

Modification Order Application for an Additional Footpath through Witcombe Farm Parish of Great Witcombe

Summary of Landowner Evidence

Charles Russell Solicitors submitted a number of comments, statements and witness evidence forms in response to the application on behalf of the landowner, Mrs Hicks Beach of Witcombe Farm. These are summarised below:

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

- **Dr Gilbert**
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.
- **James Gilbert**
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.
- **Evelyn Gilbert**
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.
- **Moira Gilbert**
The landowner says she has seen Moira Gilbert walking daily from her house at Wychbury to the reservoirs along footpath AWG/14.
- **Anne Vickery**
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 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.
- **Scott McNeill, Ann McNeill, Valerie Mason**
The landowner says none of these people have been seen using the claimed path by the landowner, her employees or neighbours etc.

- **Michael Roberts**
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.
- **Iris German**
The landowner says she has never seen this lady use the claimed path.
- **Mary Heggie**
The landowner says neither she or her family and employees have seen this lady use the claimed path.
- **Carole Neal**
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.
- **Sheila Watts**
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.
- **Mr and Mrs Peachy**
The landowner says Mr and Mrs Peachy attempted to use the claimed path once and were stopped by her son Freddie.
- **Gary John**
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.
- **Adam Hostler**
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.
- **Mary Organ**
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.
- **Maureen Pither**
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 adds that Maureen Pither has not walked the path as she is disabled.
- **Anthony Pither**
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.
- **Mr and Mrs Ruddleston**
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.
- **Miss V Cooper**
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.

- **David Cooper Jnr.**
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.
- **David Cooper**
The landowner says Mr Cooper is well known to her, but neither she nor her employees have ever seen him walking the claimed route.
- **Lynne Cooper**
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.
- **Christopher Cooper**
The landowner says she has not seen Christopher Cooper since he was a baby.
- **Richard Cooper**
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.
- **Miriam Beard**
The landowner believes Mrs Beard tried to use the claimed path on one occasion but was turned back.
- **Ruth Hepburn**
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.
- **Duncan Hepburn**
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.
- **Sybil Knight**
The landowner says she has never seen Sybil Knight using the path and adds the school was given specific permission to undertake nature walks.
- **Penelope Canbilen**
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.
- **Louise Taylor**
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.
- **Julian Comrie**
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.
- **Rosemary Hellerman**
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.

- **Mary Hostler**
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.
- **Olivia Dell**
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.
- **Angela Hendy**
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.
- **John Miles**
Neither the landowner, her family, neighbours or employees have seen John Miles use the claimed path.
- **Edward Pope and Beryl Pope**
The landowner says Mr and Mrs Pope were given permission to use the claimed path by the landowner's late mother in law.
- **Susan Willis**
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.
- **Pat Willis**
The landowner says Pat Willis is known to her but she has never been seen using the claimed path.
- **Pat Curtis**
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.
- **Rev. John Thornton**
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.
- **John Pye**
The landowner says John Pye has not been seen using the claimed path.
- **Bob Miles**
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.
- **Eunice Straley**
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.
- **Pete Bradshaw**
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.

The landowner makes the following points in response to the evidence forms:

- Almost none of the evidence forms mention that access was gated during the 1970s.

- 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.
- The user evidence is contradictory and confused with regards to the existence of signs at point A over the years.
- Several of the witnesses are family members of the claimant and “therefore their evidence is not entirely independent of the claimant”.

Landowners’ comments on the summary of documentary evidence

- **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.
- **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.
- **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.
- **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.
- **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.
- **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.

Witness statements

- **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.

- **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 Hick-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 and 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".
- **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 help on the farm. Mr Price' 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 and this 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.
- **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.
- **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 baliff 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 Higginbothan 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 Higginbothan 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.

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.

Fourteen Evidence Forms were submitted in opposition to the Modification Order application. These are summarised below:

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 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 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 knew there was not a footpath to the reservoir through farm".

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 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 that went unchallenged when trying to use the path were those who worked for Severn Trent, fishermen or persons that have been given permission.

11. 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".

12. 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.

13. 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.

