



Officer Decision Report

Date of decision:	28th April 2021
Reference number:	WDC-BUCC-TEE06-007178 (Legal Services reference number)
Title:	North Mill Lane, Bledlow - UCR dispute and obstruction
Relevant councillors:	C Etholen – CON (Ridgeway West) (& former district council ward of Bledlow & Bradenham) G Peart – CON (Lacey Green, Speen and the Hampdens) S Adoh – CON (Stokenchurch & Radnage) S Saddique – CON (Stokenchurch & Radnage)
Author and contact officer:	Helen Francis, Interim Definitive Map and Highway Searches Team Leader Claire Sturgeon, Planning and Highways Solicitor
Ward(s) affected:	Ridgeway West
Recommendations:	That the Service Director – Highways and Technical Services in consultation with the Director for Legal & Democratic Services and Head of Legal Services exercises his delegated authority to: 1) authorise the forwarding of Counsel’s draft letter to the Complainant in the form as attached at appendix 2, and to; 2) adopt/accept the recommendations of the Advice received from Counsel, as confidentially attached at appendix 3.
Reason for decision:	Having sought Counsel’s opinion it is considered that a decision is required to implement Counsel’s advice in relation to a Complaint which was received by the Council. The Complaint being that the legal status of a length of highway, being a track, to the north east of North Mill Lane, Bledlow, running through

the property known as Lydebrook and shown on the plan attached at appendix 1 ('the track').

1. Executive summary

- 1.1 The purpose of this report is to recommend that the Service Director – Highways and Technical Services uses his delegated authority to make a decision in consideration of the Opinion received from Counsel regarding the legal status of the track. Including whether the track should be upgraded to a carriageway as asserted by the complaint.

2. Content of report

- 2.1 The Council received a complaint which comprised of numerous pieces of documentary evidence, regarding the track. The complaint concerned the legal status of the track and asserted that the track should be recorded on the Council's highway records as a public road and part of U629, ('the Complaint')
- 2.2 The Owners of Lydebrook, have erected gates across the track. Signs have also been erected to prevent pedestrians from using the route.
- 2.3 Highways and Rights of Way Officers in conjunction with advice from Legal Services investigated the complaint. In consequence of the investigation and in consideration of the evidence which formed the basis of the complaint, the legal status of the track was inconclusive. It was deemed necessary that Counsel's opinion should be sought regarding the legal status of the track.
- 2.4 Counsel was initially instructed during October 2020, whilst Counsel gave an initial advice, Counsel subsequently requested further documentary evidence on more than one occasion. Counsel forwarded supplemental advice notes as part of the process of assessing the evidence. It should be noted that restrictions due to the Covid-19 pandemic delayed collating documents for Counsel.
- 2.5 Counsel was also later instructed in the drafting of a letter in response to the complaint. The draft letter is attached at Appendix 2; the initial advice, supplemental advice notes and final advice are attached at Appendix 3.
- 2.6 It should also be noted that Counsel advice at Appendix 3 should remain confidential as it relates to possible litigation and the advice is subject to legal privilege.
- 2.7 To summarise Counsel advised that, a) in relation to the complaint that the track should not be upgraded to a carriageway, and; b) subject to, the receipt by the Council of user evidence, a modification order to modify the definitive map and statement be progressed.

3. Other options considered

- 3.1 To not follow the advice of Counsel would mean that the status of the track remains undetermined and the track will remain blocked and unusable for pedestrians and local residents.
- 3.2 To adopt the advice of Counsel and to reject the claim will mean that the status of the footpath can be investigated further.

4. Legal and financial implications

- 4.1 The Council acting as Highway Authority has a duty under s130 Highways Act 1980 (HA 1980) to assert and protect the rights of the public to use and enjoyment of any highway for which they are Highway Authority.
- 4.2 In order to comply with the requirements of the HA 1980 the Council will need to determine whether the track is a highway relevant to the duty as described at 4.1 above.
- 4.3 It should be noted that enforcement action against the blocked track cannot be undertaken unless the status of the track is determined as per, R v Lancashire CC ex parte Guyer (1980).

5. Corporate implications

- 5.1 To date internal resources have been committed to responding to enquiries from members of the public in relation to the frustrations of the local residents being unable to use the track. It is envisaged that these enquires will continue until the status of the track is determined and the obstruction dealt with as necessary.
- 5.2 The costs involved are part of the normal work of the Officers of the Council in ensuring that the relevant duties under the HA 1980 are complied with across all highways, right of way and legal departments.
- 5.3 The costs of instructing Counsel have already been incurred, there are no reasons or any additional evidence to suggest that Counsel's advice should not be implemented.

6. Consultation with local Councillors & Community Boards

- 6.1 All relevant local Councillor have been consulted on the implications of this report.

7. Communication, engagement & further consultation

- 7.1 There has been numerous correspondence and enquiries from residents of Bledlow, the local Parish Council and Councillors in relation to the restrictions on the track.
- 7.2 It is envisaged that further communication and consultation will be required following this decision, if taken, in order to resolve the issue of the restrictions on the track.

8. Next steps and review

- 8.1 That the draft letter attached at Appendix 2, be forwarded to the complainant
- 8.2 That further investigations/work/analysis be carried out in relation to the status of the track.

9. Background papers

- 9.1 A plan depicting the track is attached at Appendix 1. The track appears as coloured yellow and is within the area outlined in red. X marks the point at which the obstruction occurs, being the junction of the track with the maintained highway.
- 9.2 Counsel's draft letter to the complainant is attached at Appendix 2.
- 9.3 Copies of all Counsel's Advice are attached confidentially at Appendix 3.

10. Delegated authority

The Council's Scheme of Delegations authorises the Service Director - Highways and Technical Services, to make the decision to implement Counsel advice and to agree that the Director for Legal & Democratic Services forwards the letter to the complainant.

11. Exercise of Delegated Authority

I, Rob Smith, Service Director – Highways and Technical Services agree the above recommendation.

Signed: 

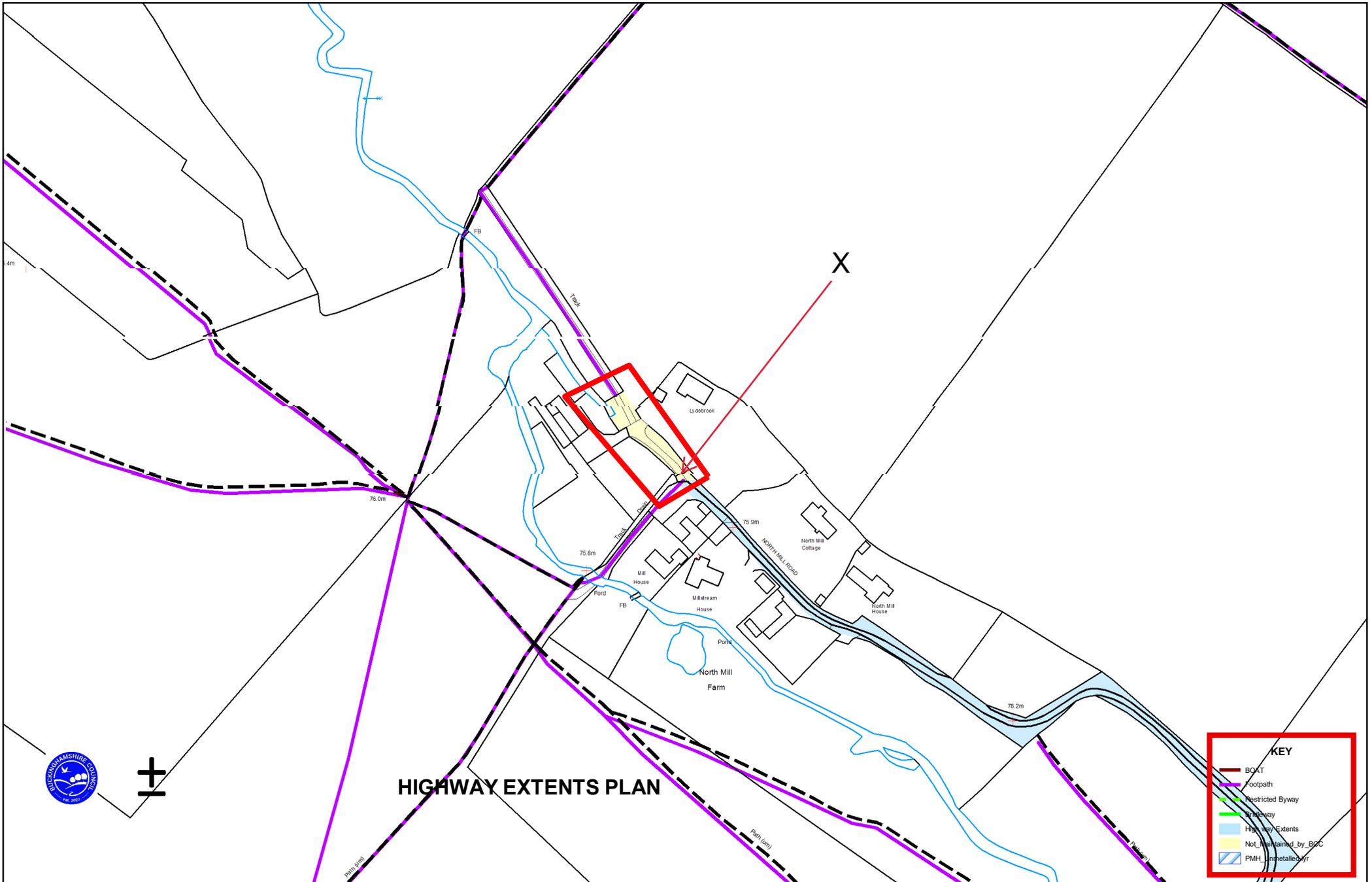
Dated: 28th April 2021

Rob Smith

Service Director – Highways and Technical Services

Appendix 1 – Plan showing route of the track

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HIGHWAY EXTENTS PLAN

KEY	
	BOCT
	Footpath
	Restricted Byway
	Byway
	Highway Extents
	Not Maintained by BOC
	PMH Unmetalled

1:2,500

Appendix 2 – Draft letter to complainant

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**IN THE MATTER OF DISPUTED HIGHWAY RIGHTS AFFECTING
LYDEBROOK, BLEDLOW, BUCKINGHAMSHIRE**

Revised Draft letter to [REDACTED]

We are writing to inform you of the course of action that the Council has decided to take in this matter, following further consideration of the evidence and consultation with Counsel secondly instructed.

The conclusion reached is that on the totality of the evidence so far available, it is unlikely that the public have any higher rights over the track through Lydebrook (“the Track”) than rights on foot. We set out the reasons below.

In the circumstances, we will not be complying with your request to record the Track as part of the U629.

We are, however, actively considering the making of a definitive map modification order under section 53(2)(b) and (3)(c)(i) of the Wildlife and Countryside Act 1981 (“the 1981 Act”) to show the Track as a public footpath.

We would welcome your co-operation and that of other local residents, and invite the submission as soon as possible of any written evidence regarding the past use and condition of the Track (whether in the form of statutory declarations, statements or user evidence questionnaires) that might assist our deliberations.

We realise that you may well disagree with that approach. However, as you will appreciate, there is a serious dispute about the legal status of the Track. While you are contending for a full vehicular highway, the [REDACTED] as landowners are denying the existence of any public rights at all. There is no single definitive piece of evidence either way. You will know that no special

statutory status is conferred on a highway authority's records, either by section 36(6) of the Highways Act 1980 ("the 1980 Act") or otherwise. The way in which the Track is from time to time depicted on the Council's highway extents map has no conclusive evidential effect (in contrast to the effect conferred on the definitive map and statement by section 56 of the 1981 Act). The dispute between the [REDACTED] and yourself could not be resolved by the purely administrative act of altering the manner of depiction of the Track on that document. The true legal status of the Track cannot be unilaterally determined by the Council (but only in judicial or quasi-judicial proceedings).

The proposed course will enable you and the [REDACTED], if so advised, to put forward your rival contentions as to the status of the Track and seek to persuade an Inspector to accept them. Alternatively, it might be that all interested parties come round to (or rather, in the [REDACTED] case, revert to) the view that the Track is indeed a public footpath. But for the time being, the existence of the dispute as to its true legal status means that the Council will have to withdraw the section 143 notices served on the [REDACTED] last year, and await the resolution of that dispute by agreement or in the appropriate forum of a public inquiry before taking any enforcement action (see for example *R v Lancashire County Council, ex p Guyer* [1980] 1 WLR 1024, reflected in section 130B(5)(a) of the 1980 Act). If and as soon as highway status is established, the Council will not hesitate to take whatever steps are necessary to secure removal of unlawful obstructions from the Track.

Turning to the reasons for rejecting vehicular highway status, we begin by pointing out that there is no evidence of a formal dedication or adoption of the Track as a highway of any description, and no evidence of any use with vehicles (or horses) by the public at large.

The starting point for consideration of its status has to be the terms of the 1812 Bledlow Inclosure Award ("the 1812 Award"). In the exercise of their powers under section 10 of the general Inclosure Act 1801, as incorporated in the Bledlow Inclosure Act 1809, the Inclosure Commissioners set out and appointed the Track (road number XII) as a "*private Carriage and Drift Road leading from the last-described Road [i.e. road number XI] at or near North Mill and extending in a Northward direction to Allotments in North ffield to Henry Williams and James Stevens respectively which said Road shall be and remain to be used as a Private Carriage and Drift Road for the use of the said Henry Williams and James Stevens for and in*

respect of their said Allotments and by their and each of their Agents Tenants Workforce and Servants for the time being.”

We regard your suggestion in previous correspondence that the above wording should be interpreted as the award of a *public* carriage and drift road as misconceived, in light of Sedley J’s judgment in *Dunlop v Secretary of State for the Environment* (1995) 94 LGR 427 and the wording of this particular Award. There would have been no point in the Commissioners’ narrowly defining the class of persons entitled to use road XII if it had been intended to serve the general public (and the same is true of the other private carriage and drift roads). Further, the express additional references to public bridleways and footways in the descriptions of other private carriage and drift roads - including road XI - would have been redundant.

The Council of course recognises that the status of the Track was not set in stone by the 1812 Award, and it could have become subject to public rights by a subsequent dedication or adoption. However, in the absence of direct evidence of any such event, the question is whether that is the correct inference to draw. In addressing that question, it is necessary to look at all the surrounding circumstances, and to weigh pieces of evidence contradicting the existence of public rights against pieces of evidence that might support it. Those pieces of evidence must pertain to the particular route under consideration. The inference certainly does not follow from *other* private carriage and drift roads in the area having since been recognised as public vehicular highways.

The implication of the 1812 Award is that in 1812, there was no perceived need or demand for any public rights of any kind over the Track - in contradistinction to road XI. It was a cul de sac leading to privately owned fields, not a place of public resort. It has never been a through route for vehicles. No reason for public vehicular rights to have come into existence over it has been demonstrated.

You rely on the depiction of the Track as part of the same linear feature, and its being comprised in the same description “Road”, as the main part of awarded road XI in the first series 1:2500 OS map and book of reference. However, that is explicable by its being a physical continuation of the main part of awarded road XI *on the ground*. That was the way in which it had been set out by the Inclosure Commissioners, but they drew a clear distinction between the rights they

were attaching to the main part of road XI and its right-angled continuation to the south-west, and the rights they were attaching to the spur leading north-west into the fields. That distinction would have been familiar to local people in the 19th century, but not apparent to the OS surveyor whose role was to record topographical features, not legal rights. It is trite law that the representation of a road, track or path on an OS map is no evidence of the existence of a right of way over it.

You also place reliance on the depiction of the Track as uncoloured and unnumbered in the 1909-10 Finance Act plan and valuation book. That manner of depiction is consistent with its having been a public vehicular highway, but by no means conclusively probative of it, any more than any other single piece of evidence. It is only one piece in the overall evidential jigsaw. No judicial decision of which we are aware has held that the Finance Act materials trump all other relevant available pieces of evidence, regardless of which way they point.

Further, the logical conclusion of that argument is that FP9 is also a public vehicular highway and part of the county road, since it is depicted in the same way. You are not, however, making that case.

It is significant that awarded road XI south-east of the junction with road XII was defined by the Inclosure Commissioners as passing along "*the North Mill Lane*". Accordingly, it had a pre-existing name and identity, unlike road XII. It seems likely that "North Mill Lane" was so called because it led to a particular destination (North Mill); was already subject to (or claimed to be subject to) some or all of the rights that the Commissioners awarded over it; and later became known as North Mill Road instead. It does not follow and cannot be assumed that the name also became attached to road XII and is necessarily to be interpreted as including it. The historic context and topography do not support treating roads XI and XII as a continuum. The access to North Mill was along road XI, not road XII.

There is, however, good reason for public rights on foot to have come into existence over the Track; that is because it makes no sense for FP81 to terminate at a point short of another public highway. As FP81 is depicted on the definitive map, its south-eastern terminus is at the opposite end of the Track to the junction of awarded roads XI and XII. It seems overwhelmingly likely that FP81 was intended to join up with the county road, but that does

not necessarily mean that the Track is part of the county road. A mistake could have been made in the depiction on the definitive map of the extent of FP81 instead, and on the current balance of evidence, the Council considers that to be more probable.

The south-eastern point of termination of FP81 was described on the parish record sheet as “*North Mill*” and is so described in the definitive statement - as is the north-eastern point of termination of FP9. That also coincides with the description in the 1812 Award of the junction between roads XI and XII as “*at or near North Mill*”. North Mill was accessed along road XI (what is now FP9), not road XII. Given the topography and layout of North Mill, the junction of awarded roads XI and XII appears to the Council to be more consistent with the description of the point of termination of FP81 as “*North Mill*” than the north-western end of road XII.

The contemporaneous perception of FP81 and FP9 as having a shared point of termination is borne out by the correspondence between the Clerk to the Bledlow-cum-Saunderton Parish Council and the County Surveyor in December 1965 - January 1966 about the omission from the definitive map and statement of the north-eastern end of FP9, in particular the initial letter of 11 December 1965 from the Parish Clerk: “*Path No 9, joins No 3, at the Ford and then continues over the footbridge to connect with No 81, and it is at this junction where the obstruction exists.*” The obstruction referred to can be identified from the opening sentence of that letter: “*a heap of scrap iron deposited on a footpath at North Mill, Bledlow*”. Its location can be identified from the extract map enclosed with the County Surveyor’s reply of 30 December 1965 and returned to him by the Parish Clerk on 15 January 1966. The manuscript annotation “*FP surveyed blocked by old vehicle*” points unequivocally to the south-eastern end of the Track.

In the circumstances, there seems to be a good argument for reading and construing the definitive map and statement together as already providing conclusive evidence of the existence of a public right of way on foot over the Track, applying the liberal and practical approach towards the interpretation of definitive maps and statements adopted in *LE Walwin & Partners v West Sussex County Council* [1975] 3 All ER 604 and *R (Norfolk County Council) v Secretary of State for Environment, Food and Rural Affairs* [2006] 1 WLR 1103. However, given the respective positions taken by you and the [REDACTED], the Council has no choice but to pursue the formal statutory definitive map modification process.

It is your case that the Track has historically been treated as publicly maintainable vehicular highway by the Council and its predecessor authorities. You place reliance on a dispute between Bledlow Parish Council and Wycombe Rural District Council as to whether “North Mill Road, Bledlow” was publicly maintainable, which was resolved in 1923 by consulting old Vestry Books according to which “*this road was repaired by the old Parish Surveyor*”. It seems to be a matter of assumption on your part that the term “North Mill Road” was being understood and used to mean not only the former North Mill Lane/awarded road XI, but also awarded road XII. The minutes seem to us to be consistent with its not including the Track.

The Council’s own highway records did not until very recently identify the Track as publicly maintainable vehicular highway. We have been unable to find anything in the Council’s historic county/unclassified road registers and lists of streets maintainable at the public expense that identifies the Track as part of the U629. It was only when the GIS highway extents layer was prepared that the Track was specifically depicted as such. We now believe that this was a mistake and we would not have done it had our subsequent researches been undertaken beforehand. Previous verbal descriptions of the U629 as terminating at North Mill are consistent with its continuing no further north-west than the junction with FP9: compare the wording of the 1812 Award and the definitive statement, as discussed above. Nor does the 1.48 mile measurement of the U629 support the inclusion of the Track.

You have been supplied with documentary evidence of the Council’s highways department denying liability to maintain the Track, which you have dismissed on the basis that the Divisional Surveyor did not know the difference between a legal duty to maintain a highway and performance of that duty in practice. We do not think that is a reasonable interpretation of those documents. We refer to:

- (a) The exchange of correspondence in August 1969 between [REDACTED] the [REDACTED] predecessor in title, and the Divisional Surveyor. On 5 August 1969, Mr [REDACTED] wrote a letter to the Divisional Surveyor headed “*North Mill Road, Bledlow*” in which he complained about potholes “*at the end of the road*” (at the approach to the breaker’s yard) and continued “*Beyond the end of the road is an unadopted section which leads to my house which I myself have made up in concrete.*” The Divisional Surveyor did not take issue with that description of the

Track as “*beyond the end of [North Mill Road]*” and “*unadopted*”, or [REDACTED] [REDACTED] having taken it upon himself to make it up in concrete, replying on 12 August 1969 (under the heading “*North Mill Road, Bledlow, Unc 629*”) “*With reference to your letter of 5th August, I hope to have the potholes repaired on the section of the county road at North Mill, within the next few days, and I trust that you will have no further trouble at this spot.*” It is difficult to read that exchange without concluding that the Track was not regarded as part of North Mill Road/Unc 629/the county road by the highway authority.

- (b) The exchange of correspondence between the Bucks Water Board and the Divisional Surveyor in March 1973. On 16 March 1973, the Board wrote asking in terms if the Council had “*any responsibilities for the length of concrete road*” shown coloured blue on the enclosed plan. There could be no mistake about the meaning of the question being asked: was the length of concrete road publicly maintainable highway? The answer was unequivocal: “*No, the concrete road is not under the jurisdiction of this Department - this ends approximately by your hydrant.*” You have described that choice of wording as “*careful and curious*”. We agree it was careful, but not curious. The word “*jurisdiction*” was plainly chosen to refer to legal responsibility. The writer was denying the existence of any statutory duties or powers over the Track, not commenting on how those powers and duties were (or were not) performed. The heading “*North Mill Road, Bledlow, Unc 629*” is explicable by the fact that the writer was informing the Board where that, being the nearest publicly maintainable highway, ended (approximately by its hydrant).
- (c) The exchange of correspondence in June 1988 between the Council’s Local Land Charges Section Head and the Divisional Surveyor. The question asked in the former’s letter dated 23 June 1988 was “*How much of North Mill Road is maintained at the public expense?*” The reply, enclosing a plan with an “X” mark at the south-eastern end of the Track, read “*This Authority maintain the length of North Mill Road, as far as the point marked X on the attached plan.*” The placing of the comma indicates that the writer intended to refer to the whole length of North Mill Road, which so far as he was concerned ended at the point marked X. (The

file reference to Unc 629 is hardly surprising as the query had related specifically to North Mill Road.)

You rely on an exchange of correspondence in April/May 1961 between the District Valuer and the Area Planning Officer. The reply (dated 4 May 1961) to the former's request in a letter dated 25 April to "*let me know whether Mill Lane is a public highway repairable by the inhabitants at large*", was "*Mill Lane is a County unclassified metalled highway (Road no 629).*" You read that as a reference to the Track, but it can instead be read as a reference to the road leading to the Track. It seems unlikely that the Track would have been described as "metalled" at that date, before [REDACTED] had purchased Lydebrook and made it up in concrete.

We find further support for the proposition that in the 1960s and 1970s, the Track had the reputation of being a public footpath, rather than part of the county road, in statutory declarations supplied to the Land Registry by [REDACTED] predecessors in title. Both Mr [REDACTED] and Mr and Mrs [REDACTED] acknowledged the existence of a public footpath along the track. On plan B incorporated in his statutory declaration dated 5 February 1990, Mr [REDACTED] (who owned Lydebrook from April 1967 to February 1976) labelled the Track "*Private Road/FP*". Mr and Mrs [REDACTED] solemnly declared on oath in paragraph 6 of their 2 November 1983 statutory declaration "*there is undoubtedly a public footpath running along the length of the track [coloured yellow on the attached plan, i.e. the Track]*". (They also referred to a farmer's right of way, which was obviously explicable by reference to the terms of the 1812 Award in creating private carriage and drift road rights over road XII for the benefit of Messrs Williams and Stevens and their successors in title.) No doubt that was the understanding on which [REDACTED] purchased the property from them (and repeated many years later in their own statutory declaration, before suddenly changing their minds).

We are unable to comment on the Land Registry's handling of the [REDACTED] application for first registration of title to Lydebrook, in which the Council had no involvement. Presumably the Land Registry registered the subject matter of the application made to it; but we can only speculate on what inquiries or assumptions were made by the Land Registry at that time. As Ms Williams wrote to you on 2 July 2020, "*without specific details, I can only advise that each application would be treated on its own merits.*"

We should conclude by saying that we see no useful purpose to be served by engaging in further protracted correspondence about this matter. The time for that has passed. The decision as to which of your position, the [REDACTED] position, and the position set out in this letter is the correct one must be put in the hands of an independent tribunal through the appropriate statutory procedure.

30/04/2021

**IN THE MATTER OF DISPUTED
HIGHWAY RIGHTS AFFECTING
LYDEBROOK, BLEDLOW,
BUCKINGHAMSHIRE**

Revised Draft Letter to [REDACTED]

Mrs Jenny Caprio
Head of Legal Services
Buckinghamshire County Council
Queen Victoria Road
High Wycombe
Buckinghamshire HP11 1BB

Appendix 3 – Counsel’s Advice (Confidential)

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