

APPENDIX 1

County Record Office reference: H/CZ4/4d/8

Item 5a

Rights of Way Sub-Committee: 23 November 1989
Parish: Whitehill
Location: From Hogmoor Road to Gorsedown Close
Owner: Mr W Gawor
Claimed by: Mr D Taylor
Claimed for: BOAT
Claim forms 8: Interviewed 5 claimants plus 3 others
Period of use: From 1932
Recommendation: Refuse to add to definitive map

1. The claim submitted by Mr D Taylor is for a Byway Open to All Traffic (BOAT) to be added to the definitive map but only one of the claimants had used the claimed path with a vehicle. This was for a short period and was in the exercise of a private right. He was, in fact, visiting the owner of a property in Golf Drive via the track in the mid 1970s.

2. The claimed path is not shown on the 1909 OS Map but is shown on the 1937/38 OS Map as an unenclosed track giving access to a small building and field. On the OS Map of 1974 the path is labelled track and goes through to Golf Lane and the properties in Hogmoor Lane are also shown, these having been built about 1966.

3. The historical and user evidence is insufficient to support a claim for a Byway Open to All Traffic and the original claim must therefore fail.

4. There is no evidence of equestrian use and therefore the only possible valid claim on the evidence available is for a footpath.

5. As the claims cover a period from 1932, this has been considered but of the eight claimants, only two claimed 20 years or more use and one admitted this was incorrect during interview.

6. In the 1930s it is admitted that the path was either fenced or gated at Hogmoor Road. In the early 1950s a Mr Lemon who was a groundsman turned claimants off the path and later, in 1968 and on occasions since then, the path has been closed – usually by Mr Ball of Zerozero on behalf of the owner Mr Gawor. Mr Ball lives in the property immediately to the south of the path.

7. Before the land was purchased for development by Mr Gawor and Gorsedown Close built, the owner of the building and field at the end of the claimed path was a Mr Atkins and he informs me that he had a private right over the track for access purposes.

8. A number of property owners in Gorsedown Close have written into their deeds a right to use the way for all purposes. This again suggests a private right may exist for a small number of individuals on an otherwise private track.

Summary: The claimed path has been used on foot by a small number of people over a number of years, but has been insufficient to justify the claim for a public footpath. The claim for a higher status is not supported by any evidence.

There have been challenges to use in the 1930s by gate or fence, in the 1950s by Mr Lemon and intermittently from 1968, culminating in closure by fencing in the mid 1980s.

Although Mr D Taylor has been informed that I was of the opinion that there was insufficient evidence to justify the claim, he has failed to produce any further evidence.

Conclusion: The evidence is of infrequent use on foot over a period of 40 years but only one person claims use of over 20 years, three claim less than 10 years use and four others provide evidence of less than 15 years use. The most consistent use claimed is of once per week over a period of between 9 and 13 years by three people. This use, taking into account the challenges made to use, is insufficient to justify the inclusion of the claimed path on the Definitive Map as a public footpath.

Recommendation: It is recommended that the Sub-Committee refuse to amend the definitive map by the inclusion of a Byway Open to All Traffic, Bridleway or Footpath.