

**COMMONS AND RIGHTS OF WAY COMMITTEE
20 MARCH 2007**

AGENDA ITEM:

**APPLICATION FOR A MODIFICATION ORDER FOR AN ADDITIONAL
FOOTPATH THROUGH WITCOMBE FARM
PARISH OF GREAT WITCOMBE**

**JOINT REPORT OF THE GROUP DIRECTOR: ENVIRONMENT AND THE
HEAD OF LEGAL AND DEMOCRATIC SERVICES**

1. PURPOSE OF REPORT

To consider the following application:

Nature of Application:	Additional Footpath
Parish / Ward:	Great Witcombe
Name of Applicant:	Dr Nick Gilbert
Date of Application:	6 th September 2005

2. RECOMMENDATION

That a Modification Order be made to add a public footpath through Witcombe Farm from Witcombe Farm Lane to public footpath AGW 4.

3. RESOURCE IMPLICATIONS

Average staff cost in taking an application to the Committee-£2,000.
Cost of advertising Order in the local press, which has to be done twice, varies between £75 - £300 per notice.
In addition, the County Council is responsible for meeting the costs of any Public Inquiry associated with the application.
If the applicant were successful, the path would become maintainable at the public expense.

4. SUSTAINABILITY IMPLICATIONS

No sustainability implications have been identified.

5. STATUTORY AUTHORITY

Section 53 of the Wildlife and Countryside Act 1981 imposes a duty on the County Council, as surveying authority, to keep the Definitive Map and Statement under continuous review and to modify it in consequence of the occurrence of an 'event' specified in sub section [3]. Any person may make an application to the authority for the Definitive Map Modification Order on the occurrence of an 'event' under section 53 [3] [b] or [c]. The County Council is

obliged to determine any such application that satisfies the required submission criteria in accordance with schedule 14 of the Act.

6. DEPARTMENTAL CONTACT

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REPORT

7. DESCRIPTION OF PATH

- 7.1 A location map at scale 1:10,000 is attached (numbered ...A) showing the position of the claimed footpath which runs through Witcombe Farm in the Parish of Great Witcombe. The claimed footpath is located approximately 5 miles south-east of the centre of Gloucester City.
- 7.2 The claimed footpath commences from class 4 road number 41143 known as Witcombe Farm Lane and runs in a southerly and then south-westerly direction for approximately 210m to its junction with existing public footpath AWG 4. The area of interest lies within Ordnance Survey Grid Squares SO 9015 and SO 9014.
- 7.3 A large-scale map of the Witcombe Farm area is attached at ...B. This shows the claimed footpath by a continuous black line with short bars at intervals, marked from A to B. Point A is at Ordnance Survey Grid Reference SO 9063/1514 and point B is at OSGR SO 9059/1494.
- 7.4 Leading to point A of the claimed footpath, Witcombe Farm Lane has a tarmacked surface. At point A the surface of the claimed footpath changes to gravel with a width of approximately 3m to 3.5m and has grass verges on either side. A private road extends from point A in a westerly direction to Witcombe Reservoirs Pumping Station. This is owned and used by Severn Trent Water. At the time of inspection in September 2005, there were 3 notices at point A of the claimed footpath:
- 'PRIVATE ROAD. NO UNAUTHORISED VEHICLES'.
 - WITCOMBE ESTATE. PRIVATE LAND. NO PUBLIC RIGHT OF WAY'.
 - A notice regarding fly-fishing for trout by the Cotswold Fishery.
- 7.5 Approximately 100m along the claimed footpath from point A, there are farm buildings on either side of the path. On one of the buildings there is a notice saying, 'SMILE. YOU'RE ON CCTV'. Further towards point B the path passes the farm house, which is located to the east of the path.

- 7.6 At point B of the claimed footpath there are two public footpath signs, which indicate the easterly and westerly extensions of public footpath AWG 4. There is also a notice saying 'WITCOMBE ESTATE. PRIVATE LAND. NO PUBLIC RIGHT OF WAY', as at point A. When the claimed path was inspected again February 2007, this notice had gone. There is another notice on the claimed path just north of point B, part saying 'FOOTPATH' with an arrow pointing towards a stile and leading onto the easterly extension of public footpath AWG 4. When the path was inspected in February 2007, part of this notice had been broken off. Also at point B there is a metal field gate, which is open. The width of the claimed footpath at this point is approximately 4.5m.

8. BACKGROUND

- 8.1 Dr Nick Gilbert contacted Gloucestershire County Council by telephone on the 16th May 2005 with regards to adding a length of public footpath to the Definitive Map of Public Rights of Way. He was sent an information and application pack on the 17th May 2005.
- 8.2 On the 27th May 2005, Dr Gilbert contacted Gloucestershire County Council to request more Public Path Evidence Forms. He was sent 20 forms on the 31st May 2005.
- 8.3 On the 27th June 2005, Dr Gilbert contacted Gloucestershire County Council to request 18 more Public Path Evidence Forms and a Form 3, the 'Form of Certificate of Service of Notice'. These were sent to Dr Gilbert the same day.
- 8.4 Witcombe Farm has been in the ownership of the Hicks Beach family since 1616. Mrs Celia Hicks Beach and her late husband moved into the farmhouse with their children 25 years ago (approximately 1981/82). For about 65 years prior to this, the farmhouse was occupied by the late Mr Jim Padgett, the Farm Manager. The late Mr Hicks Beach took charge of the running of the Estate approximately 39 years ago until his death in 1997 when the role was taken over by his son.

9. APPLICATION

- 9.1 On The 6th September 2005, Dr Gilbert submitted the application in person. The claimed footpath was described as being added from 'public road just south of Hillview Cottages – marked 'A'', to 'public footpath at Witcombe Reservoirs – marked 'B''.
- 9.2 Forty-nine Public Path Evidence Forms were submitted in support of the application, on behalf of 50 named witnesses, a summary of which can be seen at ...C.

10. LANDOWNER COMMENTS

Charles Russell Solicitors submitted a number of comments, statements and witness evidence forms in opposition to the application on behalf of the landowner, Mrs Hicks Beach of Witcombe Farm¹. A summary of the opposing evidence forms and statements is attached at ...D.

10.1 Landowners' comments on the summary of evidence forms submitted in 2005 in support of the application:

1) Dr Gilbert (witness 1)

The landowner says Dr Gilbert has never been seen using the claimed path by the landowner or any of her employees, neighbours or other users of the yard and stables such as Cheltenham Ladies' College who were often in the yard for large parts of the day in the 1990s, other than on one occasion in 2005 when permission was given. She notes that although Dr Gilbert claims to have used the path several times a week during the 1970s, he fails to mention the periods of time during which he was not resident in Great Witcombe, such as when he was at college. She questions why Dr Gilbert would use the claimed path to visit his parents when he moved to Wychbury as the route between his house and his parents house would take him along the village road and recreational walks to the reservoir would have been along existing footpath AWG/4 which starts at a point opposite his house. She adds, "Dr Gilbert fails to mention that throughout the 1970s there were signs at point A and fails to mention that during the 1970s the track was gated at point A.

2) James Gilbert (witness 2)

The landowner says that although James Gilbert is well known to her, he has never been seen walking the claimed path. She adds that the most direct route from Pasaderas to the reservoirs and the Roman Villa is along RUPP EBW/14 and footpaths EBW/15 and EBW/16.

3) Evelyn Gilbert (witness 3)

The landowner says Mrs Gilbert has never been seen walking the claimed route but one of the landowner's neighbours Mr Diett, has seen her regularly walking her dogs to the claimant's house at Wychbury along the village road rather than the claimed route.

4) Moira Gilbert (witness 4)

The landowner says she has seen Moira Gilbert walking daily from her house at Wychbury to the reservoirs along footpath AWG/14.

5) Anne Vickery (witness 5)

The landowner says she has very occasionally seen Anne Vickery using the claimed path to deliver the Church magazine, but adds that this does not constitute using the path as of right. She says Anne Vickery has no

¹ The full submission is available for viewing as background papers. Please contact the Public Rights of Way Department.

other reason to use the claimed path as to access the reservoirs or Roman Villa her natural route would be along EBW/14, EBW/15 and EBW/16.

6) Scott McNeill (w. 6), Ann McNeill (w. 7), Valerie Mason (w. 9)

The landowner says none of these people have been seen using the claimed path by the landowner, her employees or neighbours etc.

7) Michael Roberts (witness 8)

The landowner says she believes Michael Roberts tried to use the claimed path on one occasion but was stopped by one of the bailiffs and given permission due to the condition of the alternative path on that occasion.

8) Iris German (witness 10)

The landowner says she has never seen this lady use the claimed path.

9) Mary Heggie (witness 11)

The landowner says neither she or her family and employees have seen this lady use the claimed path.

10) Carole Neal (witness 12)

The landowner says she has never seen this lady use the claimed path and adds Mrs Neal claims to use the path to walk to the Church, but the route from Brockworth would take her along AWG/4 rather than the claimed route.

11) Sheila Watts (witness 13)

The landowner says she has never seen this lady use the claimed route and adds that Mrs Watts is 85 years old and it would be a long walk from Brockworth to the reservoirs. She notes that there is no available car parking at the farm.

12) Mr and Mrs Peachy (witness 14)

The landowner says Mr and Mrs Peachy attempted to use the claimed path once and were stopped by her son Freddie.

13) Gary John (witness 15)

The landowner says neither the landowner or her family or employees etc. have seen this man use the path and adds that the claimed route is not on route between Brockworth and Cranham.

14) Adam Hostler (witness 16)

The landowner says neither she nor her employees etc. have seen this man use the claimed path and believes the "circular walk" being referred to is along existing public rights of way.

15) Mary Organ (witness 17)

The landowner says Mrs Organ's late husband was farm manager of the Witcombe Estate so any use of the path by her was as the farm

manager's wife and as a tenant. She adds that Mary Organ has not been seen walking at the farm for over 30 years.

16)Maureen Pither (witness 18)

The landowner says that during a recent telephone conversation, Maureen Pither confirmed that if she ever wished to use the path she would ask permission. She does not believe that Maureen Pither would be able to walk the claimed path due to her infirmity.

17)Anthony Pither (witness 19)

The landowner says her farm is operated in partnership with Mr Pither's neighbouring farm and any use of the claimed path was not as of right but with permission by virtue of the partnership arrangements for farming the two farms.

18)Mrs C Ruddleston (w. 20) and Mr S Ruddleston (w. 42)

The landowner says she met Mr and Mrs Ruddleston on one occasion around March 2005, but has never seen them use the claimed path. She adds that if they travel to Great Witcombe by car they would have to park by the Church and would walk along AWG/4 to get to the reservoirs.

19)Miss V Cooper (witness 21)

The landowner says she recalls asking Miss Cooper to leave the reservoirs which are private property and has not seen her use the claimed path.

20)David Cooper Jnr. (witness 22)

The landowner says in 2005 Mr Cooper tried to walk up the claimed path but was turned back by her son Freddie. She denies that Mr Hicks Beach was either drunk or confrontational and says they always point out the public rights of way to people.

21)David Cooper (witness 23)

The landowner says Mr Cooper is well known to her, but neither she nor her employees have ever seen him walking the claimed route.

22)Lynne Cooper (witness 24)

The landowner says at some time prior to 1998 the late Mr Hicks Beach gave Mrs Cooper permission to use the claimed path, but as she often came through the yard with her dogs loose that permission was withdrawn by the landowner's son Freddie.

23)Christopher Cooper (witness 25)

The landowner says she has not seen Christopher Cooper since he was a baby.

24)Richard Cooper (witness 26)

The landowner believes Richard Cooper is mistaken as to the route he has used as he has not marked the map. Neither she nor her employees or neighbours have seen Richard Cooper using the claimed route.

25) Miriam Beard (witness 27)

The landowner believes Mrs Beard tried to use the claimed path on one occasion but was turned back.

26) Ruth Hepburn (witness 29)

The landowner says the late Mr Hicks Beach gave Mrs Hepburn permission to use the claimed path to take her children to the reservoirs in the early/mid 1990s but she has not been seen for many years.

27) Duncan Hepburn (witness 28)

The landowner says she has never seen Duncan Hepburn use the claimed path. She adds her late husband gave permission to certain individuals to use the path but no such “freedom was granted to the locals” as he claims.

28) Sybil Knight (witness 30)

The landowner says she has never seen Sybil Knight using the path and adds the school was given specific permission to undertake nature walks.

29) Penelope Canbilen (witness 31)

The landowner says that neither she, her late husband or employees have ever let unknown horse riders use the path and there has never been a bridleway sign as referred to. Penelope Canbilen has never been seen walking the claimed path either.

30) Louise Taylor (witness 32)

The landowner says that until 1983 the late Mr Hicks Beach stopped Louise Taylor on many occasions from walking her dog along the claimed path.

31) Julian Comrie (witness 33)

The landowner says her in-laws and predecessors in title granted permission to the Gloucestershire Wildlife Trust members to use the path on foot and with vehicles and this permission remains today.

32) Rosemary Hellerman (witness 34)

The landowner says Mrs Hellerman is well known to her but neither she or her employees or neighbours have seen Mrs Hellerman use the claimed path. She adds that if Mrs Hellerman used the path to visit the previous occupiers of Witcombe Farm House, this use would not have been as of right.

33) Mary Hostler (witness 35)

The landowner says her late husband granted permission to Mrs Hostler to drive or walk up the claimed path to paint at the reservoirs but she has not used the path in a number of years other than the one occasion when she was given permission.

34) Olivia Dell (witness 36)

The landowner says Olivia Dell lives opposite AWG/4, which leads to the reservoirs, Roman Villa and Coopers Hill. She adds on the one occasion when Olivia Dell was seen using the claimed path, she was advised that it was private.

35) Angela Hendy (witness 37)

The landowner has only seen Angela Hendy use the claimed path once with Mrs Seawright, "with permission?" But she says she has not been seen using it since.

36) John Miles (witness 38)

Neither the landowner, her family, neighbours or employees have seen John Miles use the claimed path.

37) Edward Pope (w. 39) and Beryl Pope (w. 40)

The landowner says Mr and Mrs Pope were given permission to use the claimed path by the landowner's late mother in law.

38) Susan Willis (witness 41)

The landowner confirms that Susan Willis was given permission to use the claimed path by her late husband and the previous tenant so use was not as of right.

39) Pat Willis (witness 43)

The landowner says Pat Willis is known to her but she has never been seen using the claimed path.

40) Pat Curtis (witness 44)

The landowner says Pat Curtis used to stable her daughters pony at the farm with Cheltenham Ladies College but she did not use the path as a footpath. She adds the quickest and most natural route from Pat Curtis' house to the reservoirs is along AWG/4.

41) Rev. John Thornton (witness 45)

The landowner says she grants permission to use the claimed path for the annual Rogation Service. She adds the route from the Rectory to the reservoir is along AWG/4.

42) John Pye (witness 46)

The landowner says John Pye has not been seen using the claimed path.

43) Bob Miles (witness 47)

The landowner says Bob Miles has not been seen using the claimed path and adds that if travelling from Stroud, he would have to park at the Church from which the route to the reservoirs is along AWG/4 and it is not necessary to use the claimed path to reach the woods from Little Witcombe.

44) Eunice Straley (witness 48)

The landowner says that she employed Mrs Straley as a tutor for her son in 1979 to 1980 and she visited the farm during her employment and on several occasions afterwards to check his progress. She also visited, accompanied by the landowner, to see the ponies.

45) Pete Bradshaw (witness 49)

The landowner believes that Mr Bradshaw is not authorised to give evidence on behalf of the Gloucestershire Wildlife Trust but only as an individual. The landowner says she does not know Mr Bradshaw but believes he may have visited as part of a group which was given permission.

10.2 General points made by the landowner:

- a) Almost none of the evidence forms mention that access was gated during the 1970s.
- b) The “circular walk” as referred to by a number of witnesses is the route from Brockworth to the reservoirs, Roman Villa or Church and does not involve the claimed path. She adds, “The evidence submitted by walkers from Brockworth must be viewed with some caution. Brockworth is some miles from the claimed path”.
- c) The user evidence is contradictory and confused with regards to the existence of signs at point A over the years.
- d) Several of the witnesses are family members of the claimant and “therefore their evidence is not entirely independent of the claimant”.

10.3 Landowners’ comments on the summary of documentary evidence:

- a) **Tithe map 1837, 1st edition 1”**: **1 mile Ordnance Survey Map, 1817**
The landowner says that it can be assumed that the track was not in existence during the time of the above maps.
- b) **Bryant, Map of Gloucestershire**
The landowner says the route shown on this map does not follow the claimed route and thus can have no evidential value in showing the existence of the claimed path.
- c) **Ordnance Survey 25”**: **1 mile, 1884 edition**
The landowner says that this appears to be the first documentary record of a physical track along the claimed route but considers this is evidence of a private access to Witcombe Farm as it is shown closed at both ends and the status is undefined.
- d) **Private Estate Maps**
The landowner says that from the description it appears the claimed route is not shown on this map, only the existing footpath to the south of the reservoir.
- e) **Sales particulars of Witcombe Estate, 1929**
The landowner says the description of the sales particulars describes rights that had been granted in respect of use of the claimed route. She points out the Corporation of Gloucester made an annual payment for exercising the right whilst the owner of Witcombe Wood had the benefit of

private rights of way for the purpose of transporting timber. She adds that neither of these uses establishes any public rights of way.

f) Parish Council's and District Council's Files

The landowner states, "The lack of information in the Parish Council's file or the files of the District Council indicate that no highway rights existed along the claimed route".

The landowner concludes from the County Archivist's summary of documentary evidence that there are no grounds for amendment of the Definitive Map on the basis of this evidence.

10.4 Witness statements in opposition to the application:

1) Anthony Maurice Diett, Berries Cottage, Farm Lane, Great Witcombe

Mr Diett states he has lived at Berries Cottage for 27 years and has often worked from home throughout that time. He says from his home he has a clear view of point A of the claimed footpath. He adds that he keeps a large schnauzer dog as a guard dog, which is always in the garden and alerts Mr Diett to any passers by. Mr Diett says over the years he has seen both Mrs Hicks Beach and the bailiffs turning people back on occasions when they have attempted to use the claimed path. He says that during the 27 years of having lived at Berries Cottage, there have always been signs erected at point A indicating the route is private. He adds the green signs currently at points A and B were erected 4 or 5 years ago, although he believes the sign at point B has had to be replaced several times since then.

2) Micheal Teesdale, 6 Cherrywood Gardens, Tuffley, Gloucester

Mr Teesdale states he has been a member of the Committee responsible for the management of the Witcombe Reservoirs Nature Reserve on behalf of the Gloucestershire Wildlife Trust since about 1986 and between 1992 and 2002 was the chairman of this Committee. He says during his visits to Witcombe reservoirs he frequently saw people using public right of way AWG/4. He believes that the Hicks Beach family have given permission for certain people to walk along the claimed path, such as the Committee members. Mr Teesdale says he is aware that there have been a number of footpath signs at point A, although he has no knowledge as to when the signs were erected or who erected them. He adds, "The Members of the Committee believe that the path is a private road and no public rights of access are permitted".

3) Arnold Price, Witcombe Farm Cottage, Witcombe

Mr Price states he has lived at Witcombe Farm Cottage since 1962 but has been employed as a farm worker on the Witcombe Farm since 1956. He says that he regularly works in the yard adjoining the claimed path and works from Monday to Friday, 7.30am until 4.30pm and also visits Witcombe Farm at weekends when he routinely delivers newspapers to Mrs Hicks Beach and helps on the farm. His house fronts the road which is the only access to the claimed path at point A. He says the only people that have used the claimed path have done so with permission from the

Hicks Beach family, in particular, the Church have permission to use it for the annual Rogation Service. He is aware of many occasions where people attempting to use the route were turned back by members of the Hicks Beach family or the bailiffs, yard manager or other yard users. Mr Price says the sign indicating that the route is a private road has been in place for approximately 25 to 30 years and was erected by the Witcombe Estate. He says the green signs at points A and B were erected about 4 to 5 years ago but says there has always been signs at point A restricting access to the claimed path and he also notes a gate across the farm entrance at point A up until the 1970s, which was removed when the farm machinery was too big to get through. Mr Price adds that he knows one of the witnesses, Tony Pither, and can see no cause for him to use the claimed path and says he has seen neither him, nor the other witnesses do so.

4) Irene Cross, 1 Hillview Cottages, Great Witcombe

Ms Cross states she has lived at 1 Hillview Cottages for 6 years and her home fronts onto the approach road to the claimed path. She says she usually works in the house and has a clear view of the road. She notes that there are often a number of horse riders travelling to and from the stables at Witcombe Farm, but she says that none of those named on the summary of evidence forms are personally known to her. However, Ms Cross says she has occasionally seen "one or two" walkers pass her property but the use has been nothing like the scale of use described on the evidence forms. She adds that she has no knowledge as to whether this use has been permissive or not. Ms Cross is aware of notices erected at points A and B but does not know when they were erected or by whom.

5) Kevin Higginbotham, 50 Pennsylvania Avenue, Cheltenham

Mr Higginbotham states he has been a regular visitor to Witcombe Farm for the past 30 years, as he uses the reservoirs to fish once or twice a week. He says during each visit he spends approximately 5 to 6 hours at the reservoir where he has a clear view of the claimed path at point B. He adds that for the last 7 years he has been employed by the Witcombe Estate as an honorary bailiff and is present at the site office between 7:30am and 4pm on Sundays, Mondays and Tuesdays. The office has a window facing the claimed path. Mr Higginbotham says that during his visits to the reservoir for fishing he saw many people using AWG/4 but only occasionally saw walkers on the claimed path and they were always turned back by either a member of the Hicks Beach family or the bailiffs in the office. He says that over the 7 years he has had to turn back a number of people who have attempted to walk the claimed path. Mr Higginbotham is aware that certain people have been given permission to use the path by the Hicks Beach family, in particular the Church for the Rogation Day once a year. He adds that there have always been signs in place at point A indicating that the road was private.

6) Francis H. Baxendale, Sheepwash Cottage, Aldingbourne, Nr. Chichester, West Sussex

Ms Baxendale states she has been a frequent visitor to Witcombe since 1961, being a close friend of the Hicks Beach family. She says from 1988 to 2005 she served as a Trustee of the Witcombe Trust and was active in an advisory role in all Estate matters. Following the death of Mr Hicks Beach in 1997, Ms Baxendale was an Executer of his Will and says she has considerable knowledge of the Estate. She says “at no time have persons, other than visitors to Witcombe Farm, the livery stables or the fishing, used the stretch of drive, now claimed as a footpath, for that purpose”. She adds that she does not believe the usage of the path was such that she would not have been aware of it, or been made aware of it at Estate meetings, that it was being used by people without a right of passage.

10.5 Evidence forms submitted in opposition to the Modification Order application:

1) John Anthony Metcalfe, 3 Knapp Cottage, Knapp Lane, Brimscombe, Stroud

John Metcalfe worked for Severn Trent Water from 1976 to 1999 and has been a member of the Management Committee for Witcombe Nature Reserve since around 1980 and was at the reservoirs at evenings throughout the week and on Saturdays and Sundays. He says “Historically the estate has vigorously defended the fact that the path was not a public right of way and there are a number of letters on file with Severn Trent Water from members of the public going back over 20 years”. He says over the years Gloucestershire Wildlife Trust has organised sponsored walks and permission has been given for that day only to use the claimed path. He is aware of a sign on the claimed path saying “Private Road” which has been there for at least 20 years, and a sign saying “Private Land. No Public Right of Way” which was erected in the last couple of years.

2) Rex Cross, 1 Hillview Cottages, Great Witcombe

Rex Cross has lived at his current address for 9 years but does not have a clear view of the claimed route from his home. He is aware of groups using the path but only 4 to 5 times a year and has only occasionally seen members of the public using the path prior to the signs being erected. He says that a sign was erected around 2002 saying “Witcombe Estate. No Public Right of Way”. Mr Cross comments that the claimed path should not become a right of way due to the security issues such as vandalism.

3) Mr A Price, Witcombe Farm Cottage, Witcombe

Mr Price has been at his current address for 43 years and has a clear view of the claimed path from his garden. He has been employed as a farm worker at Witcombe Farm since 1956. He is on the estate from Mondays to Fridays from 7:30am to 4.30pm and at weekends. He is not aware of members of the public or groups using the path. Mr Price notes a sign on the path erected 25 years ago saying “Private”.

- 4) Mr K Knight, 20 Poole Ground, Highnam**
Mr Knight has been a voluntary bailiff at Witcombe Farm for 8 years and is at the farm from 8am to 6pm in spring and autumn and 8am to 8pm in summer on Thursdays, Fridays and Saturdays. Mr Knight says when on duty he speaks to many walkers regarding the claimed path and asks them if they missed the sign saying it is private. He comments that there are sufficient footpaths on the estate, but people often in unsuitable footwear favour the claimed path. He notes signs on the path saying "Witcombe Estate. Private Land. No Public Right of Way".
- 5) Mrs Georgina Davies, The Malt House, Ampney Crucis, Cirencester**
Mrs Davies was a stable manager at Witcombe Farm from 1990 to 1995 and was at the farm Tuesdays to Sundays from 8am to 7pm and was at the yard unofficially riding her horse on Mondays. She says she has not seen any of the public or groups using the claimed path and has regularly turned people back who have attempted to use it, both walkers and cars. Mrs Davies comments that when Mr and Mrs Hicks Beach went on a family holiday she lived at the farm, primarily to monitor the claimed path and would occasionally get youths on the path at night, drinking, at which point she would call the police and have the youths removed for trespassing.
- 6) Mrs Pamela Cowley, 59 Millham Road, Bishops Cleeve, Cheltenham**
Mrs Cowley used to be the headmistress at Cheltenham Ladies College. She says she is aware of the owner turning people back who have attempted to use the claimed path. She adds that between 1990 and 1999 she was at Witcombe Farm nearly every day as a chaperone for the girls from college who were having riding lessons. She believes the path is private.
- 7) Lucy Wakefield, The Barn House, Marston Meysey, Wiltshire**
Lucy Wakefield is the landowner's daughter and lived in Great Witcombe from 1975 until 2002, although she was at university in London from 1995 to 1999. She says that anyone she has seen walking the path has been turned back by the landowners and on occasions she would tell anyone using the path that it was private property and ask them to turn back. She notes a "Private Road" sign on the path.
- 8) Carole Ann Diett, Berries Cottage, Farm Lane, Great Witcombe**
Carole Diett has lived at her current address for 27 years and has a clear view of the claimed path from her garden. She is aware that the Church have been given permission to use the path by the Hicks Beach family. Carole Diett says she spends a lot of time in her garden, and has a large dog that makes her aware when someone is walking past the cottage and says "I am absolutely stunned by the number of people completing the questionnaires who claim to use this stretch of road on a regular basis, either now or in the past. This is simply not true, believe me – I live here!" Carol Diett notes that of those known to her who have submitted evidence forms, she has seen Dr Gilbert using the path, mostly running through with his dog, Miss V. Cooper use the path once, and Reverend Thornton, who

was standing by the hedge of the house opposite her property and made a “rude comment” to one of the occupants and did not continue along the path but returned to the Vicarage.

9) Mr Roger Walker, 11 Derwent Close, Brockworth

Mr Walker has been employed by the Witcombe Estate as a gardener from 1987 to 2005. He is not aware of any members of the public or groups using the claimed path. He says at various times he has prevented people from using the claimed path by turning them back, as well as the bailiffs and the Hicks Beach family. Mr Walker notes a sign on the path saying “Witcombe Estate. Private Property”.

10) Terri Lawlor, 23 Fairhaven Avenue, Brockworth

Terri Lawlor started working for Mark and Celia Hicks Beach in 1975, 5 to 6 days a week. He says they moved to Witcombe Farm in 1981 and he still works there now. He has seen the Hicks Beach family and a number of fishing bailiffs tell many people there is no public footpath through the farm, but is aware that some people such as disabled or elderly people have been given permission to use the claimed path. He adds that he worked at Witcombe Farm for the Pagets when he was 14 and even then “everyone know there was not a footpath to the reservoir through farm”.

11) Fred Hicks Beach, Witcombe Farm, Great Witcombe

Fred Hicks Beach has lived at his current address for 25 years and can see the claimed path from most aspects of his property. He says permission to use the claimed path has been given for the Rogation Service and some villagers who have asked for permission due to illness. When says when he has seen people using the path he has stopped them and informed them it is not a footpath. He notes 3 signs on the claimed path, a Private Road sign, which has been in place for over 25 years and 2 No Public Right of Way signs. He comments, “From a young age I have witnessed my parents, fishing bailiffs and yard staff informing people that there was no footpath through the farm. People were stopped as soon as they were seen to be trying to travel up or down the road ... I too have stopped people that have walked through the farm and informed them it was not a footpath”. He says he has spoken to Dr Gilbert on a number of occasions since he moved to the village 6 years ago but has no recollection of him attempting to walk the path prior to this. He comments that the only people who went unchallenged when trying to use the path were those who worked for Severn Trent, fishermen or persons who have been given permission.

12) Andrew Hicks Beach, Witcombe Farm, Great Witcombe

Andrew Hicks Beach states he has been at his current address for 24 years and has a clear view of the claimed path. He is aware of the Church service, fishermen and horse riders using the claimed path and that some people have been given permission by the landowner to do so. He says that occasionally he has turned people back who have attempted to use the path. Andrew Hicks Beach comments that between 1979 and 1980 he was taken out of school due to suffering from severe Dyslexia, and had a

tutor called Eunice E Straley. Following this, Ms Straley would visit the farm to see how he was getting on. He says that he has not seen her for a number of years and finds her comments “notably misleading”.

13) Trevor Buxton, The Round House, Great Witcombe

Trevor Buxton states he has lived at his current address for 13 years, although he cannot see the claimed path from his home. He says that he has never seen anyone using the claimed path other than anglers, horse riders, fishery personnel and the Hicks Beach family. He says that permission has been given to people to use the path at the discretion of the landowners, and Buxton himself has been given permission to use the path in his electric vehicle as he is disabled. Mr Buxton adds that he came to Great Witcombe in 1967/1968 and was then told that the claimed path was not a right of way but a private road. In 1999 he was asked in his capacity of Chairman of Great Witcombe Parish Meeting if the path was public. He checked with Gloucestershire County Council who confirmed it was not. Mr Buxton notes signs on the path erected around 3 years ago saying that the path is a private road.

14) Mrs Angela Buxton, The Round House, Great Witcombe

Mrs Buxton has lived at her current address for 13 years. She says at no time has there been a right of way through Witcombe Farm Yard and says she has years of knowledge of this dating back to when her grandfather used to visit Witcombe Farm on business in the 1880s. She notes that a farm is “a business and a work place and you don’t want any Tom, Dick or Harry traipsing through”. Mrs Buxton is aware of notices on the path near the Severn Trent entrance and near the reservoir, which she says have been in place for about 4 years.

- 10.6 Ms Bennett, the landowner’s solicitor was contacted on the 26th February 2007 by Gloucestershire County Council and asked for information as to when the restriction notices were erected at points A and B of the claimed footpath. Ms Bennett responded by email the same day, saying that she has been advised by Mrs Hicks Beach that the notices were erected approximately 8 years ago.

11. DOCUMENTARY EVIDENCE

The County Archivist was asked to examine sources available in the Gloucestershire Record Office, specifically Tithe, Inclosure, Ordnance Survey and Inland Revenue maps, to see if this footpath is marked in any way, and to identify other sources which might be useful in establishing the existence of a footpath along this route, a diverted or modified route.

11.1 Inclosure award

There is no inclosure award held for this area

11.2 Tithe map, 1837 (GDR/T1/200)

The area is shown but the claimed route is not.

11.3 Bryant, Map of Gloucestershire, 1824

A route is shown which appears to follow a similar alignment to that of the claimed route, but runs to the east of Witcombe Farm (whereas the claimed route runs to the west of Witcombe Farm). The northern half of the route appears to be marked by full lines and the southern half by double pecked lines. The route is coloured white, which, on Bryant's colour key indicates that he regards it as a "lane or bridleway". This is attached at ...E.

11.4 Ordnance Survey 25": 1 mile, 1884 edition, sheet nos: 34/6,10

Witcombe Farm Lane is shown by a single pecked line and then double pecked lines on its approach to point A of the claimed footpath. From point A the majority of the claimed route is shown as a feature on the ground by a single pecked line running close to the field boundary. A short section of the claimed route at the southern end from what is now the farm house to point B is shown by double-pecked lines. The route is closed at both ends and runs through plot number 37. The status of the route is undefined. This is attached at ...F(i) and ...F(ii).

11.5 Ordnance Survey 1": 1 mile, 1st edition, 1817

The claimed route is not obviously shown.

11.6 Ordnance Survey 25": 1 mile, 1925 edition, sheet nos: 34/6,10

The claimed route is mostly shown in the same manner as on the 1884 edition Ordnance Survey map, with the majority being shown by a single pecked line running close to the field boundary. A section of the claimed route at the southern end towards point B is shown by double-pecked lines. This section has markings on either side showing that it ran over an embankment. The route is closed at both ends, however there are tie marks from the route at point A to the road (Witcombe Farm Lane) and from point B to existing footpath AWG 4. The route runs through plot number 37. There is no indication as to the status. This is attached at ...G(i) and ...G(ii).

11.7 Inland Revenue, maps compiled under the Finance Act, 1910, based on Ordnance Survey 25": 1 mile, c. 1902 edition, marked up by Inland Revenue c. 1915, and reference books or files (D2428)

Sheet 34/6 is not held. The Great Witcombe portion of sheet 34/10 is not coloured. Therefore form 37 (D2428/2/82) has not been checked.

11.8 Maps deposited with County Planning Officer under Rights of Way Act, 1932, S1, 3 (CP/D)

There is nothing relevant.

11.9 Parish Council file, Rights of Way Act, 1932

Nothing has been deposited.

11.10 Private estate maps

D2607 – Map showing roads and tracks in Great and Little Witcombe.

Only the southern section of the route from point B to what is not the farm house is shown and is marked by full lines, but the status of the route is otherwise undefined.

D2299/L79 – Sales particulars of Witcombe Estate 1929.

On the map which accompanies the sales particulars, the claimed route is shown running through lot 10. It is marked by a red pecked line between points X and W on the map (point X is approximately 60m north of point A of the claimed path and point W is at the same place as point B of the claimed path) and then continues in a westerly and south-westerly direction, following the alignment of existing public footpath AWG 4 (see ...H(i)).

The accompanying particulars for lot 10 say:

“The Corporation of Gloucester have a right of way over the roadway “W” “X” and makes a payment of 10/- a year to the tenant of Witcombe Farm and also supply materials in respect of the maintenance of the road”.

It also says:

“A right of way not exceeding 18 ft. in width is reserved for the owner of Witcombe Wood for the removal of timber over the roadway shown on the sale plan approximately between the points “T” “U” “V” “W” “X” by the red broken line. No timber shall be hauled out of the wood on to this land but the right of way shall be used for loaded timber only. The owner of Witcombe Wood shall make good any damage done by the removal of timber of pay compensation in lieu thereof”.

The full text can be seen at ...H(ii).

11.11 District Council Clerk’s correspondence

Nothing appears relevant.

11.12 County Council Solicitor’s correspondence (K596/27/1)

1949 Act objection file. There is nothing relevant.

11.13 County Surveyor: papers relating to survey of footpaths under National Parks and Access to Countryside Act, 1949 (K687)

K687/1/2/13 – Original submission map and award. The route has not been claimed.

K687/2/1/45 – Objection file. Not relevant.

K687/3/3 – Provisional map. The route has not been claimed.

11.14 Definitive Map

The claimed route is not marked as a public right of way (see ...I).

12. CONSULTATIONS

The following organisations and councils were consulted on the 12th October 2005 regarding the application, and their comments were as follows:

12.1 Great Witcombe Parish Council

Mr T Buxton, Clerk of Great Witcombe Parish Council replied by letter dated the 30th November 2005. Mr Buxton carried out an assessment into every member of the parishes' views with regards of the Modification Order application. He did this by means of sending a letter to each household together with individual unnamed reply slips for each person eligible to vote. He adds that Dr Gilbert and Mrs Hicks Beach were informed of the contents of the letter beforehand and expressed their satisfaction, although they both made additional comments that were incorporated into the letter. This letter can be seen at ...J. Mr Buxton says that this method was completely fair and allowed everyone to register an anonymous vote.

12.2 The results were as follows:

- 84 residents are eligible to vote
- 43 residents voted (51%)
- 16 residents are in favour of the claimed footpath (37%)
- 27 residents are against the claimed footpath (63%)

These results were displayed for the public on a notice.

12.3 Mr Buxton included in his letter a number of written comments that were made on the return slips that were submitted by the public. The results of the survey are attached at ...K.

12.4 County Councillor

Councillor Vines telephoned Gloucestershire County Council on the 7th September 2005, before the consultations took place as he had been hearing both sides of the argument. Councillor Vines was consulted regarding the application but no comments were received.

12.5 Ramblers' Association

Mrs J Byrne, Group Footpath Secretary for the Mid Gloucestershire Ramblers' Association contacted Gloucestershire County Council by telephone dated the 19th October 2005. She said that Dr Gilbert had recently joined the Ramblers' Association. She agreed that the claimed route should be a public footpath and said she would send in more information when she finds someone who has used the route regularly. No further comments were received.

12.6 Tewkesbury Borough Council

The Parks and Recreation Department at Tewkesbury Borough Council was consulted regarding the application but no comments were received.

12.7 Gloucestershire Wildlife Trust

Rosie Cliffe, Conservation Manager of Gloucestershire Wildlife Trust was consulted regarding the application. A response was received from Pete Bradshaw, Reserves Manager of Gloucestershire Wildlife Trust, who

submitted a Public Path Evidence Form dated the 12th October 2005. The form had been completed by Mr Bradshaw on behalf of the Gloucestershire Wildlife Trust. This form has been added to the other Public Path Evidence Forms in support of the application and is discussed in the Summary of Public Path Evidence Forms and under Section 14, 'Legal Comments and Conclusions', and is numbered 'Witness 49'.

13. APPLICANT COMMENTS

13.1 Dr Gilbert submitted comments dated the 11th November 2005². He said that the reason that the issue of the Modification Order application had arisen was because he, his family and others in the village and beyond have been told that they can no longer walk the claimed route, which had been used for over thirty years prior to this.

13.2 Dr Gilbert explains that the Gloucestershire Wildlife Trust (GWT) was established at the reservoirs in 1971 and made information available about the reservoirs history, flora, fauna and bird life. He enclosed two old pamphlets published by the GWT. One of these has a map and instructions on how to get to Witcombe Reservoirs Nature Reserve (see ...L). It says, *"Follow the OLD A417 to the Twelve Bells Pub, turn right for Birdlip. Do not take cars beyond farm entrance. Footpaths always open but permit needed from Trust for rest of Reserve"*. This implies that while cars could not be taken beyond the farm entrance, walking was permitted along the claimed footpath to the reservoirs.

13.3 In his comments, Dr Gilbert adds, "...in allowing some people to use this route, but at the same time preventing others, I feel that the landowner is acting in a discriminating way and, it is only by applying to make this a public right of way, in perpetuity, that one can ensure equality".

13.4 Dr Gilbert submitted comments in response to the Summary of Documentary Evidence and the Summary of Landowner Comments in October 2006. He says that after receiving the Summary of Landowner Comments, he spoke to most of the witnesses in support of the application and comments, "they were quite astounded by the landowner's denials of their evidence". Dr Gilbert collected a further 24 statements on behalf of 27 of the same witnesses specifically addressing comments made by the landowner.

13.5 Applicants' comments on the documentary evidence:

- a) Dr Gilbert notes that on the Ordnance Survey 25": 1 mile, 1884 edition map, the majority of the claimed route is shown as a feature on the ground by a single pecked line and a short section is shown by double-pecked lines. He

² The full submission is available for viewing as background papers. Please contact the Public Rights of Way Department.

also notes that footpath AWG 4 is not shown on this map, however its' existence is not disputed by the landowner.

- b) Dr Gilbert says that on the Bryant map of Gloucestershire, 1824, a route is shown which appears to follow a similar alignment to that of the claimed route, but runs to the east of Witcombe Farm, but this map pre-dates the construction of the reservoirs and, since regular access would be required to such a major development, it seems likely that this route may have been moved to avoid traffic having to circle around Witcombe Farm to access the reservoirs.
- c) Dr Gilbert comments, "Whilst there are variations in the way the claimed route is depicted over the years, there seems little doubt that a route existed and I aim to demonstrate that this route has been used extensively for at least several decades and with the knowledge of the tenant farmer and The Landowner, her family, employees, neighbours and users of the stable and yard".

13.6 Applicants' comments on opposing witness statements / evidence forms:

1) Angela Buxton

Dr Gilbert says that Mrs Buxton lives about a quarter of a mile from the claimed path and would not be able to observe activity along it. He notes that her comments about "the farms value" are not relevant.

2) Trevor Buxton

Dr Gilbert notes that Mr Buxton has only been a resident in the village for 13 years, whereas use of the path dates back to the 1930s. He adds that Mr Buxton is reliant on a wheelchair and has been given permission to use the claimed route, but does not wish this to be available to others.

3) Andrew Hicks Beach

Dr Gilbert says that Andrew Hicks Beach went to boarding school from the age of 10 so it is difficult to know how much time he spent at the farm and as a witness.

4) Fred Hicks Beach

Dr Gilbert states that Fred Hicks Beach was born in 1980 and would not therefore have been able to witness the use of the path until the end of the 1980s. He says that the statements by Fred Hicks Beach and his mother, Mrs Hicks Beach differ and are both incorrect as Dr Gilbert has used the path on many occasions, often running with his dog, and was only told to stop in May 2005 when he received a telephone call from Fred Hicks Beach. He says prior to this he has seen Fred and Mrs Hicks Beach on numerous occasions when walking along the claimed path. He adds, "Most of Fred Hicks Beach's additional comments are comprised of presumption and conjecture but without any evidence".

5) Terri Lawlor

Dr Gilbert notes that Mr Lawlor's comments that, "everyone knew there was no footpath to the reservoir through the farm", is clearly untrue, as 50 user evidence forms have been submitted in support of the application.

6) Roger Walker

Dr Gilbert says that Mr Walker works as a gardener once weekly or "when necessary" since 1987. Dr Gilbert is unsure how Mr Walker could've seen the bailiffs turn path users away as the garden is not well situated to view the bailiffs office or most of the pathway.

7) Pamela Cowley

Dr Gilbert says that Mrs Cowley's testimony "appears rather inconsequential" as she states to have seen path users turned away but doesn't know who or when.

8) Georgina Davies

Dr Gilbert says that Mrs Davies was only an employee for 5 years and knows only 2 of the witnesses, one of whom no longer walked the route by then.

9) Carol Diett

Dr Gilbert notes that Mrs Diett says she has seen him using the claimed route on more than one occasion, which contradicts the statements of Mr Diett and Mrs Hicks Beach. Dr Gilbert draws upon Mrs Diett's comment, that "I cannot recall seeing large numbers of people walking along the lane toward the private road", and points out that the witnesses are not claiming to have used the route 'en masse' but as individuals or in small groups.

10) Anthony Diett

Dr Gilbert states that several of the witnesses have said they have spoken to Anthony Diett as they passed his house and two have walked down the claimed route with him. Dr Gilbert says that he himself has stopped to talk to Mr Diett over his garden fence on numerous occasions, and is "disappointed and quite perplexed that he has decided to testify otherwise".

11) Lucy Wakefield

Dr Gilbert states that Lucy Wakefield was born in 1975, after many people had already walked the claimed path for 20 years. He points out that the answers on the Public Path Evidence Forms were similar as the witnesses were all answering the same questions on a pro-forma.

12) Mr K Knight

Dr Gilbert says that Mr Knight confirms he has seen groups walking the claimed path on many occasions.

13)Rex Cross

Dr Gilbert says that Mr Cross who lives opposite Mr Diett confirms he has seen people walking the claimed path.

14)Arnold Price

Dr Gilbert states that Mr Price is a longstanding employee and tenant of the landowner. He claims not to have seen any of the witnesses using the claimed path, but some of them testify that they have seen him.

15)John Metcalf

Dr Gilbert notes that as an employee of Severn Trent, Mr Metcalf would have been attending the pumping station, which is several hundred yards downhill and at a right angle from point A of the claimed path.

16)Anne Bennett

In response to Anne Bennett’s comments that she “Cannot believe that the usage was such”, Dr Gilbert states that 50 people have testified that it was used as such³.

17)Kevin Higginbotham

Dr Gilbert notes that Mr Higginbotham has been employed as an honorary bailiff for the last 7 years, and therefore after most of the witnesses claim to have used the path.

18)Irene Cross

Dr Gilbert notes that Irene Cross has only lived at Hillview Cottages for the last 6 years, and therefore after most of the witnesses claim to have used the path.

19)Michael Teesdale

Dr Gilbert says that Mr Teesdale was only present at the reservoirs for one or two hours per week from 1986 to 1996. Mr Teesdale, as a committee member of Gloucestershire Wildlife Trust had permission to use the claimed path on foot or by vehicle from the landowner, but believed that no public rights of access exist over it. Dr Gilbert enclosed another copy of the brochure issued by Gloucestershire Wildlife Trust, specifically the section which reads, “How to get to Witcombe Reservoirs Nature Reserve” (as discussed in paragraph 13.2). Dr Gilbert points out that this implies that one could walk through the farm along the claimed path to the reservoirs, “otherwise what would be the point in parking near the farm entrance?”

13.6 Applicants’ response to landowners’ comments regarding supporting witness evidence

1) Dr N J Gilbert (witness 1)

³ It appears that Dr Gilbert is referring to the statement submitted by Francis Baxendale, which was addresses to the landowner’s solicitor, Anne Bennett.

Dr Gilbert reiterates from his original comments that he walked the claimed path less in the 1980s, whilst doing medical training, but came home from Birmingham University frequently at weekends and during holidays etc. He says his main usage was in the latter half of the 1970s and early part of the 1990s and from 1997. Dr Gilbert clarifies that he did not make the comment that he used the claimed path to visit his parents, but used to live with his parents and subsequently visited them and then walked from their house to the reservoirs along the claimed path. Dr Gilbert highlights the landowner's lack of understanding as to how important the claimed path has been to himself and many others over the years as the "optimum" route for accessing the reservoirs and countryside beyond. He points out that the landowner only writes about use of the path as a functional sense to get from A to B, and doesn't understand that people walk for pleasure and that the reservoirs are a local beauty spot and nature reserve and a natural route to access the beech woods on the Cotswold Escarpment.

- 2) Dr Gilbert points out that Mrs Hicks Beach contradicts herself in her statement by saying that "Neither the landowner, nor any of her employees, neighbours or other users of the yard and stables have ever seen him using the path", whereas she goes on to say that she saw Dr Gilbert using the path on one occasion. He adds that many other people at the stables have seen him using the claimed path over the years, but many would not have known his name.

3) James Gilbert (witness 2)

James Gilbert submitted a statement in addition to his original evidence in response to the Landowner Comments.

- a. Mr Gilbert notes that the claimed footpath provides a convenient route that is suitable for pushchairs and toddlers. He says that from 1975, he used the path without hindrance when it was occupied by Mr and Mrs Paget.
- b. When Mr and Mrs Hicks Beach took occupancy of the farm, he says, both Mr Mark and Mrs Celia Hicks Beach would politely acknowledge him when they passed him in their cars along the claimed route. He adds that many of the employees of Witcombe Farm have also seen him using the claimed path, such as Mr Arnold Price the tractor driver. Mr Gilbert says, "I have exchanged friendly greetings, "good morning" etc, with some of the employees of the yard or stables...".
- c. Mr Gilbert notes a large oak tree, "which dominated the view when approaching along the claimed footpath", which was cut down, but he doesn't say when this occurred.
- d. Mr Gilbert stopped walking the claimed footpath after his wife and daughter were challenged by an employee of Witcombe Farm in 2004. In response to the landowners' statement that neither she, nor her family or employees have ever seen Mr Gilbert using the claimed footpath, he says, "... there has been a considerable turnover in employees over the many years that I have walked the claimed path".

4) Evelyn Gilbert (witness 3)

Evelyn Gilbert submitted a statement in addition to her original evidence in response to the Landowner Comments.

- a. Mrs Gilbert notes that during the 1980s and 1990s she regularly used the claimed route and was always evident to workers at Witcombe Farm and family members.
- b. Mrs Gilbert notes one occasion when Mr Mark Hicks Beach leaned out of his car to ask her to be careful not to step on the daffodils that had been planted on the verge, when she was walking along the claimed footpath. He did not tell her however, not to use the path.
- c. Mrs Gilbert notes having conversations with Mr and Mrs Diett at their garden gate and actually walking through Witcombe Farm with them.

5) Moira Gilbert (witness 4)

Moira Gilbert submitted a statement in addition to her original evidence in response to the Landowner Comments.

- a. Mrs Gilbert states that over the course of her walks along the claimed footpath, she has seen and spoken to the bailiff at the fishermen office, who gave her two trout on one occasion. She notes also seeing Tony and Carol Diett and other people at the stables.
- b. Mrs Gilbert attached a photograph of her walking towards point A of the claimed path from point B, dated around 1985 (see...M(i)).

6) Anne Vickery (witness 5)

Anne Vickery submitted a statement in addition to her original evidence in response to the Landowner Comments.

- a. Mrs Vickery states that she used the claimed path for a short time when delivering the church magazine to Mr and Mrs Hicks Beach, however she says that she regularly walked the path when Mr and Mrs Paget occupied the farm and also when Mr and Mrs Hicks Beach moved to Witcombe Farm. She retired in 2000 and continued to use the path.

7) Scott McNeill (w. 6), Ann McNeill (w. 7) and Valerie Mason (w. 9)

Dr Gilbert comments that the landowner and her employees know none of these persons so it is difficult to see how they can claim not to have seen them. Mrs Mason submitted a statement in addition to her original evidence in response to the Landowner Comments.

- a. Mrs Mason says that the claimed footpath is the most direct route to the reservoirs and as such has been used for recreational purposes by local people for many years.

8) Michael Roberts (witness 8)

Michael Roberts submitted a statement in addition to his original evidence in response to the Landowner Comments.

- a. Mr Roberts notes that he has never met the landowner and therefore could not be named.

9) Iris German (witness 10)

Iris German submitted a statement in addition to her original evidence in response to the Landowner Comments.

- a. Mrs German refers to the landowners response to Mrs Germans Public Path Evidence Form and says, “If older people are allowed to use it [the claimed footpath] ... this should be indicated on the notice and we will come prepared with our proof of old age!”
- b. Mrs German notes that during the 15 years leading up to 2001, she often walked the claimed footpath with a walking group comprising of around 10 people.
- c. She adds that the claimed footpath is more convenient than the alternative footpath AWG 4 for those who cannot negotiate through the mud, have trouble climbing over stiles and are afraid of horse.

10) Mary Heggie (witness 11)

Mary Heggie submitted a statement in addition to her original evidence in response to the Landowner Comments.

- a. Mrs Heggie notes the erection of a sign in 2001 indicating that the footpath goes through the fields.

11) Carol Neal (witness 12)

Carol Neal submitted a statement in addition to her original evidence in response to the Landowner Comments.

- a. Mrs Neal notes that the “no access” notices were erected in 2001.
- b. She mentions the Right to Roam Act, and says that as a result, “this closure is surely illegal”.

12) Sheila Watts (witness 13)

Dr Gilbert says, in response to the landowners’ statement regarding Mrs Watts’ age and the length of the walk from Brockworth to the reservoirs, that she was not always 85 years old and is now in fact 86 and can still walk over 5 miles comfortably.

13) Mr and Mrs Peachey (witness 14)

Mrs Peachey submitted a statement in addition to her and her husbands’ original evidence in response to the Landowner Comments.

- a. Mrs Peachey says that now people are being confronted when using the claimed footpath, it is a shame that less abled people are unable to visit the reservoirs.

14) Gary John (witness 15)

Gary John submitted a statement in addition to his original evidence in response to the Landowner Comments.

- a. Mr John points out that as far as he is aware, he does not know the Hicks Beach family or any of their staff and therefore asks how they could know him or say he hasn’t used the claimed footpath
- b. Mr John adds that he was Gloucester County Champion at cross country and the claimed path was part of his training program of 100 miles a week.

15) Adam Hosler (witness 16)

Adam Hosler submitted a statement in addition to his original evidence in response to the Landowner Comments.

- a. Mr Hosler says that he has seen and been seen by different people whilst using the claimed footpath and never been told that it was not a public right of way.
- b. He confirms that the claimed footpath does form part of a circular walk, rather than following existing public footpaths.

16) Mary Organ (witness 17)

Dr Gilbert comments that Mrs Organ's husband was farm manager at Witcombe Estate and therefore she would've had permission to walk the claimed path. However, Mrs Organ's husband died in 1969 and after that she was not employed by the landowner. She stayed in her "tied cottage" for a further 10 years and then moved to Brockworth where she continued to walk the claimed path until approximately 1995.

17) Maureen Pither (witness 18)

Maureen Pither submitted a statement in addition to her original evidence in response to the Landowner Comments

- a. Mrs Pither states that her disability has got worse, but in the 50s, 60s and 70s she walked miles around the valley and on Cooper's Hill happily.

18) Anthony Pither (witness 19)

Anthony Pither submitted a statement in addition to his original evidence in response to the Landowner Comments.

- a. Mr Pither says that although he has operated a partnership with the landowner in recent years, in past times he used to walk through Witcombe Farm to the reservoir for leisure and bird-watching.

19) Mrs C Ruddleston (w. 20) and Mr S Ruddlestone (w. 42)

Mr Simon Ruddleston submitted a statement in addition to his original evidence in response to the Landowner Comments.

- a. Mr Ruddleston notes that he and his wife moved away from the area in 2003 and have not been walking in the area since then, contrary to the landowners' statement.
- b. Mr Ruddleston says that from 1997 to 2003 when walking the claimed footpath, he occasionally saw the Hicks Beach family pass in their vehicles. He adds, "It was at a particular point in time during 2002 to 2003 that the land owners spend weekends 'in wait' to strongly inform walkers to vacate their land".

20) Miss V Cooper (witness 21)

Dr Gilbert notes that the landowner claims in her evidence that neither the landowner nor any of her family, employees, neighbours or other user at the stable or yard have seen Miss Cooper using the claimed footpath. However, Mrs Carole Diett confirms in her opposing witness statement that she has seen Miss Cooper using the path, although "once only".

21) David Cooper Jnr (witness 22)

Dr Gilbert says that David Cooper Jnr had walked the claimed footpath for over 20 years without any problems until 2005 when he was turned back.

22) Mr David Cooper (witness 23)

Mr Cooper submitted a statement in addition to his original evidence in response to the Landowner Comments.

- a. Mr Cooper states the following Mr Pagets occupancy of the farm, he regularly saw Mr Mark Hicks Beach, often in his vehicle, and exchanged pleasantries with him. He says, “the only occasions he ever got annoyed was if anyone stood on the daffodils, which lined the entire route during the spring”.
- b. Mr Cooper notes regularly stopping and speaking to Mr Tony Diett who was often working on his garden. He also recalls at least two occasions when he met Mrs Hicks Beach close to the farm.
- c. Mr Cooper feels that there was no problem in using the claimed footpath until after the death of Mr Hicks Beach.

23) Mrs Lynne Cooper (witness 24)

Mrs Cooper has submitted a statement in addition to her original evidence in response to the Landowner Comments.

- a. Mrs Cooper notes one occasion when she was walking the claimed footpath with her dog, and Mrs Hicks Beach told her to keep her dog on a lead after an incident between Mrs Coopers dog and one of the 3 or 4 dogs owned by Mrs Hicks Beach.
- b. Mrs Cooper says she often spoke to Tony and Carol Diett on her return journey and recalls an occasion when their son, Alexander, needed help with finding information for a school project relating to marathon runner dietary needs.

24) Christopher Cooper (witness 25)

Dr Gilbert states that he spoke to Mr Cooper on the 25th October 2006, when he confirmed that he used the claimed footpath frequently, especially during his childhood.

25) Richard Cooper (witness 26)

Dr Gilbert notes that the landowner states in her comments that she believes Mr Cooper is mistaken as to the route he has used, however, Mr Cooper said on his Public Path Evidence Form that the route he had walked was from Hillview Cottages to Witcombe Reservoir for over 20 years. Dr Gilbert states that this could only have been through usage of the claimed path.

26) Miriam Beard (witness 27)

Dr Gilbert says that the landowners evidence, which states that Mrs Beard has never been seen using the claimed path, “other than on one occasion when the Landowner believes she attempted to walk the path but was turned back”, does not explain when or by whom Mrs Beard was turned back.

27) Duncan Hepburn (w. 28) and Ruth Hepburn (w. 29)

Duncan and Ruth Hepburn submitted a statement in addition to their original evidence in response to the Landowner Comments.

- a. Mr and Mrs Hepburn say that the late Mr Hicks Beach spoke to Mrs Hepburn only once at a meeting with a group of other people at his house, but never spoke privately to Mrs Hepburn again. Contrary to the landowners' statement, Mr Hicks Beach did not know Mr and Mrs Hepburn when they had children (1994 and 1997) as he had passed away.
- b. They state that the notices were erected on the claimed footpath in 2001.
- c. Mr and Mrs Hepburn recall one occasion when they moved out of the way for Freddie Hicks Beach' car on the claimed footpath.
- d. Mr and Mrs Hepburn submitted photographs taken in 1997 and 1998 of themselves with friends and children on the claimed footpath and at the reservoirs (see ...M(ii)).

28) Sybil Knight (witness 30)

Dr Gilbert notes that Mrs Knight has used the claimed path since 1935, whereas the landowner, Mrs Hicks Beach, has only lived at Witcombe Farm since 1981. He adds that whilst Mrs Knight did make some of her walks with the school, who had permission to use the claimed footpath, she continued walking the route for many years after leaving the school.

29) Penelope Canbilen (witness 31)

Penelope Canbilen is the applicants sister. She submitted a statement in addition to her original evidence in response to the Landowner Comments.

- a. Mrs Canbilen says that she has met, spoken to and been acknowledged using the claimed footpath, on foot and horseback, by Mrs Hicks Beach and Mr F. Hicks Beach, who, she points out, has only been old enough to take an active role in recent years. She notes that Mr Mark Hicks Beach saw her frequently and was always pleasant.
- b. Mrs Canbilen recalls the tenant farmers, Mr and Mrs Paget frequently being around when she rode and walked through the farm in earlier years, and never tried to prevent people passing through, even when another horse rider complained about one of their dogs which subsequently was put down.
- c. Mrs Canbilen says that she has regularly seen and spoken to Mr and Mrs Diett as she passed by, saying, "I have even walked over the route, either in front of them or behind them, keeping our distance because of our respective dogs". She also recalls a number of occasions when she has seen and been acknowledged by Mr Arnold Price.
- d. Mrs Canbilen states that the claimed footpath was always the accepted and most heavily used route by all of the horse riders wishing to access Witcombe Woods from below.

30) Louise Taylor (witness 32)

Louise Taylor is the applicant's sister. She submitted a statement in addition to her original evidence in response to the Landowner Comments.

- a. Mrs Taylor states that she has never personally met or spoken to Celia Hicks Beach or her late husband, and was never asked to stop using the claimed footpath.

31) Julian Comrie (witness 33)

Dr Gilbert says that, regarding the landowners comments that M Comrie had permission to use the claimed footpath as a member of the Gloucestershire Wildlife Trust, Mr Comrie began using the route in 1968, 3 years before he helped the Gloucestershire Wildlife Trust set up the nature reserve in 1971.

32) Rosemary Hellerman (witness 34)

Dr Gilbert states that Mrs Hellermans use of the claimed footpath dates back as long as 70 years and was not only as a visitee to see the then tenant farmer, as pointed out by the landowner, but also walking for leisure.

33) Mary Hostler (witness 35)

Dr Gilbert notes that Mrs Hostler has not stated on her Public Path Evidence Form that her use of the claimed footpath was with permission other than on one occasion in 1997.

34) Mrs Olivia Dell (now Laker Dell) (witness 36)

Mrs Laker Dell submitted a statement in addition to her original evidence in response to the Landowner Comments.

- a. Mrs Laker Dell says that when walking the claimed footpath early in the mornings, she often saw Mrs Hicks Beach walking her dogs at about 7:15am, and Mr Hicks Beach was often civil, saying “good morning” on a few occasions. She adds that Mr Hicks Beach would ask her if she had seen Mrs Hicks Beach’ dogs who had run off.

35) Angela Hendry (witness 37)

Dr Gilbert notes that Mrs Hendry has walked the claimed footpath since 1947 and was only challenged November 2004, some 70 years later.

36) John Miles (witness 38)

John Miles submitted a statement in addition to his original evidence in response to the Landowner Comments.

- a. Mr Miles notes a particular occasion on the 27th April 2003 (from his bird records) when he told Mrs Hicks Beach that he had seen a rare black Tern at the reservoir that day. He adds, “She asked me not to spread the news as she did not want the crowds to turn up to see it as had happened when there was a Osprey there”.

37) Mr Pope (w. 39) and Mrs Pope (w. 40)

Dr Gilbert says that the landowners statement that Mr and Mrs Pope “Both now live in Spain...” is untrue as they occasionally travel to France for up to 3 weeks but are still local residents of Little Witcombe. Dr Gilbert adds that Mr and Mrs Pope were given permission to use the claimed path by the late Diana Hicks Beach, sometime in the 1970s/1980s, but notes that they had already walked the claimed footpath for over 20 years prior to permission being granted.

38) Susan Willis (witness 41)

Dr Gilbert notes that Susan Willis was given permission to use the claimed footpath by the then tenant farmer, however, he has not lived on the farm for 23 years but Susan Willis has continued to use the path.

39) Pat Willis (witness 43)

Dr Gilbert is surprised that the landowner claimed not to have seen Mrs Willis using the path, as she has done so for 62 years.

40) Pat Curtis (witness 44)

Pat Curtis submitted a statement in addition to her original evidence in response to the Landowner Comments.

- a. Mrs Curtis states that she continued to use the claimed footpath (as a footpath) both prior to and after her daughters pony was stabled at Witcombe Farm in 1998/99.

41) Rev. John Thornton (witness 45)

Rev. Thornton submitted a statement in addition to his original evidence in response to the Landowner Comments.

- a. Rev. Thornton says that during the years 1962 to 1991 he constantly used all the footpaths on the estate and in the course of pastoral visits to the residents and does not remember meeting members of the Hicks Beach family.

42) John Pye (witness 46)

Dr Gilbert notes that the landowner has stated that Mr Pye has not been seen using the claimed footpath, probably without knowing who he is.

43) Bob Miles (witness 47)

Dr Gilbert says that Mr Miles is quite clear in his Public Path Evidence Form that he has used the claimed footpath as a circular walk for leisure from his then home in Little Witcombe, along the claimed route to the reservoirs, to the woods and along Birdlip.

44) Eunice Straley (witness 48)

Eunice Straley submitted a statement in addition to her original evidence in response to the Landowner Comments.

- a. Mrs Straley clarifies in her statement that she tutored Andrew Hicks Beach from April to July in 1980 at her home and was self-employed and was therefore at no time an employee of the Hicks Beach family. Mrs Straley pointed out that she had made a mistake on her Public Path Evidence Form, and in fact all her use of the claimed path dated from 1956 when she moved to Brockworth.
- b. Mrs Straley says that on her walks along the claimed footpath, she often met and conversed with Lucy Hicks Beach, Andrew Hicks Beach (who once invited her in for tea), Maureen and Tony Pither, the Pagets (who lived at the farm before the Hicks Beach family) and most, if not all, of the fishermen as well as Ron, the Bailiff. She adds that she often had conversations with Mrs Hicks Beach, especially in the 1990s when she

regularly took her children along the claimed footpath, for many years in a pushchair.

- c. Mrs Straley recalls various conversations with Mrs Hicks Beach, for example, she says, "When our elder son started school, I remember her [Mrs Hicks Beach] asking me where he was!" She recalls Mrs Hicks Beach inviting her in to see the house while she was walking the claimed footpath. She also recalls a number of conversations she had with Carol and Tony Diett of Berries Cottage during the 1980s, as she and her husband walked along the road to Witcombe Farm. Mrs Straley says that when her children arrived and her husbands work hours increased, she walked the claimed path almost daily with her children, during the day from Monday to Friday from around 1990 to 2005, and notes that the Dietts would have been at work at this time and not seen her walking.
- d. Mrs Straley says that she also walked along the claimed footpath many times to photograph the scenery, and those images have been included in her photography exhibitions.

45) Pete Bradshaw (witness 49)

Dr Gilbert notes that although Mr Bradshaw is a member of the Gloucestershire Wildlife Trust who had permission to use the claimed footpath, Mr Bradshaw says that in practice, he and his staff have encountered difficulties in trying to do so.

13.6 General points made by applicant

- 1) Regarding the gate at point A of the claimed footpath, Dr Gilbert notes that the opposing witness, Mr Arnold Price, states in his evidence, "Up until the 1970's there was a gate across the farm at point A. This was removed when the farm machinery used was too wide to access through the gate". Dr Gilbert comments that most of the witnesses would not have encountered the gate, which was absent by the 70s. Furthermore, when present, the gate may have been kept open and not noticeable to those using the claimed footpath.
- 2) Regarding the landowner's comment that user evidence from people living in Brockworth must be viewed "with caution", Dr Gilbert points out that Brockworth is only approximately 1 mile from Great Witcombe and people walk for enjoyment, not just to reach a destination.
- 3) Regarding the notices at point A and B of the claimed footpath, Dr Gilbert states that the 'WITCOMBE ESTATE, PRIVATE LAND, NO PUBLIC RIGHT OF WAY' notices have only been in existence since 2002. The 'PRIVATE ROAD. NO UNAUTHORISED VEHICLES' notice is placed at point A where there is another road running to the reservoir pumping station, and it is not clear to which road the sign refers. He adds, "Finally, the fact that it says, "Private Road" and specifically refers to "Vehicles" would not preclude there being a right of way to walk there".
- 4) Dr Gilbert responds to the landowner's comments that several of the witnesses who have submitted Public Path Evidence Forms are close family members of the applicant and therefore their evidence is not

independent, Dr Gilbert states that he has never met twenty-four of the witnesses and barely know a further ten witnesses when the evidence was collected. He notes, "What is more, none of the witnesses are employed by me nor rent houses or land off me".

5) Dr Gilbert explains that with regards to use of the claimed path, there was a "definite change of policy by The Landowner" in 2002, when members of the public were no longer allowed to use the claimed path. He surmises that this may be the result of the implementation of the 'Right to Roam' under the Countryside and Rights of Way Act 2000. He states, "...the Landowner has only lived at Witcombe Farm since 1981 and so can have little idea of what happened during the time before this".

13.7 Dr Gilbert was contacted by telephone on Tuesday 27th February 2007 regarding his membership to the Gloucestershire Wildlife Trust, who had a private right of access along the claimed footpath. Dr Gilbert confirmed that he had become a member approximately 3 years ago (2003-2004), at which time the restriction notices had not been erected on the claimed footpath.

14. LEGAL COMMENTS AND CONCLUSIONS

14.1 Section 53 (3) (c) (i) of the Wildlife and Countryside Act, 1981 relates to the discovery by the Authority of evidence that shows that a right of way that is not shown on the map and statement subsists, or is reasonably alleged to subsist, over land in the area to which the map relates.

14.2 Section 31 (1) of the Highways Act 1980 states that where a way over any land, other than a way of such character that use of it by the public could not give rise at Common Law to any presumption of dedication, has actually been enjoyed by the public as of right and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence there was no intention to during that period dedicate it. The period of 20 years in sub-section (1) is to be calculated retrospectively from the date when right of the public to use the way is brought into question. Through an overt act by the landowner which makes it clear to the public that their right is being challenged. The twenty years usage must furthermore be "without interruption" and the requirements of Section 31 will not be met if "there is sufficient evidence that there was no intention during that period to dedicate it".

14.3 Section 31 (9) of the Highways Act 1980 says that nothing in this Section operates to prevent the dedication of a way as a highway being presumed on proof of user for any less period than 20 years. Paragraph 12 of Annex B of the Department of Environment Circular 2/93 states that before making an order the surveying authority must be satisfied that the evidence shows on the balance of probability that a right of way of a particular description exists.

- 14.4 We now need to consider whether there has been a full 20 years use by the public and, in order to do this, we have to firstly ascertain whether there has been an overt act on the part of the landowner to bring it home to users that their right is being challenged. The 20 years use, for the purposes of Section 31, is to be dated retrospectively from this date of challenge.
- 14.5 There is no fixed method by which the public's right is brought into question, though one (the erection of a notice) is expressly referred to in Section 31. The words "or otherwise" in Section 31(2) leave the matter at large. Lord Denning in *Fairey v Southampton CC* (1956) said "*In order for the right of the public to have been brought into question, the landowner must challenge it by some means sufficient to bring it home to the public that he is challenging their right to use the way, so that they may be apprised of the challenge and have a reasonable opportunity of meeting it*".
- 14.6 The methods by which the public's right to use the way might be brought into question could include: the locking of a gate; putting up a notice denying the existence of a right of way; seeking a declaration that there is no highway over the land in question or physically preventing a walker from proceeding along a path. Whatever means are employed, it should be sufficient "*to make it likely that some of the users are made aware that the owner has challenged their right to use the way as a highway... The persons to whom the challenge has to be brought home are the users of the way.*" (Lord Dyson in *R v Secretary of State for the Environment, Transport and the Regions ex parte Dorset CC* (1999))
- 14.7 It is not necessary for it to be the landowner who brings into question the right of the public to use the way. The date of calling into question is simply the date when, as the result of some action, the public's entitlement to use the way was put in issue. There are no words in Section 31(2) of the 1980 Highways Act confining this action to be by or on behalf of the landowner. It simply sets the date from "...when the right of the public to use the way is brought into question." This view is confirmed by *Applegarth v Secretary of State for the Environment, Transport and the Regions* (2001) in which it was stated that anybody with an interest could bring into question the right of people to use the path and this needn't necessarily be the landowner. The burden lies on whoever needs to rebut the presumption to show that the owner of the path had not intended to dedicate the path as a public highway. Whilst in practical terms, the bringing into question will be by or on behalf of the landowner, it does not have to be so.
- 14.8 The sign at point A of the claimed footpath, stating: 'PRIVATE ROAD. NO UNAUTHORISED VEHICLES', was erected over 25 years ago. A number of opposing witnesses have commented on this sign as proof that the claimed footpath was not a public right of way. For example, Mr Anthony Diett comments, "During all the 27 years of my residence at Berries Cottage there have always been signs erected at point A. These signs indicated that the route was private..." The statement by Mr Arnold Price supports this, as he says, "The sign currently erected indicating that the route is a private road has been in place for approximately 25 to 30 years and was erected by

the Witcombe Estate...” However, Section 31 of the Highways Act 1980 states that for a notice to be effective, its wording must clearly deny a public right of way. The words ‘Private road’ are of doubtful adequacy because of their ambiguity: the words could be interpreted as showing an intention to deny the existence of a carriageway, but not that of a right of way on foot. As the applicant correctly points out, “the fact that it says, “Private Road” and specifically refers to “Vehicles” would not preclude there being a right of way to walk there”. Furthermore, eleven of the forty-nine witnesses have commented in their Public Path Evidence Forms that they believe this notice to indicate the route leading to the pumping station rather than the claimed footpath, or that they are unsure which of the two routes the notice refers to.

- 14.9 The notices at points A and B of the claimed footpath, stating, “WITCOMBE ESTATE, PRIVATE LAND, NO PUBLIC RIGHT OF WAY”, clearly denies it is a public right of way. However, there is some uncertainty as to when these signs were erected. Two of the witnesses in support of the application believe the notices were erected in 2001, whereas ten believe this occurred in 2002. Two witnesses say that they were erected between 2001 and 2002 and one says it was between 2002 and 2003. A further three witnesses believe that the notices were erected in 2003 or later. Of the witnesses in opposition to the application, one witness believes that the notices were erected in 2001 and two witnesses say it was 2001 to 2002. A further three believe this occurred in 2002. The landowner is unsure as to exactly when the notices were erected but believes that it was approximately 8 years ago (1999).
- 14.10 The twenty years’ use must be “without interruption” and this must be proved by the claimant. “An interruption” has been defined as “an actual and physical stopping of the public’s enjoyment” (*Mersham Manor Ltd v Couldson Urban DC [1937]*) as opposed to an act which merely challenges the public’s right. It is not a mere absence in the continuity of use. Moreover, such interruption must be with the intention to prevent public use. It is not sufficient if the interruption is for some other purpose. A number of witnesses in this case have been challenged whilst using the claimed footpath.
- a) Witness 1, Dr Gilbert was challenged in 2005 when he received a telephone call from Freddie Hicks Beach asking him not to use the claimed footpath. This occurred after the restriction notices were erected.
 - b) Witness 3, Evelyn Gilbert was asked by an employee of Witcombe Farm, while using the claimed footpath for her name on the request of the landowner. This occurred in 2004, which is after the restriction notices were erected.
 - c) Witness 8, Michael Roberts was turned back while using the claimed footpath in June 2005. This occurred after the restriction notices were erected.
 - d) Witness 11, Mary Heggie was told in 2001 that the footpath was over the stile and through the field. It seems that this occurred after the restriction notices were erected as she comments in her statement that she had always used the claimed footpath before 2001 when the notices appeared.

- e) Witness 13, Mrs Sheila Watts was told to use the public footpath over the stile and through the field. Whether this occurred before or after the restriction signs were erected is unknown.
- f) Witness 14, Mr and Mrs Peachey were stopped while using the claimed footpath in the spring of 2005 by the landowner and “read the riot act to”. This occurred after the restriction notices were erected.
- g) Witness 19, Anthony Pither was told by Mrs Hicks Beach when walking the claimed footpath in approximately 2002 that it is not a public right of way. This occurred after the restriction notices were put up.
- h) Witness 21, Miss Cooper was asked to move from the reservoirs by somebody on behalf of Mrs Hicks Beach. During a telephone call on the 2nd March 2007, Miss Cooper said that she was unsure of the exact date that this occurred but thought it was 4 to 5 years ago (2002 –2003). This would have been after the restriction notices were erected.
- i) Witness 22, David Cooper Jnr. was challenged when using the claimed footpath by Freddie Hicks Beach in 2005. This occurred after the restriction notices were erected.
- j) Witness 24, Mrs Lynne Cooper was told by Freddie Hicks Beach when using the claimed footpath in 2002 that it was private land. This occurred after the restriction notices were put up.
- k) Witness 27, Mrs Miriam Beard was turned back while using the claimed footpath in summer 2004 by somebody on behalf of the landowner. This occurred after the restriction notices were erected.
- l) Witness 31, Penelope Canbilen was challenged while using the claimed footpath by somebody on behalf of the landowner after the restriction signs went up.
- m) Witness 35, Mary Hosler was challenged in 1997 when driving along the claimed footpath to the reservoir. She turned back and parked the car at Hillview Cottages. She says, “I was told it was not a right of way, but I was given permission to paint on that day”. This occurred prior to the restriction notices being erected.
- n) Witness 36, Olivia Dell was “recently” told by Mrs Hicks Beach not to use the claimed footpath. During a conversation With Olivia Dell on the 2nd March 2007, she confirmed that this occurred after the restriction notices had been erected.
- o) Witness 37, Mrs Angela Hendry was told by a man in the trout fishing office that the claimed footpath was not a right of way in November 2004. This was after the restriction notices were erected.
- p) Witness 38, John Miles has been told since approximately 2002 that he is not allowed to walk along the claimed footpath. He believes this is by the landowner. This occurred after the restriction notices were erected. He adds that since this time he has been stopped while using the path several times.
- q) Witness 49, Pete Bradshaw on behalf of the Gloucestershire Wildlife Trust said that some members have been refused access along the claimed path, even though the Trust has a permissive right of access. He does not say when this occurred.

14.11 Witnesses 13 and 49, Sheila Watts and Pete Bradshaw were challenged when using the claimed footpath but it is not known if this was before or

after the restriction notices were erected. Only witness 35, Mary Hosler, was definitely challenged before the restriction notices were erected, however, her use of the path at that time was by car and not as a footpath. Although Mrs Hosler was told that the path was not a right of way, this one occasion is not representative of a challenge to the public at large. It appears that all the other challenges to users occurred after the restriction notices were put up. The erection of these notices at points A and B of the claimed footpath seems to be the first time that it was brought home to users that their right to use the path was being challenged. Therefore, the date of challenge will be the date that the restriction notices were erected.

- 14.12 The majority of witnesses, both in support of the application and opposed to the application who have stated in their evidence the date that the restriction notices were erected, agree that this was between 2001 and 2002. Although the landowner estimates that the notices were erected approximately 8 years ago, this estimate is uncertain. In this case, the evidence strongly suggests that the notices were erected between 2001 and 2002, so to be cautious the date of challenge will be taken as 2001.
- 14.13 For long usage to give rise to a presumption of dedication, user must be without force, secrecy or permission.
- a. The applicant and Witness 1, Dr Gilbert is a member of the Gloucestershire Wildlife Trust, who, the landowner states, has permission to use the claimed footpath with or without vehicles. Dr Gilbert became a member of the Gloucestershire Wildlife Trust in approximately 2003/2004, which is after the date of challenge. Therefore his use of the path would have been as of right and not with permission. The landowner also states, "...neither the Landowner nor any of her employees, neighbours or other users of the yard and stables have ever seen him using the path nor given him permission to use the claimed path". This is with the exception of the one occasion when permission was granted in 2005, after the date of challenge.
 - b. Witness 5, Anne Vickery used the claimed footpath with permission when delivering the Church magazine. However, she claims to have only done this for a short time and the majority of her use has been recreational. We cannot discount all her use of the claimed path on the basis that a small part of it has been with permission. Therefore Anne Vickery's use would have been as of right.
 - c. Witness 8, Michael Roberts was given permission on one occasion in June 2005 to use the claimed footpath but this was after the date of challenge and therefore his use of the path would have been as of right.
 - d. Witness 14, Mr and Mrs Peachey were stopped whilst walking the claimed footpath in Spring 2005 but eventually given permission to continue on that occasion. This was after the date of challenge, so their use would have been as of right and not with permission.
 - e. Witness 17, Mary Organ's husband was farm manager until approximately 1969 so until this time her use of the claimed footpath was with permission. She continued to use the path until 2001, giving her 32 years use of the claimed path.
 - f. Witness 18, Maureen Pither says that she had permission to use the claimed footpath during the annual Church Rogation Service. The

- landowner states that she was given permission to drive along the claimed footpath and adds, "During a recent telephone conversation she confirmed that if she ever wished to use the path, she would ask permission". However, Mrs Pither states that she did not ask for permission to walk or drive along the claimed footpath. Therefore it is unknown whether her use was permissive or as of right.
- g. Witness 19, Anthony Pither has used the claimed path with permission as he owns the neighbouring farm and has operated in partnership with Witcombe Farm. However, some of his use has been recreational, although we do not know to what extent.
 - h. Witness 24, Lynne Cooper denies being given permission to use the claimed footpath, although the landowner states that her late husband granted Mrs Cooper permission, which was later rescinded. In this case it is unknown whether use was permissive or as of right.
 - i. Witness 29, Ruth Hepburn denies that she was given permission by the late Mr Hicks Beach to use the claimed footpath with her children as her first child was born in 1994 and her second in 1997, at which time Mr Hicks Beach at passed away. Her use has therefore been taken as being as of right and not permissive.
 - j. Witness 30, Sybil Knight mentioned in her Public Path Evidence Form that she used the claimed footpath with her school, which was given express permission to use the path when undertaking nature walks. During a telephone conversation on the 2nd March 2007, Sybil Knight confirmed that she attended Witcombe School between 1931 and 1939. Although some of her use of the path during this time may have been recreational, her use has been calculated from when she left Witcombe School in 1939, giving 66 years use.
 - k. Witness 33, Julian Comrie used the claimed footpath from 1968 to 1975. He has been a member of the Gloucestershire Wildlife Trust for many years. Witcombe Reservoirs have been held as a Nature Reserve by the Trust since 1971 and therefore any use after this time was with permission. This means the witness has use the path for 3 years as of right from 1968 to 1971.
 - l. Witness 34, Rosemary Hellerman states she has used the claimed footpath for leisure and to "enjoy the fresh air" as well as for visiting friends. Therefore her use would have been as of right.
 - m. Witness 35, Mrs Hosler says she was given permission to use the claimed footpath on one occasion around 1997. However, the landowner states that the late Mr Hicks Beach granted permission to Mrs Hosler to drive or walk the path to paint at the reservoirs. Therefore it is unknown whether use was permissive or as of right.
 - n. Witness 37, Angela Hendy was seen using the claimed footpath once in 2005 by the landowner who questions whether this was with permission. However, this was after the date of challenge, so would not affect Angela Hendy's use as of right before this time.
 - o. Witnesses 39 and 40, Mr and Mrs Pope were given permission to use the claimed footpath by the late Diana Hicks Beach. The current landowner states that any use of the path since this time has also been with permission. As we do not know when this permission was granted, use of

the claimed footpath by Mr and Mrs Pope will be taken as permissive and not as of right.

- p. Witness 41, Susan Willis was given permission to use the claimed footpath by the previous tenant farmer, who moved away from Witcombe Farm approximately 25 years ago. The current landowner states that she and her late husband have given Susan Willis permission to use the path on foot and sometimes horseback. Therefore use of the claimed footpath by Susan Willis will be taken as permissive and not as of right.
 - q. Witness 44, Mrs Curtis was given permission to use the claimed footpath as a bridleway in 1999 to 2000, however, her use of the claimed path as a footpath was as of right and not permissive.
 - r. Witness 45, Rev. John Thornton was given permission to use the claimed footpath when leading the procession for the annual Rogation Service. Although some of his use of the path during this time was also for recreation, it is difficult to distinguish between permissive use and use as of right. Rev. Thornton used the claimed path as of right when he retired from 1991 to 2003, giving him 12 years use of the path without permission (although it appears likely that his use as of right was longer than this).
 - s. Witness 48, Eunice Straley tutored Andrew Hicks Beach. The landowner feels that her use of the claimed footpath has therefore been with permission, however, Eunice Straley states that she only tutored Andrew Hicks Beach for a few months from April to July, 1980, and this took place at her home. She denies being employed by the Hicks Beach family. Therefore her use of the path has been as of right.
 - t. Witness 49, Pete Bradshaw was given permission to use the claimed footpath as a member of the Gloucestershire Wildlife Trust. His use would not have been as of right.
- 14.14 The fact that some people used the way with permission will not necessarily prevent use by the public in general from being without permission (*Beresford Trustees v Secretary of State for the Environment and Cumbria CC, 1995*). We can thus consider the evidence of the remaining witnesses in establishing whether rights have come into being over the claimed route.
- 14.15 Two of the 49 witnesses in support of the application have mentioned that they stopped using the claimed footpath during the Foot and Mouth Disease outbreak in 2001. Witness 1, Dr Gilbert says, "In 2001 there was the foot and mouth disease epidemic and a temporary sign went up to ask that people avoid walking past the farm, which I respected". Witness 48, Eunice Straley notes, "... but we did not use the path during the 2001 Foot and Mouth epidemic". The Planning Inspectorate and DEFRA are of the opinion that the temporary cessation of use of ways solely because of the implementation of measures under the Foot and Mouth Disease Order 1983 could not be classified as an "interruption" under Section 31(1) of the Highways Act 1980.
- 14.16 We can now calculate the length of use of the claimed footpath by those who have used the path as of right before the date of challenge in 2001. Use dates back to the 1930s by witness 34, Rosemary Hellerman. Depending on when in the 1930s she began using the claimed footpath, she

has been using it for between 71 and 62 years. Witnesses 30, Sybil Knight, and 43, Pat Willis, have both used the claimed path for 62 years since the 1930s. Two witnesses have been using the claimed path since the 1940s (witnesses 37 and 38), three witnesses have been using the claimed path since the 1950s (witnesses 44, 47 and 48), five witnesses have been using the claimed path since the 1960s (witnesses 5, 17, 23, 33 and 46). A further twelve witnesses have been using the claimed path since the 1970s (witnesses 1, 2, 3, 8, 12, 13, 14, 15, 16, 25, 31 and 32) and another twelve since the 1980s (witnesses 4, 6, 7, 9, 10, 11, 20, 21, 22, 26, 36 and 42). Four witnesses have used the claimed path since the 1990s (witnesses 27, 28, 29 and 45). Twenty-five of the forty-four witnesses who have used the claimed footpath as of right have over 20 years use individually. The above has not included the evidence of the witnesses who claim to have used the path as of right, but who the landowner claims giving permission to. These are witness 18, Maureen Pither (use in the 1950s, 60s and 70s), witness 19, Anthony Pither (use from 1960), witness 24, Lynne Cooper (26 years use since 1975) and witness 35, Mary Hosler (26 years use since 1971).

- 14.17 The landowner has stated in her evidence that several of the supporting witnesses are close family members and their evidence is not entirely independent of the claimant. However it is not a requirement of Section 31(1) of the Highways Act 1980 that all witnesses have to demonstrate individual use over twenty years, merely that use in excess of twenty years can be demonstrated. In this case, the applicant has identified those witnesses who are close friends or members of the family, saying, "It is true that my wife, Mrs. Moira Gilbert, my two sisters, Penelope Canbilan and Louise Taylor and my parents, Mr. James and Mrs Evelyn Gilbert are close to me. I can also name two close friends in Mr. Gary John and Mr. Adam Hostler". All of those who have submitted evidence, irrespective of whether they were immediate members of the applicant's family, should be regarded as members of the public in this respect.
- 14.18 The landowner states in her evidence that the claimed footpath was gated at point A, something that she notes has not been mentioned by a number of the witnesses who claim to have used the path during the 1970s. Mr Arnold Price in his opposing evidence confirms that "Up until the 1970s there was always a gate across the farm entrance at point A. This was removed when the farm machinery used was too wide to access through the gate". Six supporting witnesses have noticed a gate on the claimed footpath, (witnesses 15, 17, 41, 43, 44 and 45). Each of these witnesses began using the claimed path before 1971. A further sixteen witnesses also began using the path before 1971, but have not noticed any gates. However, there is no evidence as to whether the gate was locked or even closed. As the applicant points out in his evidence, the gate may have been open all the time and thus not noticeable. If the gate was closed, it is the purpose for which it was closed that is relevant. For example, if the gate were closed for stock control this would not prevent a public right of way from coming into being.

- 14.19 The landowner also states that there have been a number of signs erected at point A over the years and would expect a more precise recollection of these signs from people claiming to have used the path so regularly. Thirty-two of the forty-nine supporting witnesses have noted on their Public Path Evidence Forms the 'WITCOMBE ESTATE, PRIVATE LAND, NO PUBLIC RIGHT OF WAY' notices on the claimed footpath. Sixteen of the witnesses noted the 'PRIVATE ROAD, NO UNAUTHORISED VEHICLES' notice. Ten of the witnesses have not seen any notices on the claimed path, three of which had stopped using the claimed path by the time the restriction notices were erected (witness 15 who used the path until 1995, witness 33 who used the path until 1975 and witness 47 who used the path until 1997). The applicant says that the signs stating 'WITCOMBE ESTATE, PRIVATE LAND, NO PUBLIC RIGHT OF WAY' have only been in place since about 2002. The older sign stating 'PRIVATE ROAD, NO UNAUTHORISED VEHICLES' may have been obscured by the overgrown hedges he notes that these have been cut back since the Modification Order application was made. He adds that it is not clear which path this sign refers to.
- 14.20 In her evidence, the landowner comments that a number of the witnesses in support of the application would not have any cause to use the path from point A to B, as it does not serve them as the most direct route, or there are more convenient routes such as existing public footpath AWG 4. The applicant states in his evidence, "She [the landowner] only writes about walking between one place and another in a functional sense and has not grasped the notion that people walk for pleasure and that the reservoirs are a local beauty spot and nature reserve and a natural route to access the beech woods on The Cotswold Escarpment". The Public Path Evidence Forms support this, as the majority of witnesses state that they have used the claimed path for leisure, recreation, pleasure and exercise. Other popular purposes of use are for dog walking, bird watching and visiting the reservoirs and Roman Villa.
- 14.21 The landowner has stated in her evidence that with regards to twenty-seven of the witnesses who submitted Public Path Evidence Forms, "Neither the Landowner nor any of her employees, neighbours or other users of the yard and stables have ever seen this man/lady using the path" or a statement of similar wording. The witnesses that this statement has been applied to are witnesses 1 (other than on one occasion), 2, 5 (other than when delivering the Church magazine), 6, 7, 9, 11, 12, 13, 15, 16, 20, 21, 22 (other than on one occasion), 23, 25, 26, 27 (other than on one occasion), 28, 30, 31, 37 (other than on one occasion), 38, 42, 43, 46 and 47.
- 14.22 The landowner has provided statements and evidence forms from nineteen people in opposition to the claimed footpath. These have been completed by members of the Hicks Beach family, employees and past employees of Witcombe Farm, people living in neighbouring properties to Witcombe Farm, members and past members of the Gloucestershire Wildlife Trust, one past employee of Severn Trent Water and others.

- 14.23 Terri Lawlor has the longest knowledge of the claimed footpath as he worked at Witcombe Farm at the age of 14, approximately 1947. He worked at the farm again from 1975. Arnold Price has known the claimed path since the 1950s and Francis Baxendale and Trevor Buxton since the 1950s. Anthony Diett, Kevin Higginbotham, John Metcalfe, Mrs Pamela Cowley and Carole Diett have known the claimed path since the 1970s, and Michael Teesdale, Mr K Knight, Lucy Wakefield, Mr Roger Walker, Fred Hicks Beach and Andrew Hicks Beach have known the path since the 1980s.
- 14.24 Ten of the nineteen opposing witnesses state that they have never seen any of the witnesses who submitted Public Path Evidence Forms in support of the application using the claimed footpath. A further seven opposing witnesses note seeing people using the path very occasionally. Mr Knight says that he has seen groups walking the claimed path on many occasions, but doesn't say if these groups had permission. Rex Cross states that he has occasionally seen some of the witnesses who submitted Public Path Evidence Forms using the claimed path before the restriction notices were erected.
- 14.25 Seven of the nineteen opposing witnesses have stopped or turned members of the public back from using the claimed footpath, however only two state when they did this. Kevin Higginbotham says that he has turned people back over the past 7 years and Mrs Davies says that she regularly turned people back between 1990 and 1995. A further three opposing witnesses state that they have advised members of the public that the claimed footpath is not a public right of way, although they have not indicated when.
- 14.26 The Committee's attention is drawn to the Bagshaw / Norton Case of 1994. There are two tests in Section 53 (3) (c) (i) of the Wildlife and Countryside Act 1981: that a right of way "subsists" (which the judge referred to as Test A) or is "reasonably alleged to subsist" (Test B). Where there is no conflicting evidence (for example, the owner has not provided evidence that the witnesses were stopped, or challenged by notices etc.) the test of whether a right of way "subsists" is that of the balance of the probability. For Test B, it is necessary to show that "a reasonable person having considered all of the relevant evidence available could reasonably allege a right of way to subsist". That decision was reaffirmed in the later Court of Appeal case in 1997 – R v. Secretary of State for Wales *ex parte* Emery. If there is "conflicting evidence which could only be tested or evaluated by cross-examination an order would seem to be appropriate". If an applicant can produce credible evidence of public enjoyment of a path for 20 years, then even though there may be conflicting evidence, it is reasonable to say that a right of way is deemed to exist".
- 14.27 In this case there is conflicting evidence. The applicant has provided well over 20 years evidence of use of the claimed footpath from at least 42 witnesses (and possibly 46 witnesses) who have used the path as of right, prior to the date of challenge in 2001 and use has been regular. Use of the claimed path dates back to the 1930s, and approximately 25 of the

witnesses began using the path before the 1980s when the current landowner took up residence at Witcombe Farm. However, the evidence of the applicant and supporting witnesses is strongly disputed by the landowner, who states that she has never seen approximately twenty-seven of the supporting witnesses walking the claimed footpath (excluding a couple of noted occasions) and the majority of the remaining supporting witnesses she claims to have seen only on rare occasions when they were turned back. This is supported by the nineteen witnesses who are in opposition to the Modification Order application; approximately thirteen of these opposing witnesses have known the claimed footpath and claim to have knowledge about the use of the path before the landowner moved into Witcombe Farm in 1981/82.

- 14.28 Under Section 32 of the Highways Act 1980, when determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give weight thereto as the court or tribunal considers justified in the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced.
- 14.29 The Bryant Map of Gloucestershire appears to show the claimed footpath, although it is shown running to the east of Witcombe Farm, rather than to the west as it does today (the standards of accuracy of some of Bryant's maps differ from county to county). Bryant regarded this route as a "lane or bridleway". This shows that the claimed footpath existed as a physical feature since as early as 1824.
- 14.30 Ordnance Survey maps carry a disclaimer that the representation of a road, track or path is not evidence of the existence of a right of way over it. However, they do provide evidence of the physical existence and extent of a way, suggesting (but not proving) that the path had been in use for a longer period than that for which user evidence is available. The 1st edition Ordnance Survey maps show that the claimed footpath was in existence since 1884 and followed the same alignment as it does today. It is shown in the same manner on the 3rd edition Ordnance Survey maps dated 1922. There is no indication of status, however the boundary features at points A and B on both maps do not necessarily mean that the route was private.
- 14.31 The sales particulars for Witcombe Estate dated 1929 describe the claimed footpath as a "roadway". It is evident from the sales particulars that this route was not a public right of way, but was a private access for the Corporation of Gloucester and the owner of Witcombe Wood for the removal of timber over the roadway.
- 14.32 There is no documentary evidence to support this application, however there is strong user evidence dating back to the 1930s. Although there is conflicting evidence between the applicant and supporting witnesses and

the landowner and opposing witnesses, the applicant has produced credible evidence of public enjoyment of the path through Witcombe Farm for over 20 years, therefore it is reasonable to say that under Section 53 (3) (c) (i) of the Wildlife and Countryside Act 1981 that a right of way is reasonably alleged to subsist. Therefore it is recommended that a public footpath be added to the Definitive Map of Public Rights of Way through Witcombe Farm from Witcombe Farm Lane to public footpath AGW 4.

14. Appendices

- A. Location Map 1:10,000
- B. Large scale map of claimed footpath 1:2,500
- C. Summary of Public Path Evidence Forms submitted in 2005
- D. Summary of opposing evidence forms and witness statements submitted in 2006
- E. Bryant, Map of Gloucestershire, 1824
- F. (i) Ordnance Survey 25": 1 mile, 1884 edition, sheet no: 34/6
(ii) Ordnance Survey 25": 1 mile, 1884 edition, sheet no: 34/10
- G. (i) Ordnance Survey 25": 1 mile, 1925 edition, sheet no: 34/6
(ii) Ordnance Survey 25": 1 mile, 1925 edition, sheet no: 34/6
- H. (i) Sales particulars of Witcombe Estate, 1929 (map)
(ii) Sales particulars of Witcombe Estate, 1929 (text)
- I. Original Definitive Map, on 1:10,560 OS map base SO 91 NW (1954) & SO 91 SW (1955).
- J. Letter of consultation from Great Witcombe Parish Council to residents dated 2nd November 2005
- K. Comments received by Great Witcombe Parish Council from residents in response to consultation.
- L. 'The Wildflowers of Witcombe Reservoirs Nature Reserve', page from pamphlet published by Gloucestershire Wildlife Trust.
- M. (i) Photograph submitted by Moira Gilbert dated circa 1985.
(ii) Photographs submitted by Mr and Mrs Hepburn dated 1997 and 1998.