

**Application No. 884: Claim for additional public rights of way, East Dean**

Response on behalf of the landowner Mr Richard Parry

Footpath application dated 4<sup>th</sup> August 2005 for modification to include footpath from opposite Manor Farm, East Dean to Dean Hill Barn Farm.

The footpath claimed is a former access road shown in a conveyance dated 20<sup>th</sup> June 1940 between William Ashley Nichols and The Commissioners of the Office of the Lord High Admiral of the United Kingdom and Ireland (the purchasers) (*document 1*). This route is identified in the deed as a private access. However, the plan accompanying this deed and other contemporary maps show that there were two footpaths which joined this access way to the south east, starting from East Dean Road nearer to the centre of East Dean. These also crossed Mr Nichols' land.

Clause 4 of the deed advises that a notice to treat had been given under section 16 of the Defence Act 1842, which indicates that the Admiralty closed up public rights of way over the land under the powers of this act.

Clause 16 of the Defence Act 1842 reads as follows:

“It shall be lawful for the principal officer of Her Majesty’s ordnance for the time being to enter on, survey, and mark out, or to cause to be surveyed and marked out, any lands, buildings, or other hereditaments or easements wanted for the service of the ordnance department or for the defence of the realm, or to stop up or divert any public or private footpaths or bridle-roads, and to treat and agree with the owner or owners of such lands, buildings, hereditaments, or easements, or with any person or persons interested therein, either for the absolute purchase thereof, or for the possession or use thereof during such times as the exigence of the public service shall require.”

Clause 17 of the act required the Admiralty to provide an alternative route and a letter to the chair of East Dean Parish Council from E.W. Hughes for the civil engineer in chief dated 22<sup>nd</sup> May 1939 shows that this was done (*document 3*). The letter refers to the resolution of East Dean Parish meeting on 11<sup>th</sup> May 1939, approving the closing of existing public footpaths crossing the site that the Admiralty was in the process of acquiring and the provision of the alternative footpath shown on the accompanying plan. This alternative footpath, now equates to footpath 9 on the definitive map and did not exist on maps prior to 1939.

The Parish Council confirmed that this alternative route had been agreed in response to Hampshire County Council’s inquiries under the 1949 National Parks and Access to the Countryside Act. (*documents 4, 5 and 6*).

The right of way referred to in the Nichols deed of 1940 was reserved in a deed dated 5<sup>th</sup> December 1910 between Sybil Curzon and Walter Trower of the first part, John Brettel Gilbert of the second part Frederick John Dalgety of the third part and Frederick John Dalgety, Algernon Fawkes and Edmund Theodore Doxat. (Clause 2 of the Nichols deed)

The 1910 deed was drawn up when the land holdings affected came under new ownership following the disposal of part of the Lockerley Hall Estate by the Dalgety family.

The right of way was closed in 1941 under a deed between Richard Melsome Woolley (the vendor and Commissioners for Executing the Office of Lord High Admiral of the United Kingdom of Great Britain and Ireland (the purchaser). (*document 2*)

Mr Woolley was also served with notice to treat under section 16 of the Defence Act in this deed and clause 2 states that the right of way identified in the Nichols conveyance “shall be merged and extinguished.” Mr Woolley retained an alternative right of way over the route which now forms part of footpath 9.

Under clause 5 of the Woolley deed the vendor covenants to indemnify the purchaser against all claims on the part of owners or occupiers of adjoining properties arising from the closure of the access track. These owners were granted the access under the 1910 deed referred to in the Nichols deed and referred to again here.

Clause 5 of the Woolley deed contained a declaration that the vendor accepted the sum of £1,375 as full satisfaction of all claims arising from the closure of the right of way referred to in this application for modification of the definitive map.

*Application dated 26<sup>th</sup> October 2005 for modification to include footpath from Brewers Arms to join track running East-West along Dean Hill dated*

The application does not appear to supply any evidence that this footpath ever existed, nor have we been able to find any record of it. The line of the footpath appeared as a field boundary until 1908 when it was shown as a footpath on the Ordnance Survey map. It seems unlikely that this was ever a footpath, because of the terrain. At its southern end, the footpath would have gone up an extremely steep hill and through dense woodland and, if it did exist, it seems unlikely that it would have been an absolute straight line as shown.

The Admiralty was meticulous in its application of the law relating to land ownerships and rights of way in its transactions to acquire the Dean Hill site. The records show that a public footpath in West Dean was stopped up and diverted and other footpaths in East Dean were dealt with under notices to treat and a diversion as recorded above. If there had been a public footpath along this route, the Admiralty would have treated it in the same, particularly given its sensitivity, running through the centre of the site.

*Documents accompanying this response:*

- 1) Conveyance: Lieutenant-Colonel W.A. Nichols to the Admiralty 20<sup>th</sup> June 1940  
*Original held by the Land Registry*
- 2) Conveyance: R.M. Woolley Esq to the Admiralty 21<sup>st</sup> November 1941  
*Original held by the Land Registry*
- 3) Letter E.W. Hughes for Civil Engineer in Chief to Lt Col. A.W. Gibson Bishop, Chairman East Dean Parish Meeting 22<sup>nd</sup> May 1939 and plan 968/39 to which the letter refers  
*Originals at Hampshire Records Office ref. 156M88/PX3 and 97M72/DD54*
- 4) Letter Chairman East Dean Parish Meeting to The County Surveyor Hampshire County Council 21<sup>st</sup> April 1942 with plan  
*Original at Hampshire Records Office ref. 156M88/PX2*
- 5) Extract of Minutes of East Dean Parish Meeting held March 1952  
*Original at Hampshire Records Office ref. 156M88/PX2*
- 6) Parish of East Dean Footpaths – Record compiled by East Dean Parish Meeting 21<sup>st</sup> April 1952 with plan  
*Original at Hampshire Records Office ref. 156/M88PX2*

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Dear James

### **Footpaths Dean Hill Park: Defence Act 1842**

I have reviewed the information you have given me in relation to Hampshire County Council's proposals with regard to footpaths at Dean Hill Park and specifically issues relating to the Defence Act 1842.

### **Background**

The Admiralty acquired the land at Dean Park between 1938 and 1940 from a number of landowners. The land was purchased outright under the Defence Act 1842. This was not a case of acquisition for a temporary period for the duration of the war or "for such time as the exigence of the public service shall require" but an absolute purchase under Section 16 of the Act.

At the time of these purchases there appear to have been footpaths on the land, although whether these were public rights of way has yet to be established. The Admiralty used their powers under Section 16 and 17 of the Defence Act to close all footpaths on the land and to create a diverted path which is still in existence.

Correspondence with the Parish Council and the Rural District Council for the area at the time of diversion of the footpaths contains no reference or indication that this was a temporary measure. When the definitive footpath maps were published for the area in 1953 there was a requirement to show limitations on the use of footpaths. After consultation with the Rural District Council, the Admiralty and the Parish Council no temporarily closed footpaths were shown on the definitive map; the only footpath shown was the diverted route with no reference to the limitation that this was a temporary route.

In 2001 The Ministry of Defence produced a defence munitions rationalisation study which recommended the closure of the depot Dean Hill. The depot was closed in 2004 and the land sold to the current owners. It is clear from the reasons for the closure that the original purchase had been an "absolute purchase" as opposed to a temporary requisition, and closure was because the needs of The Ministry of Defence had changed.

### **Was the diversion temporary or permanent?**

Section 16 of the Defence Act specifically provides for the permanent or temporary acquisition of land. However the power to stop up or divert footpaths is not expressed in these terms. On any logical interpretation of Section 16 the words "either for the absolute purchase" or for "the possession or use

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during such time as the exigence of the public service shall require" solely relate to the authority to treat or agree with the owners of such lands for their acquisition not to the diversion of footpaths.

There is a general principle in highway law of "once a highway always a highway" and highways including footpaths can only be stopped up or diverted in accordance with statutory procedures for specific purposes. What all these statutory provisions have in common is that with the exception of short term emergency closures there is no statutory power to effect temporary diversion and creation of footpaths where the route reverts to a former route on the happening of a certain event in the future. It is notable that the one exception I can find to this is in the Land Powers Defence Act 1958 which contains specific powers for The Ministry of Defence to make temporary footpath diversions for a period specified in the order with provision for restoration of former paths at the expiry of that period. This contrasts with the wording of the Defence Act 1842 and indicates that very specific provision is needed to deal with such temporary stopping up.

Even if a power could be implied into Section 16 of the Defence Act for the temporary closure of footpaths while the land was in the ownership of the Ministry of Defence, determination of whether the diversion was permanent or temporary would depend on whether the acquisition was temporary or permanent. It is clear from the background to the purchase of this land that it was intended to be an absolute permanent acquisition. The fact that the land has become surplus to requirements cannot retrospectively make the diversion of footpaths temporary.

## Conclusion

The Defence Act 1842 makes no provision for temporary footpath diversions. Even if this can be implied the factual evidence relating to the original stopping up and diversion of any footpaths that existed at Dean Park does not specify or imply that these closures and diversion were merely temporary. There is no evidence to justify a conclusion that the diversion was temporary or any indication that former paths would be reinstated on the happening of a certain event. The publication of the definitive map for the area and the correspondence with the various local authorities prior to this also makes it clear that the paths were regarded as permanently stopped up. I have seen no support for argument that the footpaths closures were temporary and that there is any right for the County Council to require reopening of any footpaths that can be established to have been in existence in 1939.

Yours sincerely

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