

Application for a Map Modification Order to record a public bridleway between Ewshot Lane and Naishes Lane, Church Crookham ("the Gurkha Path")

Reference: CR/1110

Response of Taylor Wimpey Developments Limited ("Taylor Wimpey")

Introduction

- 1 Taylor Wimpey are the owners of the land ("**Site**") across which the Gurkha Path ("**Path**") crosses. Taylor Wimpey acquired ownership of the Site in 2002, prior to which the Site had been in the ownership of the Ministry of Defence ("**MoD**") as a barracks for the Gurkha Regiment Barracks. The Path stretches across private land and the Path has never been the subject of any public right of way.
- 2 On 10 October 2012 Mrs Valerie Hall ("**Applicant**") submitted an application under Section 53(5) and Schedule 14 of the Wildlife and Countryside Act 1981 ("**Application**") for Hampshire County Council ("**County Council**") to modify the Definitive Map and Statement dated 1st January 2008, so that it includes the Gurkha Path ("**Path**").
- 3 Taylor Wimpey submitted a written response, dated 1 March 2013 ("**Preliminary Response**"), to the application in which it expressly reserved the right to respond in further detail, setting out any other reasoning and/or evidence as it considers necessary. This written submission replaces the Preliminary Response which is withdrawn, and responds further to the Application in light of a notice received from the County Council, dated 5 January 2016, informing Taylor Wimpey of the County Council's intention to now proceed to investigate the Application.
- 4 In order to grant the Application under Section 53(5) and Schedule 14 of the Wildlife and Countryside Act 1981, the County Council must be satisfied that a public bridleway has been created by means of prescription either through the common law or Section 31 of the Highways Act 1980.
- 5 This submission sets out Taylor Wimpey's view that there could have been no prescription of a public bridleway and as such, the County Council have no choice but to refuse the application. This view is based on two grounds:
 - (a) the ownership and regulation of the Site prior to its acquisition by Taylor Wimpey in 2002 was such that either:
 - (i) the owner was unable to lawfully grant permission to use the Path; or, in the alternative
 - (ii) that express permission to use the Path was granted by the regulations which were printed and posted around the Site

In each case, the suggestion that any rights could have been accrued by prescription during this period is plainly incorrect;

 - (b) since Taylor Wimpey's acquisition of the Site in 2002 three signs were erected along the Path expressly stating that public use was "with the owner's permission"

demonstrating a clear break in any possible continuous use of the Path as a right for 20 years, as assessed at the date of the Application; and

(c) In any event, statutory deposits submitted by the MoD in 1994 and renewed in 2000 under s31(6) Highways Act 1980 protected the Path from prescription from 1994 to 2010 demonstrating a clear break in any possible continuous use of the Path as a right for 20 years, as assessed at the date of the Application.

6 For context, this submission also sets out how the Development has progressed since the date of the Application.

7 Taylor Wimpey reserves the right to respond further should it prove necessary to do so. The decision not to respond to all of the Applicant's evidence in this Submission in no way amounts to acceptance of its content.

1950 – 2002: Byelaws in operation over the Site

8 Historically the Site was part of the "lands affected" by local military byelaws promulgated under the Military Lands Act 1892. From 1950 – 1976 the governing byelaws were the Aldershot and Military Land Byelaws 1959, however a copy of these byelaws has not been obtainable. Since 1976 – 2002 the governing byelaws were the Aldershot and Military Land Byelaws 1976 ("**Byelaws**") appended to this submission. During these periods the Site was signed with the Byelaws which were displayed at all major entrance locations ("**Notices**"). Sample photos of the Notices on display at Leipzig Road entering MoD property, and at Naishes Lane from which the Path is accessed, are appended to this Response. These photos were taken *circa* 2010/2011.

9 The relevant provisions of the appended Byelaws are as follows, and it can be assumed that the previous Byelaws were similar, given that they were made under the Military Lands Act 1976:

"2. **Subject to the provisions of these Byelaws the public are permitted to use all parts of the Military Land** not specially enclosed or the entry to which is not shown by notice as being prohibited or restricted, including those Ministry of Defence roads thereon which have been constructed and made up for general use by vehicular traffic, for the purposes of open-air recreation at all times when the Military Lands are not being used for military purposes for which they are appropriated." (our emphasis)

"3 When any such Ministry of Defence road as aforesaid within any part of the Military Lands which is not specifically enclosed or the entry to which is not prohibited or restricted is not closed to the public or is not being used for any military purposes:-

(1) no person shall ride a horse or, bicycle or tricycle or drive a vehicle of any kind elsewhere than on the carriageway of such road

....." (our emphasis)

"4 Without prejudice to the provisions of Byelaw No 3, **no person when on the Military Lands shall:-**

.....

(2) ride a horse, bicycle or tricycle, or ride, drive or propel a vehicle of any kind otherwise than on the carriageway of a road suitably constructed and made up for general use for vehicular traffic" (our emphasis)

- 10 The Applicant states in her written evidence that the MoD "offer the public permitted use of the land (albeit that the land sometimes has to be cordoned off for military use)". This is consistent with the permission granted in Byelaw 2, which only allows restriction of public use of the land when it is being used for military purposes.
- 11 A key feature of the law of prescription under the common law and Section 31 of the Highways Act 1980, is that the use must be *nec precario*, that is to say it must have been enjoyed as a right, without permission or licence granted by the owner. When establishing prescription and use as a right, it is necessary to establish that the owner has acquiesced to the use.
- 12 A further feature is that prescription is founded on the presumption of a grant. A grant cannot be presumed however where, in the circumstances, to do so would have been contrary to the law.
- 13 The effect of the Byelaws and Notices therefore, is as follows; either:
- (a) the use of the Path was contrary to the Byelaws because the Path is a small dirt track and any equestrian use was not "on the carriageway of a road suitably constructed and made up for general use for vehicular traffic"; as required by Byelaw 4. The suggestion of any rights being accrued by prescription across the subject military land is rebutted on the basis that a grant of permission for equestrian use of the Path would have been contrary to the Byelaws, and hence unlawful; or
 - (b) in the alternative, if use of the Path was not contrary to Bylaw 4, then the use was expressly permitted by the general permission provided by the MoD in Byelaw 2. The suggestion of any rights being accrued by prescription across the subject military land is rebutted on the basis that the MoD did not acquiesce to the public's use of the Path, but rather the use was expressly permitted by the widely posted notices setting out the Byelaws.

2002 – Present: Express Permission from the Owner via Signage

- 14 The suggestion that a right over the Path have been accrued by prescription is further rebutted on the basis that there is clear a gap in the continuity of 'use as a right' from 2002 onwards.
- 15 Under Section 31 of the Highways Act 1980, and generally under common law prescription, the proposed right of way must have been used as a right continuously and without interruption for a minimum of 20 years previous to when the right was called into question. The application called the right into question in 2012, as such, to establish prescription the Path must have been used as a right from 1992 – 2012.
- 16 However, after purchasing the property in 2002 Taylor Wimpey erected three signs ("**Signage**") at intervals along the Path stating:

"Use of this path is with permission of the Owner"

The Applicant acknowledges the Signage in her written Application under the section "Redevelopment", there is a photo of the remaining Signage and there are witness statements testifying as to its existence.

- 17 Section 31(3) of the Highways Act 1980 clearly states that:

"Where the owner of the land over which any such way as aforesaid passes—

(a) has erected in such manner as to be visible to persons using the way a notice inconsistent with the dedication of the way as a highway

...

the notice, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway"

18 The Signage demonstrates that Taylor Wimpey gave the public express permission to use the Path from 2002. This falls within Section 31(3) above and also rebuts any suggestion that Taylor Wimpey acquiesced to the use of the Path (see paragraph 9 above). Therefore, a gap in the continuity of use of the Path as a right during the 20 years prior to 2012 is clearly established, if indeed it was ever used as a right.

19 As such, prescription under Section 31 and/or the common law is not made out.

1994 – 2010: Section 31(6) Highways Act 1980

20 In 1994 the MoD submitted a Statutory Declaration under s31(6) Highways Act 1980 stating that no new public rights had been dedicated, this was renewed subsequently in 2000. These declarations provide the Path protection from prescription from 1994 to 2010, as they demonstrate "sufficient evidence to negative the intention of the owner or his successors in title to dedicate any such additional way as a highway". This also provides a clear break in any possible continuous use of the Path as a right for 20 years, as assessed at the date of the Application.

Other Matters

21 Whilst not directly relevant to the decision to be made by the County Council, we would highlight that the Site takes the benefit of a planning permission (Hart District Council reference: 11/00001/MAJOR) dated 17 November 2011 for major residential development ("**Development**").

22 Since January 2012 Taylor Wimpey have been implementing the Development. Once constructed the Path is intended to form a footpath/cycleway through the Development and its use by horses would conflict with pedestrians and cyclists, with the associated risks of injury. In addition, the Path will be made up with a hard surface and the British Horse Society is of the view that a tarmac surface is not suitable as a bridleway. In places the available width is constrained by trees, ditches and the development itself, such that there is not space to provide a parallel horse path.

23 Taylor Wimpey have now provided a suitable bridleway from Ewshot Lane to the west, across open areas to the south and west of the Development, to the same end point on Naishes Lane.

Conclusion

24 For the reasons stated in this submission Taylor Wimpey submit that the Applicant's Application for a modification of the Definitive Map and Statement should be refused for want of demonstrating 20 years continuous use of the Path as of right.

Addleshaw Goddard LLP

09 February 2016



**Aldershot and District
Military Lands
Byelaws
1976**

Made by the Secretary of State for Defence, under the provisions of Part II of the Military Lands Act 1892, for regulating the use of the above-mentioned lands.

DEFENCE

THE ALDERSHOT AND DISTRICT MILITARY LANDS BYELAWS 1976

Made 16th March 1976
Coming into operation 17th May 1976

The Secretary of State for Defence in exercise of his powers under Part II of the Military Lands Act 1892 (a) and Section 2 of the Defence (Transfer of Functions) Act 1964 (b) and of all other powers enabling him in that behalf hereby makes the following Byelaws:—

LANDS AFFECTED

1. The lands to which these Byelaws apply consist of lands belonging to the Secretary of State, in the Borough of Rushmoor, in the Districts and Parishes in the Schedule attached hereto, in the Counties of Berkshire, Hampshire and Surrey, but excluding any public rights of way, the boundaries of which are, for convenience of identification, shown by a black line on the plans annexed to these Byelaws each being identified as the "Plan of the Aldershot Military Lands" all of which are hereinafter referred to as "the Military Lands".

USE OF LANDS BY PUBLIC

2. Subject to the provisions of these Byelaws the public are permitted to use all parts of the Military Land not specially enclosed or the entry to which is not shown by notice as being prohibited or restricted, including those Ministry of Defence roads thereon which have been constructed and made up for general use by vehicular traffic, for the purposes of open-air recreation at all times when the Military Lands are not being used for military purposes for which they are appropriated.

CONTROL OF ROAD TRAFFIC

3. When any such Ministry of Defence road as aforesaid within any part of the Military Lands which is not specially enclosed or the entry to which is not prohibited or restricted is not closed to the public or is not being used for any military purposes:—

(a) 55 & 56 Vict. c.43.

(b) 1964 c.15.

- (1) No person shall ride a horse, bicycle or tricycle or drive a vehicle of any kind elsewhere than on the carriageway of such road.
- (2) No person shall use any vehicle of any kind to ply for hire on any such road.
- (3) Every person who rides a horse, bicycle or tricycle or drives a vehicle of any kind on any such road
 - (a) shall comply with the directions, given orally or by signal, of a Service policeman in uniform or any member of a police force, or special constable under the control of the Defence Council;
 - (b) shall comply with all military and traffic signs, and
 - (c) shall ride or drive with due care and attention and with reasonable care for other persons.
- (4) No person shall ride a bicycle or tricycle or drive a vehicle of any kind upon such road during the hours of darkness as prescribed by the enactments relating to the lighting of road transport unless such bicycle or tricycle or vehicle carries the appropriate lights which are required to be carried by such bicycle or tricycle or vehicle when on a public highway during the hours of darkness.
- (5) No person shall drive a vehicle of any kind without a valid Driving Licence or be in charge of any vehicle unless the vehicle is registered, taxed and insured, as required for such vehicle when on a public highway.

PROHIBITED ACTIVITIES

4. Without prejudice to the provisions of Byelaw No 3, no person when on the Military Lands shall:—

- (1) enter on any part of the Military Lands which is specially enclosed or the entry to which is shown by a notice as being prohibited or restricted, or
- (2) ride a horse, bicycle or tricycle, or ride, drive or propel a vehicle of any kind otherwise than on the carriageway of a road suitably constructed and made up for general use for vehicular traffic, or
- (3) engage in or carry on any trade or business of any nature or kind whatsoever or ride, drive, conduct, or cause to be ridden, driven or conducted, use or employ any animal or vehicle of any kind or use any audible means either wholly or mainly for the purposes of trade or advertisement, or
- (4) loiter, or commit any nuisance, or behave in any indecent or unseemly manner, or
- (5) assemble or attempt to assemble or cause to assemble or bring upon the Military Lands any number of persons for the purpose of a private or public meeting or otherwise, or address any such persons when assembled, or

- (6) camp (whether in tents, caravans or otherwise), bivouac or sleep out, or
- (7) deposit industrial or domestic refuse, rubble, waste or litter or abandon any vehicle or vehicle part or article, or
- (8) damage, cut or remove grass, turves or growing crops, shrubs, trees, timber or wildflower roots, or
- (9) graze any animal, or
- (10) pursue, kill, shoot, snare or trap game or other birds or animals, or take or destroy their eggs, or
- (11) damage, spoil, interfere with or remove any building, wall, fence, gate, post, cattle grid, stores, equipment or ammunition, or
- (12) dig or search for any projectile or any lead or other metal, or interfere with or take or retain or be in possession of any projectile or lead or other metal found within the Military Lands, or
- (13) do, or cause or allow to be done, any act which is likely to cause nuisance, annoyance or injury to other persons, or
- (14) deposit or distribute or cause to be deposited or distributed any handbills, leaflets or other literature or printed matter of any description, or
- (15) affix posters, notices or bills of any description in or on the boundaries, walls or fences or in or on any buildings or other structures or on any tree, pillar, post, bollard, railing, gate or other erection, or
- (16) light fires, drop or leave lighted or live matches or burning cigarette ends or do any act or thing liable to cause an outbreak of fire, or
- (17) take or cause to be taken on the Military Lands any fire-arm, air-gun, ammunition, any explosive or detonator or any part or component of the foregoing.

WARNING OFF

5. (1) No person shall remain on the Military Lands after having been warned off by a person acting under the authority of the General Officer Commanding the Army District or of the Officer in Charge of the Military Lands.
- (2) No person being the owner or person for the time being in charge of any animal, vehicle or thing upon the Military Lands shall permit the same to remain upon the Military Lands after having been warned to remove the same by a person acting under the authority of the General Officer Commanding the Army District or of the Officer in Charge of the Military Lands.

OFFENCES

6. Subject to the provisions of Byelaw No 8, any person doing anything prohibited by or otherwise contravening any provision of the preceding Byelaws Nos 3, 4 and 5 thereby commits an offence against the Byelaws so contravened.

ENFORCEMENT

7. The following persons are hereby authorised to remove from the Military Lands and to take into custody without warrant any person who commits an offence against any of the said Byelaws, and to remove from the Military Lands any animal, vehicle or thing found on the Military Lands in contravention of any of the said Byelaws:—

- (a) the General Officer Commanding the Army District;
- (b) the Officer in Charge of the Military Lands;
- (c) any officer, warrant officer, non-commissioned officer or rating of corresponding rank, or any Service policeman, in uniform and being for the time being under the command of the said General Officer Commanding the Army District or of the Officer in Charge of the Military Lands;
- (d) any person authorised in writing by or on behalf of the said General Officer Commanding the Army District or of the Officer in Charge of the Military Lands, and
- (e) any member of a police force or any special constable under the control of the Defence Council.

EXEMPTIONS

8. (1) Nothing done by a person using the Military Lands for any of the military purposes for which they are for the time being appropriated, if done in pursuance of such military purpose, shall be deemed to constitute an offence against any of these Byelaws.
- (2) Nothing done by a person in exercise of any rights of common shall be deemed to constitute an offence against any of these Byelaws.
- (3) Nothing done by a person acting under and in accordance with any authority or permission given by or on behalf of the Secretary of State, the General Officer Commanding the Army District or the Officer in Charge of the Military Lands shall be deemed to constitute an offence against any of these Byelaws.

INTERPRETATION

9. The Interpretation Act 1889 (c) shall apply to the interpretation of these Byelaws as it applies to the interpretation of an Act of Parliament.

COMMENCEMENT, CITATION AND REVOCATION

10. (1) These Byelaws shall come into operation on the 17th day of May 1976 and may be cited as the Aldershot and District Military Lands Byelaws 1976.
- (2) The Byelaws in respect of the Aldershot and District Military Lands dated the twenty-third day of March 1950(d) are hereby revoked.

Dated this 16th day of March 1976.

(Signed) M. H. TALLBOYS
By order of the Secretary of State for Defence

SCHEDULE

The Lands belonging to the Secretary of State for Defence together with all buildings thereon to which the foregoing Byelaws apply are situated in the following Counties, Boroughs, Districts and Parishes:—

COUNTY OF HAMPSHIRE

	Borough	District	Parish
Aldershot Military Town and the training areas and other land situated west of the Farnham-Farnborough Road and Hawley Lane and extending to Warren Corner, Crondall, Fleet, Hawley, Farnborough and including part of Yateley Common	Rushmoor	Hart	Crondall, Fleet, Hawley, Yateley
Bordon Camp (including Hogmoor Inclosure and Broxhead Common)		East Hampshire	Whitehill
Kingsley Common		East Hampshire	Kingsley
Shortheath		East Hampshire	Kingsley and Selborne

(c) 1889 c.63.

(d) SI 1950/496.

The Slab and the Warren	East Hampshire	Selborne and Whitehill
Oakhanger	East Hampshire	Selborne and Worldham
Woolmer Forest	East Hampshire	Whitehill, Bramshott
Bramshott Common	East Hampshire	Bramshott
Longmoor	East Hampshire	Whitehill, Greatham and Liss
Liphook	East Hampshire	Bramshott

COUNTY OF SURREY

	Borough	District	Parish
Ash Vale, Ash Common, Normandy Common, Claygate Common, Cobbetthill Common and other land	Guildford		Ash and Normandy
Pirbright Common, West Heath, Dawney's Hill, Cowshott Common, Stanford Common, Porshop Common, Bullswater Common and other land	Guildford		Pirbright
Inkerman Barracks West End Common, Colony End, Hagthorne, New England, Donkey Town Bisley Common	Woking	Surrey Heath	Woking West End
Bagshot Heath	Surrey Heath and Guildford	Surrey Heath	Bisley, West End, Pirbright Windlesham
Deepcut, Blackdown, Frith Hill, Mytchett, WRAC Staff College, Staff College, part Royal Military Academy, Olddean Common	Surrey Heath		Frimley
Hungry Hill, Bricksbury, Hallimore Hill		Waverley	Farnham
Stoughton Barracks	Guildford		

COUNTY OF BERKSHIRE

	Borough	District	Parish
Arborfield Camp and West Court		Wokingham	Arbor- field, Newland, Barkham, Finch- ampstead
Part Royal Military Academy		Bracknell	Sand- hurst, Crow- thorne, Easthamp- stead

NOTICES

PENALTY FOR OFFENCES

1. By Section 17(2) of the Military Lands Act 1892, as amended by Section 92 of and Schedule 3 to the Criminal Justice Act 1967, it is provided that:—

If any person commits an offence against any Byelaw under this Act, he shall be liable, on conviction before a Court of Summary Jurisdiction, to a fine not exceeding TWENTY POUNDS, and may be removed by any Constable or Officer authorised in manner provided by the Byelaw from the area, whether land or water, to which the Byelaw applies, and taken into custody without Warrant, and brought before a Court of Summary Jurisdiction to be dealt with according to law, and any vehicle, animal, vessel or thing found in the area in contravention of any Byelaw, may be removed by any Constable or such Officer as aforesaid, and on due proof of such contravention, be declared by a Court of Summary Jurisdiction to be forfeited to Her Majesty.

COMMON RIGHTS

2. By Section 14(1) of the Military Lands Act 1892, it is provided that:—

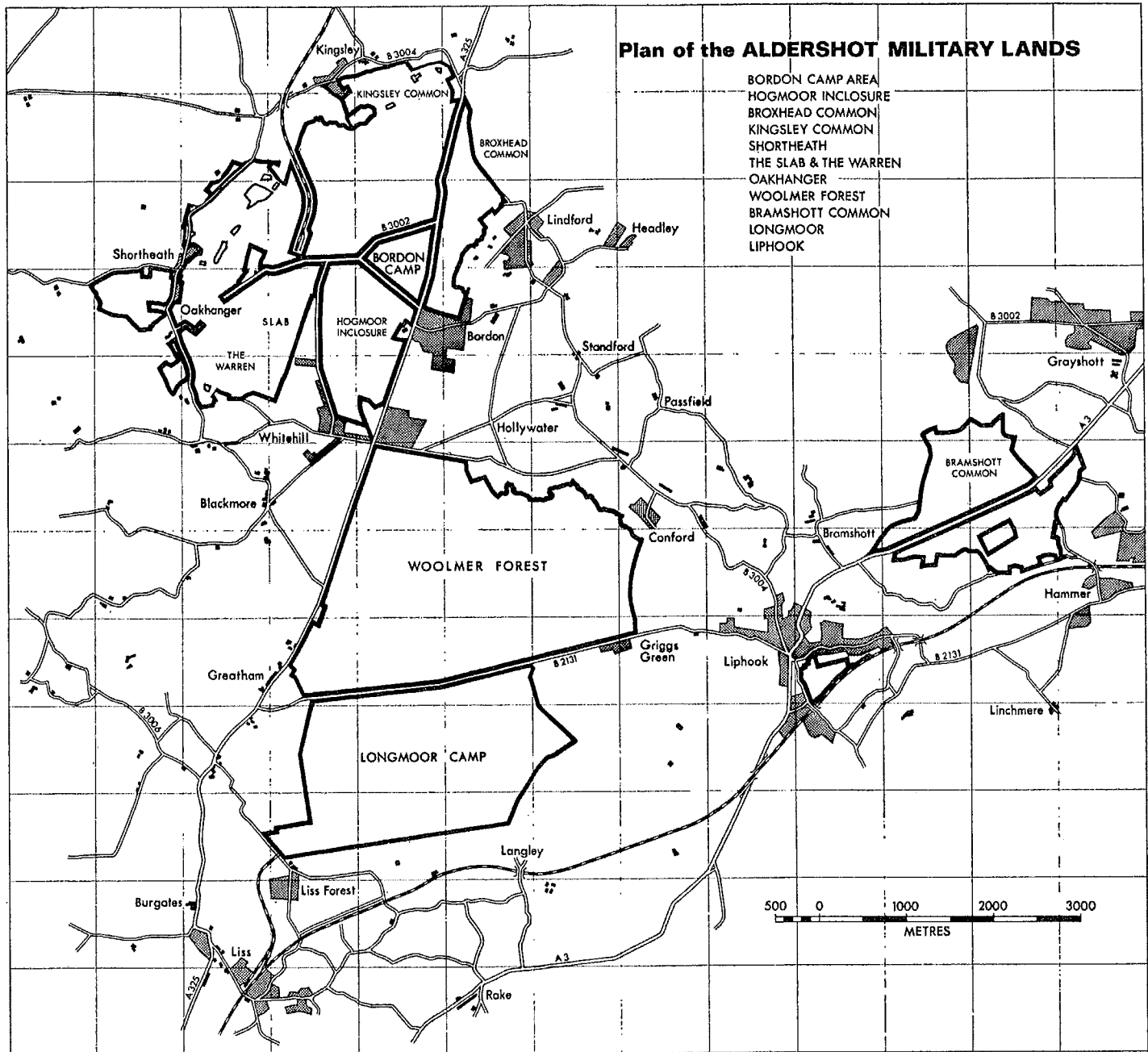
No Byelaws promulgated under this section shall authorize the Secretary of State to take away or prejudicially affect any right of Common.

INSPECTION OF BYELAWS AND PLANS

3. A copy of these Byelaws and the plans showing the Military Lands to which these Byelaws apply may be inspected at Headquarters Aldershot Garrison, Queens Avenue, Aldershot, the Police Stations at Aldershot, Farnham, Fleet and Farnborough and also at the office of the Senior Estate Surveyor, Property Services Agency, Department of the Environment, Blandford House, Farnborough Road, Aldershot, Hampshire GU11 2HA where copies of the Byelaws may be obtained at the price of five pence (5p) for each copy.

Plan of the ALDERSHOT MILITARY LANDS

- BORDON CAMP AREA
- HOGMOOR INCLOSURE
- BROXHEAD COMMON
- KINGSLEY COMMON
- SHORTHEATH
- THE SLAB & THE WARREN
- OAKHANGER
- WOOLMER FOREST
- BRAMSHOTT COMMON
- LONGMOOR
- LIPHOOK



Plan of the ALDERSHOT MILITARY LANDS



— Military Lands

0 1 2 3
0 Km 1 2 3
0 Miles 1 2

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Director General, Ordnance Survey

Notwithstanding any fine limit mentioned in the above byelaws the current maximum fine as at 01/09/2008 is the sum of £500 being the maximum on level 2 of the standard scale.



