Pony Club. She rode at least twice a month with friends, sometimes more frequently, using the two bridle routes to provide a circuit via Brinsea and the Mendips. She was never turned back but she saw the notices at The Woodlands.

20.7 Mrs V Rossiter rode from around 1945 to 1986. In the 1940s she rode about ten times a year during the summer holidays but from 1947 until 1957 when she owned a thoroughbred horse she rode in the woods monthly. From 1957 she needed to exercise three horses and rode almost daily with one or two other riders. She would usually ride up past The Woodlands to Corporation Cottage and Plunder Street. The route was a well known bridlepath. There were never any signs forbidding riding. After 1958 she moved to Yew Tree Farm and would sometimes use the Ball Lane route to go up into the woods and would come down by The Woodlands.

20.8 At some time after Tilhill Forestry bought part of the woodlands in 1958 she received a letter from them offering her a permissive pass to ride some other paths on their land. She paid a small fee for one year and received a pass which covered extra routes in King's Wood, parts of Ball Wood, Lower Wood and Three Cornered Plantation. She was never asked to show it and was not invited to renew it. When Mr Urch put up notices at The Woodlands she ignored them in the belief that the route had always been a public bridleway.

## 21. Twenty Years Use

21.1 If the date when the right of the public to use the routes was brought into question is the date of Mrs Craggs's application in 1989, 18 of the 28 user evidence forms submitted by riders show use of the routes over a period of 20 years, and seven show use of 30 years or more. Even if the date is accepted as

being when Mr Urch challenged the right of use as a bridleway in June/July 1976, there are still seven user evidence forms which show use of the routes for 20 years or more.

21.2 Only two riders refer to permission. Besides Mrs Rossiter, Mrs Lewis also remembers paying 50p to Tilhill Forestry. Both riders believe the permits allowed them to ride on paths other than the two bridleways. Although many of the users were young when they started riding, that should not imply that they did not use the routes as of right. They were shown them by parents, friends, and the Pony Club. It would be unlikely that the Pony Club would ride on illegal routes and country people would naturally tend to respect private rights. Some of the riders might well have been known to the landowners, but that does not necessarily indicate that they were given permission to ride.

21.3 There is no evidence of a physical challenge or barrier to riders before 1975/76 when the gate to Woolmers was locked, not to prevent riders but because of a fire hazard. Mr Urch claims evidence of a gate at The Woodlands before he erected his, but there is no evidence that it was ever locked. Mr Urch erected his gate and stile to prevent sheep straying. Mr D A Richards refers to a wicket gate in the same position in 1946-49, but confirms that the gate was never locked; Mrs Rossiter and Mrs Terry recall riding through it. Congresbury Parish Council approved erection of a public footpath sign in 1973 but a sign reading "No Horse Riding" was not erected until 1986.

21.4 A five-barred gate is claimed to have been kept locked at the eastern end of AX16/31 from 1967-70, but the reason for the gate is not stated. Mrs Carter can remember riding round the gate because the fence did not reach it. The inference must be that the gate was kept locked to stop vehicles not horses.

21.5 Mr P W Gillman mentions a locked gate in Ball Lane in the 1940s and 50s, but the evidence is vague as to exactly when or why it was kept locked. The evidence is also at variance with that given by riders.

22.0 Comments on the Order

22.1 Objections and comments on the grounds of the adverse impact on the ecology that a bridleway might have or potential conflict between riders and walkers have also been registered but can have no bearing on the matter under the terms of the Wildlife and Countryside Act 1981. Much user evidence has been received from walkers and there is considerable conflict between their evidence and that of the riders. The County Council has to assume that both sides are recording the truth as they see it, but the differences in the two sides' evidence are not easy to reconcile.

22.2 Objectors have produced many statutory declarations in which the principal point is that they do not remember seeing horses in the wood. Statutory declarations can not of course be



tested by cross examination. Exactly where witnesses walked, at what times, and how frequently, can not be determined. King's Wood encompasses many smaller woods and is very large; walkers and riders could easily miss each other.

22.3 To wonder why AX16/31 was not registered on the Definitive Map as a public bridleway would be speculation. The record cards give no clues. They were written mainly in pencil and not signed or dated. The present Clerk to Congresbury Parish Council concedes that filing of correspondence and records at the time was erratic. It is not clear what information was sent to Somerset County Council, so it is not known whether the correspondence from Mr Harvey and Bristol Municipal Charities was available to them. The draft Definitive Map was not advertised until 1956, by when Mr Harvey had died and the Bristol Municipal Charities were about to sell their land. It took 20 years to complete the first Definitive Map, and it has not been reviewed once.

22.4 The riders have established 20 years of uninterrupted enjoyment of both paths as of right; they did not seek permission. In the case of AX16/31, the landowners in the early 1950s both referred to the route as a bridleway. This must be regarded as strong evidence of presumed dedication. On the balance of the available evidence, the County Council believes that public bridleways subsist or are reasonably alleged to subsist over the paths in question.

#### The Case for the Supporters

23.1 Eight further witnesses gave evidence in support of the Order. One statutory declaration and 15 letters and user evidence forms were submitted. The earliest date claimed for riding the routes is 1950. The gist of the evidence is similar to that already given, ie riding in the woods and on the routes the subject of the Order as of right unchallenged until the mid-1970s and unhindered until 1989.

#### The Case for the Objectors

##### Congresbury Parish Council

24.1 It is significant that Avon County Council took the decision to submit this Modification Order to the Secretary of State against the advice of the County Solicitor and the Rights of Way Officer. It appears that a typing error had missed out the word 'not' on the document prepared for the sub-committee. Although this was pointed out to the sub-committee before any discussion took place, the officers' recommendations were overturned despite the fact that not one of the Councillors serving on the sub-committee represented Woodspring.

24.2 The Minute Books in the Parish Council's possession begin in 1950. On 4th December a minute reads "The Clerk read letters from R D Harvey relative to footpaths . . . the matter has been put right as to paths on Mr Harvey's property. Mr Gosling reported." References to the "onerous task of plotting and scheduling the footpaths" were made on nine occasions until 3rd March 1952 when Mr Wear and Mr Gosling "reported on the footpaths survey which had been completed . . . maps would be available for inspection, porch of parish church, Monday March 10 - Monday March 24. Adv. to be inserted in Weston Mercury and Bristol Observer. . . The Parish meeting 'Survey of Footpaths' to be held on April 7 at 8.0pm. Agreed."

24.3 On 7th April 1952, "The Clerk reported on an interview with Mr H F Towill, Sec. Bristol Charities, in regard to their survey, having due regard to the paths through their property. Mr F Gosling to see Mr Towill on the matter."

24.4 On 5th May, "Mr Gosling had consulted with Mr Towill, Sec. of Charity Trustees, in regard to footpaths on their property. A letter in regard to certain footpaths had been sent to Mr Gosling and the Council, this letter was read by the Clerk. Mr T Day moved . . . Footpath No.32 remain as scheduled, No.33 be deleted."

24.5 On 24th May, "Mr Gosling reported having met Messrs R D Harvey Esq. and Mr Towill, Sec. Charity Trustees."

24.6 On 28th July, ". . . Mr F Gosling reported that consequent to Mr R D Harvey's illness, it had been possible to complete the footpath survey as between the properties of the Charity Trustees and R D Harvey Esq."

24.7 On 8th September, ". . . Mr F Gosling and Mr R D Harvey agreed in regard to certain footpaths Charity Trustees property & were meeting Mr Towill in the matter of a final decision."

24.8 On 2nd March 1953, ". . . Mr Towill, Sec. of Bristol Charities, had written Mr F Gosling in the matter of a path running through their property. The matter had now been settled. That being so the Committee could proceed to filling in the cards."

24.9 On 3rd December 1956, "The Draft Map & Statement for the Parish are now available & should deposited in the Parish for inspection for a period of six months. The Chairman (Mr W A Walter) kindly offered the use of their Office for such purpose."

24.10 On 3rd June 1957, "The Chairman . . . in view of the fact that the footpath maps had been on view at the offices of Messrs J G Walter & Sons for a few weeks, suggested that they should be displayed at some other suitable place. Mr Peacock moved . . . The Clerk consult the Vicar in the matter, with a view to their being hung in the Church Porch. Agreed."

24.11 On 20th May 1968 a letter from Mr R C Inglis was sent to the Parish Council complaining that at the eastern end of

"Footpath No.16/31 near to the Cleeve/Wrington road which it joins, a gate is periodically locked causing obstruction."

24.12 On 1st April 1970 a letter from Tilhill Forestry (Hereford) Ltd to the Parish Council headed Congresbury Woodlands - Footpaths states "Mr Challen visited the woodlands recently and is not agreeable to any further extension of the existing public facilities. This is primarily with regard to the proposed conversion of footpaths to bridlepaths . . . However, Mr Challen will consider applications from individual for licence to ride through the woodlands . . ."

24.13 A letter from Tilhill Forestry Ltd dated 27th July 1970 and headed Congresbury Woodlands states ". . . you mention 'bridle-paths' whereas, we understand, all paths approved are footpaths."

24.14 On 5th March 1973, "It was agreed to recommend the purchase of four metal signs to where the footpath left the highway at . . . Woodlands & . . ."

24.15 In 1986 a proposal was made to create a bridleway beginning and ending on AX16/31 but running slightly to the south so as to avoid Woolmers. A letter from the Parish Council to Mr C W Trenfield of the Bristol Ramblers states "Although the Parish Council agreed with the proposal by the County Council in the first place, further evidence came to light which resulted in the council rescinding its decision to support the County. . . it is doubtful if any further action will be taken."

24.16 It is clear from these records that the Parish Council performed its duty thoroughly and that all claims were properly examined, both at the time of the survey for the Definitive Map and since. Full consultations were held with all parties. None of the evidence produced to support presumed dedication of the footpaths as bridleways would have been withheld from them.

Mr O J Urch

25.1 Mr Urch produced copies of the conveyance of his own purchase of The Woodlands and conveyances of previous sales. The first that can be discovered is dated 3rd February 1925 when Mr R D Harvey purchased the property from a Mr Lewis. It does not mention any right of way along the line of AX16/31. Mr Harvey died in 1954 and his wife died in 1968. Mrs Harvey's trustees sold to Mr and Mrs Holder in 1969. The conveyance was made subject to 'the existing footpath' ie AX16/31. The Holders sold to Mr Toogood in 1973. Again the conveyance was made subject to the public footpath. Whatever Mr Harvey may have written in 1952, therefore, his opinion does not appear to coincide with the legal status of the footpath.

25.2 When the property was purchased in 1975 by Mr Urch a signpost stood at the Wrington Road junction put up by Congresbury Parish Council in 1969 which read 'Footpath to Woolmers'. Before 1975 a number of signs reading 'No Horses' were nailed to various trees along the footpath. These signs were torn down from time to

time and thrown into the undergrowth where they were seen by Mr Urch. Mr Urch erected a sign himself by July 1976 and in 1986 Woodspring District Council wrote to him "I confirm that the above right of way is a public footpath."

25.3 Mr Urch retired 13 years ago and because his house is adjacent to the footpath he is well placed to observe its use. He has on occasion seen horse riders and turned them back. Indeed, one objector admits that she was stopped in 1984. Since 1975 not more than a handful of riders have attempted to use the footpath, whereas use of the path by walkers has increased to between 200 and 300 per week.

25.4 Six witnesses gave evidence and 19 further statutory declarations were submitted in support of Mr Urch's case. The witnesses include the owner of Woodland Park whose property abuts the western end of AX16/31, and who has lived there since 1985. Another witness cycled the length of the footpath from 1946 to 1948, and still walks the path regularly. Neither ever saw a horse or droppings on the footpath.

25.5 Another witness has walked footpath AX16/31 every weekend from 1974 to 1978 and almost every day since then. From 1974 to 1978 he met only one rider. He has encountered none since. A Parish Councillor has run along the footpath once or twice a month for the last ten years and has never seen a horse or droppings. Another witness has walked the footpath from The Woodlands to Woolmers daily since 1969 and has never seen a horse on it. A witness who began walking the path in 1971 recalls only one occasion when he met a horse and rider; he would walk from The Woodlands to Woolmers and then south via AX16/32.

25.6 Another Parish Councillor worked on Mr Harvey's land beside the footpath for three years from 1946. His work included keeping the footpath clear of undergrowth and obstructions. The witness never saw a rider. He remembers a gate but it was not kept locked. His wife walked the route from 1944 till about 1961, but never saw a horse or droppings. The daughter of Mr Harvey's gamekeeper from 1925 to 1948 remembers that Mr Harvey instructed him to keep all riders off his property, and recalls her father's anger when he discovered riders or evidence of horses.

25.7 The statutory declarations include claims from people who have walked the path regularly for up to 37 years. Most claim never to have seen a horse and rider on it. One person has walked regularly with his wife since 1940, and on two or more occasions each week since retiring in 1973; he can recall only two occasions when he met a rider. Another who walked the path on average three times a week since 1982 until 1990 and weekly since then, recalls meeting only two riders, both of whom apologised for having lost their way.

25.8 Letters from objectors refer to a fallen tree that blocked the route between 1974 and 1989. A letter from someone born at Woolmers in 1931 and who has lived nearby all his life states that no horses rode the routes as of right and recalls that Mr Harvey would unlock his gate to allow a Boxing Day ride.

Mrs D Powell

26.1 Mrs Powell purchased Woolmers in 1974 from Mr N Barr. Mrs Powell submitted a letter from Mr Barr who bought Woolmers from Mr Challen in 1967. The letter states that access to Woolmers was via the Corporation Cottage entrance through a five-barred gate which was kept permanently locked until about 1970, and that four people were given permission by Tilhill Forestry to ride in the woods.

26.2 AX16/31 is shown as a public footpath on Mrs Powell's Deeds. Tilhill Forestry approached her to 'police' the area where practicable and keep out unauthorised riders. She has always challenged riders since moving into Woolmers in 1975, and by mid 1976 had erected a sign at the Corporation Cottage entrance reading 'Riding Prohibited'. Smaller signs were attached to trees at intervals along the drive but these were torn down by persons unknown. The gate at the entrance was padlocked for part of the summer of 1975 and from June to September 1976. Since 1981 very few riders were seen near Woolmers. They began to appear in 1989 and Mrs Powell telephoned the nearby Equestrian Centre who agreed to advise riders not to use the path.

Mr J Ridley

27.1 Mr Ridley purchased Congresbury Woods in 1989. Both routes pass through his woods. The deeds of sale only mention footpaths. He spends almost his whole time in the woods and has seen only one or two "rogue" riders since he purchased the woods. From 1975 there have been few riders, thanks to Mrs Powell's challenges. He began working in the woods in 1952-3 and believes that "a privileged four or five had rights". Mr Ridley put in the cattle grid at the Corporation Cottage entrance and locked the gate at the Ball Lane entrance. The barrier and stile west of Woolmers had already been erected by Mrs Powell in 1975.

The Ramblers Association

28.1 The Ramblers Association's evidence covers points already made elsewhere.

Mr P W Gillman

29.1 Mr Gillman has owned nine acres of land immediately east of footpath AX16/33 at the Ball Lane junction since 1976. He purchased the land from Bristol Municipal Charities who managed the woods on behalf of the first owners, Queen Elizabeth's Hospital, since 1835.

29.2 In addition to documentary evidence already given, the Diocesan copy of the Congresbury Tithe Map of 1840 is a First Class Map, ie it bears the seal of the Tithe Commissioners. It is sufficiently detailed to distinguish between different types of woodland, yet it does not depict any routes whatever through the

wood. The end of the present Ball Lane is shown decisively closed off where it enters Ball Wood, for this was where the public right of way ended. Further proof is shown on the valuation maps which resulted from the Finance Act 1910. Deductions were claimed for public rights of way in 15 of the 45 properties in the valuation book, but although both Woolmers and The Woodlands are identified, no deductions were claimed for them even though the two footpaths pass within metres of these large residential properties.

29.3 Although public access to the woods on horseback was strenuously resisted, in June 1928 a Clerk to Congresbury Parish Council wrote to the Secretary of the Trustees complaining of an obstruction to a bridlepath within the woods along the line of AX16/33. The Secretary replied "Your Council are quite mistaken that these paths are bridlepaths, and the Trustees are unable to admit that your Council have any jurisdiction in the matter." The dispute rumbled on, bringing in the Highway Surveyor of the Axbridge Rural District Council. The Surveyor investigated the matter and the District Council decided to drop it. The minutes of the Bristol Municipal Charities record "The fact that obstructions had been placed on paths and timber roads in the woods and maintained for a period of two years and upwards, was sufficient indication that the Trustees had no intention of dedicating such paths to the public." The provision of "a new gate to the Woods" is also recorded. If use on horseback continued to occur within the wood, it had been effectively challenged at least by 1929.

29.4 In 1939, minutes record "that instructions had been given for all applications to pick blackberries to be refused." A letter from Mr D F J Burford who was born at Iwood and now owns property adjoining Ball Lane states "During at least the 1940s and 1950s the Harvey family of The Woodlands, Congresbury had a locked gate in Ball Lane very close to the site of the present gate. There was a sign on the gate warning against unauthorised access to the woods. As a result, therefore, it was impossible to enter Ball Wood on horseback along Ball Lane during the 1940s and 50s." The gate and sign are confirmed in two other letters, but the dates are given as the 1950s and 60s.

29.5 The letter of 1st May 1952 when Lieutenant Colonel F Towill, the Secretary of the Trustees, in defiance of all earlier evidence, stated to the Parish Council that the line of the present AX16/31 was a public bridleway was probably written in simple error. He thought it doubtful that AX16/32 was a public path and wrote emphatically that AX16/33 was quite definitely a private path. Mr R D Harvey, in a letter of 10th May to Colonel Towill wrote that Mr Gosling informed him that Footpath No.33 would be deleted from the survey for the Definitive Map and wrote of 'Footpath' No.31. Yet, by a process which seems to owe more to inadvertence than deliberate intent, all three routes: the agreed footpath No.31, the 'doubtful' footpath No.32 and the 'deleted' footpath No.33, all appeared as public footpaths when the draft map was published. How and why this happened and why the decision was not disputed is a mystery, for it runs completely against the positions previously taken both by Mr Harvey and by the Bristol Municipal Charities. It may be that the Trustees of Bristol

Municipal Charities, who could have challenged all three footpaths had they examined the evidence contained in their own archives and elsewhere, were so concerned to sell the loss-making woodlands that they were not inclined to argue over such an apparently small matter. Nonetheless, however it occurred, public footpaths they became and public footpaths they remain.

### Summary of Objections

30.1 The right to ride on the footpaths was certainly challenged in 1975/6, if not before. No record or map exists which shows the paths as public bridleways, whether a public document or a private document of title. The only map produced is the sale map of Bristol Municipal Charities, undated but presumably before 1958, on which is shown a "bridle path". The word 'public' is not used, whereas the public footpaths are shown as "public footpaths".

30.2 In 1952 the Parish Council had the paths surveyed for the Definitive Map. On the evidence of Mr Gosling's reports and the Parish Meeting, the Council clearly had in mind the status of the disputed paths as possible public bridleways. Yet, after ample opportunity for discussion and after meetings of all parties concerned, including Mr R D Harvey and Colonel Towill of the Bristol Municipal Charities, both of whom had at some time stated in writing that they had considered their parts of AX16/31 to be a bridleway, the paths were put forward by the Parish Council as public footpaths. It is inconceivable that no objection or query is recorded as having been made to the grading of the routes as footpaths if any real evidence of their status as bridleways existed, or if Mr Harvey or Colonel Towill still supported their earlier statements. The only inference to be drawn is that the matter was raised and discussed and that thereafter those concerned came to the conclusion that the proper status for these rights of way was that of footpath. Similarly, when the draft Definitive Map was placed on public deposit for six months in 1957, only five years later and still at a time when it is alleged that the routes were being regularly ridden, no objections were made to their being graded as public footpaths, because that was their correct and accepted status.

30.3 Assuming that all user evidence forms were made in good faith, claims made by 36 bridleway supporters for 42,013 journeys over a total of 646 years, are disputed by evidence from 41 walkers who have seen a total of 12 horses in 680 years. A discrepancy of 41,001 unobserved rides simply does not correspond with observations of those who have lived in the wood or have used the paths regularly. Even spread over 20 years, and not all the riders claim to have used the paths for that period, there should have been continual and evident use of the footpaths by riders, yet very few horses indeed were ever seen, and those that were seen on AX16/31 near The Woodlands were turned back.

30.4 Authors of the forms were being asked to deal with events at least 20 years ago and in some cases much longer. Most of them were children when they began riding. Mrs Craggs and Mrs

Carter, for example, were both eight years old. One rider was only five. Time and their youth must cast doubts on the reliability of their memories and their understanding of the conditions under which they were permitted to ride the paths. Many riders claim to have ridden throughout the woods, so the frequency of their rides over the two paths concerned would in any case be less than stated on the user forms.

30.5 The accuracy is suspect, too, in other ways. For example, on most forms the paths are described as being between 8 and 14 feet wide but some put them as wide as 20 feet. The widths of the paths do vary widely but above The Woodlands the width reduces to 1.75m (less than 6 feet). Either the forms are wildly inaccurate, therefore, or the riders did not use that path.

30.6 One witness kept her pony in a field rented from Mr Harvey. Another was the wife of the Secretary to the Trustees of Bristol Municipal Charities. A third was the daughter of the surveyor, Mr Gosling. Most of the riders were from local families and many were members of the local Pony Club. Permission may not have been given specifically to each rider on each occasion but permission would have been implicit from beneficent landowners to local people known to them or whose families were known to them. They were not the general public. Others were given notices of permission to ride for a small fee. The remainder would have been trespassing. Several admit to ignoring notices. Some claim to have bypassed Woolmers to avoid being challenged by Mrs Powell, but if they had really believed that they were riding as of right, her challenge should not have concerned them. Deviations from the claimed routes, whether at Woolmers or, as stated in evidence, by riding on the bank above the sunken lane east of The Woodlands also invalidate the claim on the routes.

30.7 The user evidence presented is unconvincing, whilst evidence of lack of intention to dedicate, apart from a blip in 1952 which was apparently rescinded, is consistent. The two managers of the Congresbury Estate, Mr B I Dorrington from 1961 to 1979 and Mr J M Josephi from 1981 to 1989, state in letters that though they were aware that riders used the woods without permission they were advised that no bridleway existed and they were asked to leave.

30.8 Those responsible for surveying the rights of way for the Definitive Map took into account all the evidence available to them, both user and documentary, from local people who knew the area intimately. After full consultation and discussion they came to the conclusion that the routes concerned were public footpaths; and such they should remain.

## CONCLUSIONS

31. The application for a Modification Order was based upon user evidence alone. Colonel Towill's claim of ancient rights is



not supported by the evidence. The documentary evidence of letters from Mr R D Harvey and Colonel Towill of Bristol Municipal Charities in 1952 in which they stated that they regarded their parts of route AX16/31 as bridlepaths is immaterial unless:

1. It is new evidence not known or taken into account by the committees responsible for formulating the Definitive Map and Statement.
2. The authorities responsible for compiling the Definitive Map and Statement behaved improperly or failed to carry out their statutory responsibilities.

Yet all three men concerned, Mr Harvey, Colonel Towill and Mr Gosling, met at The Woodlands in May 1952. A Parish Meeting was held in April and Congresbury Parish records show that a number of further meetings among all parties were held until March 1953, when matters had been settled and the Parish cards to be forwarded to the County Council could be filled in. Thereafter, events took their proper course until December 1956 when the draft map was available. In 1957 it was put on view for inspection by the public for six months.

32. Why the three routes were designated as public footpaths when Mr Harvey had expressed his view clearly that his part of what was to become AX16/31 was a bridlepath and Colonel Towill had made the same statement for his part, and had emphatically denied any public rights at all over what was to become AX16/33, is as much a mystery to me as to any other parties at the Inquiry. One can speculate that a landowner who believed that he had a public bridleway running over his land might be relieved to discover that it was to be designated as only a footpath and so do nothing about it, but it seems unlikely that one would agree to a footpath where he believed none existed. Nonetheless, the facts are that after full discussion and ample opportunities to refute them, AX16/31, 32 and 33 were all graded as footpaths. Further, when the draft map was published in March 1957 no objections were made to it, despite, if the proposer's user evidence forms are to be believed, the routes being ridden regularly at that time. I am satisfied, therefore, that all procedures were correctly carried out and that Mr Harvey's and Colonel Towill's claims were properly examined.

33. The question is whether bridleway rights have been established under the terms of HA80 S31, ie that the paths have been actually enjoyed as bridleways by the public as of right and without interruption for a full period of 20 years from the date when the right of the public to use the ways as bridleways was brought into question. The County Council claim this date to be 1989 when the cattle grid at the eastern end of AX16/31 was installed and the gate at Ball Lane was padlocked. They point out, however, that three riders were also stopped in 1984/85.

34. Towards the end of the Inquiry, after the objectors' evidence had been heard, the County Council invited me to consider 1975 as being the date to begin the 20 year count. I agree that Mrs Powell's challenges of that year first brought the right of the public to use the paths as bridleways into question and I take

that year as my starting date. However, I have also examined the other two possible dates of 1984 and 1989 to discover whether 20 years' use can be established. I find evidence from 1975 less authoritative than for the other two dates for the following reasons:

1. The proposer's user evidence forms are completed until 1989, not 1975. If evidence of 20 years' use existed in 1975, presumably it would have been presented then when the evidence was fresh and could have been properly examined.
  2. 20 years from 1975 brings one back to 1955. Only seven of the user evidence forms date back to that year, and only two of those users gave evidence at the Inquiry. One of these started riding at the age of eight and would have been 15 in 1955. She rode with the Pony Club initially but from the mid 1950s rode in the woods only about six times a year. The other was the daughter of the Parish Councillor in charge of the survey for the Definitive Map, and so would have been known to both Mr Harvey and Colonel Towill.
  3. Four other witnesses at the Inquiry claim to have ridden at that time, but again all were very young in 1955 and the routes they rode and the conditions under which they rode them are not sure enough to provide convincing evidence. Most were of local families or were riding with the Pony Club. On the balance of probabilities, some at least would have been known or approved by the land owners or their agents.
  4. 1955 was in the middle of the period of compilation of the Definitive Map, one year before the relevant date when the three paths were established as public footpaths, five years before objections were invited against the draft map and eleven years before the provisional map was produced. Yet at none of these events is there any record of dissent or of the case for creating bridleways over the routes in question being advanced.
  5. Unsupported evidence 40 years old based upon childhood memories, no matter how sincerely those memories may be held, can not have the authority of fresh evidence from recent years that can be properly examined.
35. The first question is to what degree the way was actually enjoyed. I am not persuaded that the routes were ridden as often as has been claimed. I found convincing the vehement certainty of those witnesses who knew the woods intimately and claimed in some cases never to have seen a rider or evidence of horses and in other cases to have seen only a few riders. Mrs Craggs stated that riders rode throughout the woods and that she only chose the paths the subject of the Order to provide a round route; so if fewer rides were made than claimed, as I

suspect, the numbers of riders who actually rode the routes of the proposed bridleways would be fewer still.

36. Several users refer to the "new owners" of Woolmers. Mrs Powell moved into Woolmers in 1975, over half way into the 20 year period from 1989. One wonders when these riders last rode the routes. Mrs Powell clearly challenges riders at every opportunity and I can well believe that few riders have been seen near Woolmers since 1981. Two admitted in evidence that they deliberately bypassed Woolmers. In doing so, they were not riding the route of AX16/31.

37. The beginning of the western end of AX16/31 is narrow and runs between high banks. That it was periodically blocked for substantial periods of time by fallen trees was not disputed. On my site visit one such tree had fallen across the path making it impassable for horses. Three witnesses stated that when this happened they would ride beside the path on the high ground to the north where another path exists, and then join up with AX16/31 further on. So, again, they were not enjoying AX16/31.

38. The second question is whether the paths were enjoyed as of right. HA80 S31(3) states that a visible notice is sufficient evidence to negative presumed dedication. Several riders claim not to have seen any notices; others state that they saw them but ignored them. Mr Urch erected his own notice in 1976, which although politely expressed I find to be unequivocal evidence of his intention not to dedicate the route as a bridleway. He claims to have seen other notices reading 'No Horses' broken and in the undergrowth soon after he moved in to the property but he could not say over what period they were erected or whether they would have been visible to riders. In 1986 Woodspring District Council on behalf of Mr Urch erected a sign reading 'No Horse Riding' at the beginning of the route. By mid 1976 Mrs Powell had erected a sign at the eastern end of AX16/31 reading 'Riding Prohibited'. In evidence it became apparent that her vigorous challenging persuaded riders to avoid Woolmers, intimating at the same time that they did not believe that they rode the route as of right.

39. The above extant signs, which I found to be all clearly visible, together with the several Congresbury Estate signs referring to public footpaths are convincing evidence of the landowners' intentions not to dedicate paths through their woods as public bridleways. The signs serve to negate the Order if 1984 or 1989 is used as the starting point.

40. A lack of intention to dedicate before 1975 is indicated by the letters from Tilhill Forestry to the Parish Council in 1970 stating that all paths were footpaths and that the owner was not prepared to renegotiate them as bridleways. The issue of the passes provided by Tilhill Forestry for the two riders I find to be ambiguous. Without seeing the passes, it can not be proved whether or not they included the proposed bridleways.

41. The third question is whether the paths have been ridden without interruption for a period of 20 years. The letter to Congresbury Parish Council in 1968 complaining that the gate at

the eastern end of AX16/31 was periodically locked causing obstruction indicates that the route could not have been ridden uninterrupted for 20 years from 1975, or indeed from 1984. The gate was locked again during the summer of 1975 and from June to September 1976. The reason for the gate was to prevent all comers entering the woods because of the fire risk. A witness stated that she was able to ride round it, but that does not invalidate the effectiveness of the gate in interrupting the 20 years. The point is that it blocked the route; she could not open the gate, neither did she jump it.

42. A barrier and stile were erected west of Woolmers in 1975 and at the Ball Lane entrance a locked gate appears from the written evidence to have existed at some time between the 1940s and 1960s making it "impossible to enter Ball Wood on horseback along Ball Lane." More precise dates are not given.

43. These several gates and barriers would, I deduce, have made it impossible to ride the routes the subject of the Order uninterrupted for 20 years, whether beginning in 1955, 1964 or 1969.

44. In summary, the Order seems to fail on all counts. I do not find that the criteria set out in HA80 S31(1) have been met; on the other hand, I find that the criteria of Section 31(3) have been met. A case has not been adequately made to persuade me that public bridleways subsist or are reasonably alleged to subsist either over the public footpaths or over the two new routes described in the Order.

#### DECISION

45. For the above reasons and in exercise of the powers transferred to me, I have decided not to confirm the Order. Both copies of the Order are accordingly returned.

46. A copy of this letter has been sent to the objectors and to other interested persons.

Yours faithfully,



A S Jeapes  
Inspector