

## **APPLICATION FOR A DEFINITIVE MAP MODIFICATION ORDER: STANMER PARK**

### **RESPONSE OF CHERRYWOOD INVESTMENTS LIMITED**

#### **1. Cherrywood's lease of Stanmer House and Gardens**

We have acted as solicitors for Cherrywood ever since it started negotiations in 1999 with the Council for the acquisition of a long lease of Stanmer House and its gardens.

On 21 March 2000 Cherrywood entered into an agreement with the Council for the grant by the Council to Cherrywood of a long lease of Stanmer House and its gardens, conditional upon the grant of planning and listed building consents for the restoration of Stanmer House and change of use of the house and also conditional upon the gardens of Stanmer House ceasing to be designated as public open space.

The planning and listed building consents were duly granted. The Council duly advertised publicly its intention to appropriate the gardens of Stanmer House for the purposes of the grant of the lease so as to remove the gardens from the designated public open space, without any objections being received by the Council to this within the requisite statutory period and therefore, by virtue of section 123 (2A) of the Local Government Act 1972, the gardens ceased to be public open space and on 21 November 2002 the Council granted to Cherrywood a 125 year lease of Stanmer House and its gardens.

Thereafter, Cherrywood commenced restoration works to the house, which it completed and, since then, Cherrywood has occupied the house and its gardens for the purposes of its own businesses.

Replies to pre-contract enquiries raised by ourselves of the Council's solicitor before Cherrywood entered into the agreement for lease stated that no adverse rights were enjoyed by anyone over Stanmer House and its gardens, except for the then current occupational licence granted in respect of the Stanmer Museum and the agreement for lease declared that the lease would be granted to Cherrywood free from any incumbrances except for the Museum Licence.

The results of our local authority search and enquiries received 25 February 2002 stated that there was no public footpath crossing Stanmer House or its gardens.

#### **2. The DMMO Application**

On 4 March 2011 certain individuals applied to the Council for an Order ("the DMMO") modifying the Definitive Map and Statement for the area by adding a footpath, lying within Stanmer Park, along a defined route shown in yellow on the plan accompanying the application, including a section of land passing through the double gates in the north east boundary of Stanmer House (commonly called "the Italian Gates"), across the gardens of Stanmer House to the steps built in the south west boundary of the gardens, then leading up the hill rising to the south west of the gardens into Great Wood ("the Application").

3. **Public Footpath cannot be created over land already designated as public walks and pleasure grounds**

The public right of way is alleged to arise through long use by the public, such that the landowner is deemed to have dedicated the land to the public for the purposes of a highway (in this case a public footpath).

Dedication can be presumed under section 31(1) Highways Act 1980, which states:

- "31(1) *Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to be dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.*"
- "(2) *The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question ...*"
- "(7A) *Subsection (7B) applies where the matter bringing the right of the public to use a way into question is an application under section 53(5) of the Wildlife and Countryside Act 1981 for an order making modifications so as to show the right on the definitive map and statement.*"
- "(7B) *The date mentioned in subsection (2) is to be treated as being the date on which the application is made in accordance with paragraph 1 of schedule 14 to the 1981 Act.*"

Thus it must be shown that there was user "as of right" throughout the 20 year period ending on the making of the DMMO application on 4 March 2011. User as of right incorporates the same requirements as in private easements of "*nec vi, nec clam, nec precario*" – see *R. v Oxfordshire County Council ex parte Sunningwell* [2000] 1 AC 335; *R. (Godmanchester) v Secretary of State for the Environment, Food and Rural Affairs* [2007] UKHL 221. The Application can therefore be resisted if it can be shown that the use was permitted. It can also be resisted if "*there is sufficient evidence that there was no intention during that period to dedicate it*" (Section 31(1) Highways Act 1980).

It is common knowledge that before the Council acquired Stanmer Park, Stanmer House and Stanmer Park had been in the private ownership of members of the Pelham family for centuries. By a conveyance dated 11 November 1947, trustees of the Pelham family and the Chichester Estates Company conveyed the freehold of Stanmer Park (including Stanmer House and its gardens) to the Council, together with other land.

The Council's solicitor has produced to us minutes of a meeting of the Council held on 7 July 1953, at which the Council resolved to allocate 269 acres of the park land and wood forming part of the land comprised in the 1947 conveyance, including Stanmer Park, "*for use as public walks and pleasure grounds*". The Council's solicitor has expressed the view (with which we agree) that it must be presumed that Stanmer Park was allocated "for use as public walks and pleasure grounds" pursuant to section 164 Public Health Act 1875, as the wording of the minutes follows the wording of that section, which provides as follows:

*"Any [local authority] may purchase or take on lease, lay out, plan, improve and maintain land for the purpose of being used as public walks or pleasure grounds and may support or contribute to the support of public walks or pleasure grounds provided by any person whomsoever."*

*"Any [local authority] may make bye-laws for the regulation of any such public walk or pleasure ground and may by such bye-laws provide for the removal from such public walk or pleasure ground of any person infringing any such bye-law by any officer of the [local authority] or constable."*

Even if the footpath has been used by the public as claimed (which is not admitted) it has not been used "as a right" while held by the Council "for use as public walks and pleasure grounds".

It is implicit in the requirement of user as of right that the user is capable of being prevented. It depends on acquiescence in use which could be, but which has not been, prevented. See *Dalton v Angus & Co* (1881) 6 AppCas 740, 773 cited with approval in *R v Oxfordshire County Council ex parte Sunningwell* [2000] 1AC 335. In this case, walking along the alleged way prior to the grant of the lease to Cherrywood could not have been prevented, because the way formed part of land designated for public walks and pleasure grounds.

Likewise, use is not "as of right" if it is referable to some other existing right. See *Sunningwell* at pages 62 and 72. See also *Gale on Easements* 18<sup>th</sup> Edition at 4-119.

It follows from these principles that if the public already had the right to walk wherever they liked in the park because of its allocation by the Council in 1953 as public walks or pleasure grounds, no footpath could be created because (a) the Council could not prevent such use and (b) the use by the public of any particular path or way across Stanmer Park was and is pursuant to express permission granted by the Council, as the owner of the park, by virtue of the Council having designated the park for use for public walks and pleasure grounds.

Accordingly the alleged use of the footpath is referable to the public rights to use the land held under section 164 Public Health Act 1875 as public walks and pleasure grounds, by express permission from the landowner. In other words, as the alleged use of the way across the land shown on the plan accompanying the DMMO Application was not "as of right", the presumption of dedication cannot have arisen under section 31(1) Highways Act 1980 and the public cannot have acquired any right to use that land as a public footpath. Therefore the whole basis of the Application is fundamentally flawed.

For these reasons, it is not considered necessary to analyse the evidence provided by the applicants in support of the Application, nor to provide any counter-evidence. Nevertheless we shall do so, for the sake of completeness.

#### **4. Evidence submitted by Cherrywood in Refutation of the Application**

We attach the following evidence:

1. Exhibit 1 – landowner evidence form completed by Michael Holland, the owner and director of Cherrywood.
2. Exhibit 2 – signed statement of Philip Purvis, architectural technician exhibiting aerial photograph of Stanmer House and its gardens taken in March 1999, together with invoice from the aerial photographer dated 18 March

1999. The photograph (and the separate enlargement with it) show the Italian Gates at the entrance to the gardens of Stanmer House as being shut and a padlock locking the gates. Mr Purvis's statement exhibits a letter dated 12 February 2007 from Deborah May of the Council's Planning Strategy & Projects Group, referring to Cherrywood's obligation contained in a section 106 agreement dated 12 July 2006 to ensure that a specified part of the gardens of Stanmer House shall remain open to the public at all times from dawn to dusk for the purposes of access to adjacent land and stating that it had been brought to her attention that this covenant was not being complied with, in that "the right of way remains gated". In his statement, Mr Purvis refers to that letter and confirms that in compliance with that letter, Cherrywood unlocked the gates in March 2007.

3. Exhibit 3 – signed statement of Samantha Holland, who has organised functions and events at Stanmer House since February 2006, and exhibited photograph taken by her in September 2004 showing the Italian Gates shut and also showing a large stone slab installed immediately behind the gates preventing them from being opened.
4. Exhibit 4 – witness statement of David West.
5. Exhibit 5 – signed statement of Derek Chapman.
6. Exhibit 6 – signed statement of E. S. Huxham.
7. Exhibit 7 – signed statement of Philip Chibeba.

It is submitted that the above evidence demonstrates the following sequence of events:

- 1958 until some time after 1981, when University of Sussex left the building: Italian Gates shut and park police prevented public entry into gardens.
- Council allowed public entry into gardens from some time in the 1980s after 1981 (when Sussex University left the building) until no later than 1998.
- Gates locked continuously from 1998 to 2007 (except when they occasionally needed to be opened by Cherrywood for functions).
- Large stone block placed immediately behind Italian Gates so as to prevent them from being opened for continuous period from 1999 until June 2006.
- Italian Gates unlocked in March 2007 at the demand of Deborah May of the Council and remained unlocked until early 2011.
- Gates locked and fencing installed all around the gardens in Spring 2011 and gates have been locked and fencing has remained in situ since then.
- Between March 2007 and Spring 2011, gates locked between dusk and dawn as permitted by Cherrywood's covenant in the section 106 agreement thus providing further evidence of the Council's intention not to dedicate the way as a footpath open to the public at all times.

Cherrywood did enter into a section 106 agreement with the Council in 2003, and again in 2006, in which it covenanted to permit the public to have access across the gardens of Stanmer House from the Italian Gates to the steps in the south western boundary of the

gardens between dawn and dusk every day. Whilst that may be evidence of an intention on the part of the Council that the public should have access across the gardens between dawn and dusk at the time of the entering into of the two section 106 agreements, the fact is that the gates remained locked until March 2007 and the obstructing stone remained immediately behind the gates until June 2006 preventing public access across the gardens via the alleged route. Moreover, on 12 April 2011, the Council entered into a Deed of Variation of the most recent section 106 agreement with Cherrywood, under which the Council agreed that any public access across the gardens via the alleged route will be extinguished upon Cherrywood completing the formation and landscaping of an alternative route around the outside of the southern end of the gardens (which works are nearly complete at the date of this submission). By entering into that agreement, the Council has clearly evidenced its intention that (subject to Cherrywood completing the alternative access around the outside of the gardens) any current permission for the public to have access across the gardens via the defined route will be withdrawn.

## **5. Observations on Applicants' Evidence**

### **A. Evidence in Jessica Hamilton's Landowner Evidence Form on behalf of Council**

Paragraph 1 is incorrect, the Council acquired the land by the conveyance dated 11 November 1947 deduced to us by the Council's legal department.

Ms Hamilton admits in her statement that her involvement with Stanmer House is limited to the past 5 years or so. Therefore we submit that her recollection of events before her involvement is not necessarily reliable (albeit that she will presumably have consulted such records held by the Council as she has been able to inspect).

Her understanding that access had not been restricted to the gardens prior to the grant of the lease to Cherrywood is contradicted by the above evidence produced by Cherrywood.

### **B. Evidence of Hugo Bloomfield in his email of 15 July 2011 to Carl Hearsum of the Council**

Again, Mr Bloomfield states that he only started working for the Council in 2005 and therefore presumably has little or no personal knowledge of whether the gates were shut or locked prior to that.

Mr Bloomfield's statement that the gates were not known to him to be locked from 2005 until early 2011 is contradicted by the letter from Deborah May of the Council to Cherrywood dated 12 February 2007 referred to in Exhibit 2 herewith. The witness statements of David West, Michael Holland and Phil Purvis in Exhibits 1,2 and 4 testify to the gates having been locked continuously between 1998 and March 2007. Mr Bloomfield himself also refers to a statement by a resident of Stanmer village that the gates were locked by Sussex University when they leased Stanmer House about 20 years ago.

Mr Bloomfield says that most of the park is considered to be open to access on foot under the bye-laws for the park – which provides further evidence that people walking on paths through the park are there by permission of the landowner (the Council) and not as of right.

### **C. Letter dated 26 August 2011 Stanmer Preservation Society Open Spaces Society**

The 1816 picture is only a painting, does not show the location of any path as necessarily coinciding with the route of the alleged footpath across the current

gardens of Stanmer House and, in any event, in 1816 Stanmer House and its gardens were of course in the private ownership of the Pelham family, who would doubtless have constructed footpaths in and around the ornamental gardens of Stanmer House but for the private use of the Pelhams and their guests. That in no way proves that the Pelhams allowed the public at large to use those paths.

The purpose of the police map and the handwritten annotations on it are not understood. In any event, whilst the map appears to show a carriageway connecting to the forecourt at the front of the house, it shows no pathway leading from the carriageway to the position of the present Italian Gates at the entrance to the garden.

This evidence is therefore unreliable.

D. The 318 signed Evidence Forms

Firstly, these are only signed statements and none of them attaches any hard evidence of the existence of a public right of way across the gardens or along any other part of the route coloured yellow on the plan accompanying the Application. Whilst witness statement number 48 attaches photographs of children playing by the ornamental fountain in the gardens, of people picnicking and of a child playing on what appears to be the hill lying to the west of the garden, none of these provides evidence of people passing and re-passing over a defined way. By contrast, Cherrywood is able to exhibit to this response actual 1999 and 2004 photographs showing the gates shut and padlocked and (in the latter photograph) a large stone obstruction to the opening of the gates. It is also able to produce correspondence from the Council's own officer, Deborah May, stating that public access across the gardens had been physically obstructed.

It is abundantly clear from inspection of the grassy hill leading from the south western boundary of Stanmer House gardens up towards the woods that there is no worn track, nor any worn grass along any defined route leading from the top of the steps in the south western boundary of the gardens up the hill into the woods. (Once inside the woods, one can clearly see that there are paths leading in several directions, but there is no evidence of any worn path between the woods and the steps in the south western boundary of Stanmer House gardens, across which the Applicants allege there is a public right of way). There is evidence on the ground of a worn path leading from the bottom of the woods, diagonally across the hill, which comes out at the back of a nursery onto the road which passes along the north side of Stanmer House stable block. That clearly evident path provides a means of access from Stanmer Village up into the woods. There is no worn path leading from the steps in the south western boundary of Stanmer House gardens up the hill into the woods.

There is also evidence of a worn path around the southern end of the gardens of Stanmer House but it is admitted that this may only have come into being recently following the works carried out by Cherrywood to form an alternative means of access around the gardens.

We note that no fewer than 28 of the 318 witness statements state that the witnesses have seen the gates locked – which supports Cherrywood's contention that unimpeded access via the alleged route across the gardens has not been established (see statements 68, 91, 98, 111, 112, 118, 122, 135, 137, 155, 169, 187, 189, 223, 224, 235, 245, 258, 259, 268, 301, 305, 306, 310, 311, 312, 313 and 315). Additionally, witness number 4 states that the gates were locked during a dog show at an unspecified time. Witness 38 states that the gates were locked for a short period just over a year ago. Witness 48 states that the gates

were open/closed/broken over the years and admits that most people used the earth track at the side of the gates, rather than the gates themselves, for access. Witness 159 admits to having seen a gate across the bottom of the path and although he/she stated that the gates were never locked, he/she inconsistently stated that "it never stopped us going across because you could go around or through", indicating that the gates, by virtue of being locked or shut, did in fact prevent people from accessing the alleged way across the gardens so that people had to enter the gardens through gaps in the hedges/trees. Witness 304 states that he has seen the gates but doesn't answer the question whether they were ever locked.

8 witnesses (numbers 60, 64, 101, 150, 156, 181, 288 and 316) haven't completed most of the questions in their evidence forms and, in particular, have not answered the question whether they have seen any gates or ever seen gates locked, so these are of no evidential value.

We have counted 77 of the witness statements where the witnesses have said that they have only used the claimed right of way for 12 years or less (12 years being the length of time that Michael Holland and Philip Purvis can testify from their own knowledge as to the presence of the gates and that they have been locked for most of the time during the past 12 years). As those 77 witnesses cannot testify to the use of the alleged right of way more than 12 years ago and as Cherrywood has provided compelling evidence herewith (such as the photographs and the letter from the Council's enforcement officer) of the gates having been locked and the obstructing stone slab having been in place for a large part of the last 12 years, it is submitted that very little weight can be given to the evidence submitted by those 77 witnesses.

That leaves a large number of witnesses, who claim to have used the alleged way for many years and who, astonishingly, say that they have never seen any gates across the way and/or state that the gates have never been locked. The evidence we have provided herewith demonstrates that those statements are untrue. Witness statement number 11 from the Director or former Director of Parks of the Council itself states that the present ornamental iron gates were installed in about 1970. How can all these witnesses, who claim to have been walking across the gardens for decades, all say that they have never seen any gates across the way? How can the others say that the gates have never been locked when they patently obviously have been for a large part of the last 12 years?

It is therefore submitted that the statements of all those persons who claim to have frequently used the alleged path across the gardens over a substantial period of time without ever having seen any gates or (if having seen them) without having seen them unlocked, is unreliable.

Section 31(7B) of the Highways Act 1980 makes it clear that anybody claiming a public right of way must demonstrate actual public use of that way for a period of time right up to the date of the application for the Footpath Modification Order. Even if (as we admit would appear to be the case from the evidence obtained from Cherrywood's witnesses) the Council allowed members of the public to use the gardens of Stanmer House for a period of time during the 1980s and 1990s, that permission was clearly withdrawn when the Council locked the gates in or before 1998 (see Philip Purvis's witness statement in Exhibit 2) and installed the large stone block behind them, preventing them from being opened in about 1999. It should be noted that that locking of the gates and obstruction of the gates by the stone block was an act of the Council as the owner of the freehold of

the gardens – not an act of Cherrywood, which only became a tenant of the house and gardens some 3 years later in 2002.

It is also worth noting that a single act of interruption by the landowner of public access across his land is of much more weight than many acts of enjoyment by the public. (See *R v Secretary of State for the Environment ex parte Blake* [2004] JPL 101). Therefore the mere fact that a large number of witnesses state that they have walked a given route is outweighed by the hard evidence produced by Cherrywood that access across the lawns via the Italian Gates has been interrupted for a very substantial length of time in recent years (from at least as far back as 1999 until March 2007 and subsequently since early 2011).

Some of the witnesses on behalf of the applicants state that they accessed the gardens through gaps in the trees and hedges surrounding them – which implies that the gates may at the time have been locked, or at least have been shut, making access through the gaps more convenient. To the extent that access was had through the gaps rather than the gates, clearly access across the gardens would not have been via the alleged route leading from the gates to the steps in the south western boundary of the gardens.

## **6. Conclusion**

In conclusion:

- No hard evidence of use of the alleged footpath has been provided by the Applicants. The evidence provided has been only in the form of signed statements.
- By contrast, Cherrywood has provided hard evidence (in the form of photographs and of the letter from Deborah May of the Council requiring the gates to be opened) that the gates have been locked for a significant period of time (1999 to 2007) in the recent past.
- Since early 2011, the gardens have been fenced off by Cherrywood in accordance with planning permission and with written consent granted by the Council in its capacity as the owner of the freehold. The gates have also been locked since early 2011. The Council has, by the Deed of Variation dated 12 April 2011 of the 2006 section 106 agreement, signified its intention that permission for the public to have access on foot across the gardens of Stanmer House via the route shown on the plan accompanying the footpath application will be withdrawn upon Cherrywood completing the formation of the new means of access and landscaping and other works outside the gardens, pursuant to the Deed of Variation.
- The statements of the majority of the applicants' witnesses are unreliable, because they are making statements which are patently untrue (such as they have never seen any gates across the way in all the years that they have been allegedly walking the alleged path and/or that the gates have never been locked).
- Whilst evidence obtained both by the applicants and by Cherrywood indicates that the Council may have allowed the public access into the gardens of Stanmer House for a period of time during the 1980s and 1990s, firstly that evidence does not prove that during that period the Council allowed the public to use any particular path across any particular route, and secondly, there is clear evidence from the 1999 photograph showing the gates padlocked and the installation of the stone obstruction behind them in about 1999 that any such permission had been withdrawn by 1999 and the gates were not open again until March 2007

(and then only between dawn and dusk) and have been shut since early 2011. Therefore, importantly, the applicants have not made out the case, required by section 31 Highways Act 1980, that the public have, as a matter of fact, enjoyed use of the alleged footpath across the gardens for any given period of time continuing up to the date of the application for the DMMO.

- Even if the applicants had made out such a case, it is submitted that the application is fundamentally flawed because any de facto exercise of rights of way across any given route through the park will have been by express permission of the Council as owner of freehold of the park, by virtue of the Council having designated the park for use for public walks and pleasure grounds in 1953 – and not exercised as a right. Rights of way alleged to arise through long use cannot be exercised if they have been exercised with the express permission of the landowner.

On behalf of Cherrywood, we would therefore respectfully urge the Council to dismiss the application.



Adams & Remers  
On behalf of Cherrywood Investments Limited  
28 September 2011



Wildlife and Countryside Act 1981

Claimed Public Right(s) of Way - LANDOWNER EVIDENCE FORM

Please PRINT clearly. A separate form should be completed by each person.

Name (Mr/Ms/Miss/Ms) MICHAEL HOLLAND

Address 15 ABBOTTS 129 KINGS RD  
BRIGHTON BN1 2FA

Tel. no. 01273 680400

Description of claimed public right of way:

Footpath \*

Leading from: TQ 336094

Bridleway \*

(Grid reference: .....)

Byway \*

to: .....

Other public right of way \*  
(\* delete as applicable)

(Grid reference: .....)

1. The route of the way is shown on the accompanying plan.  
Does this route cross or adjoin your land?

Yes/No

[If not, no further question need be answered].

If yes, please indicate on the plan the position of your land, and state the number of years it has been in your:

Ownership: 9 years

or Tenancy: 9 years

2. Have you seen, or been aware of, members of the public using this way?

Yes/No

only between  
2007 to early  
2011

If so, please state the period, regularity and nature of such use:

From time to time -

3. Have you ever required people to ask permission before using the way?

Yes/No

If yes, please give details:

.....  
.....

4. Have you deposited a section 31 (Highways Act 1980) plan and statement?

Yes/No

5. Have you, or has someone on your behalf, ever turned back or stopped someone from using the way?

Yes/No

If yes, please give details and appropriate dates: .....

When we have a large event and gardens are in use - several occasions since opening gates in 2007 when requested to open them on 12th Feb 2007 it enforcement officer.

6. Have you, or has someone on your behalf, ever told anyone using the way that it is not public?

Yes/No

If yes, please give details and appropriate dates: .....

Security upon being asked by public

7. Have you ever erected notices or signs stating that the way was not public?

Yes/No

If yes:

- a. Please give details and approximate dates: .....

Only whenever a large event was on.  
or when helicopter due to land several times a year.

- b. State whether those notices were ever defaced or destroyed

and if so when: Sometimes on a fairly regular basis

- c. Please show the position of any notices on the accompanying plan.

8. Have there, to your knowledge, ever been on the way any stiles or gates?

Yes/No

- a. If yes, state when these gates were installed/removed: .....

Believe present gates early 70<sup>s</sup> replacing other gates

- b. state whether the gate or gates were ever locked: .....

Yes gates locked to our knowledge 1999 to 2007

- c. Please show the position of any gates on the accompanying plan.

9. Have you ever obstructed the way?

Yes/No

If yes, please state how, where and when: .....

From 2002 when we acquired the house and gardens until 2007 when we were required to open the gates by the enforcement officer the gates remained locked

10. **OTHER COMMENTS**

Please provide any further details which you consider to be relevant.  
Continue on a separate sheet if necessary.

The gates had been locked by the council when or before we became first involved with the property in 1999. They remained locked until the enforcement officer told us to unlock them on 12<sup>th</sup> February 2007

I hereby certify that to the best of my knowledge and belief the facts that I have stated are true.

Signed: [Signature]

Date: 7/9/11

Brighton and Hove City Council will make a decision based on a consideration of all available evidence.

It is important that witnesses should answer the questions as fully as possible and not keep back any information.

NOTE: Your responses in this questionnaire will be made available for public inspection.

TO WHOM IT MAY CONCERN

STANMER HOUSE, STANMER PARK, BRIGHTON.

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I was first invited to look around the Stanmer House site in May 1998 when Brighton and Hove Council were seeking interest for the granting of a lease to enable the restoration of the building.

At this time I produced a prospectus of outline proposals on behalf of Cherrywood Homes Ltd (later to become Cherrywood Investments Ltd) and subsequently, following negotiations with the Council, such a lease was agreed to be granted.

At this time I was asked to prepare proposals for the restoration project.

Now becoming more familiar with the buildings and grounds in March 1999 I had a series of aerial photographs taken of the site, including the attached photograph.

Access to the Garden Area from the east was through various gaps in the trees as the large Italian gates were securely chained and padlocked, which it appeared had been the case for many years.

The attached aerial photograph shows the Italian gates to the garden area locked shut with the chained padlock visible.

It was not until six years later in January 2005 that restoration work to the house commenced following the granting of Listed Building Consent. The gates remained locked during the time of the house restoration work.

The garden area was first used in June 2006 for a function when vehicular access to the garden was required. Therefore the large stone now blocking the gates, placed as a deterrent to vehicles being driven into them, was removed and the padlock and chain replaced.

Following this function the gates were locked up again and were only occasionally opened thereafter when vehicular access was required.

It was in March 2007 following correspondence from Debra May at Brighton & Hove City Council, (see copy correspondence attached), that the gates were opened regularly.

Therefore I am able to confirm that to my knowledge there has been no public access to the garden through the Italian gates for nine years since my first visit in May 1998 until March 2007.

Signed

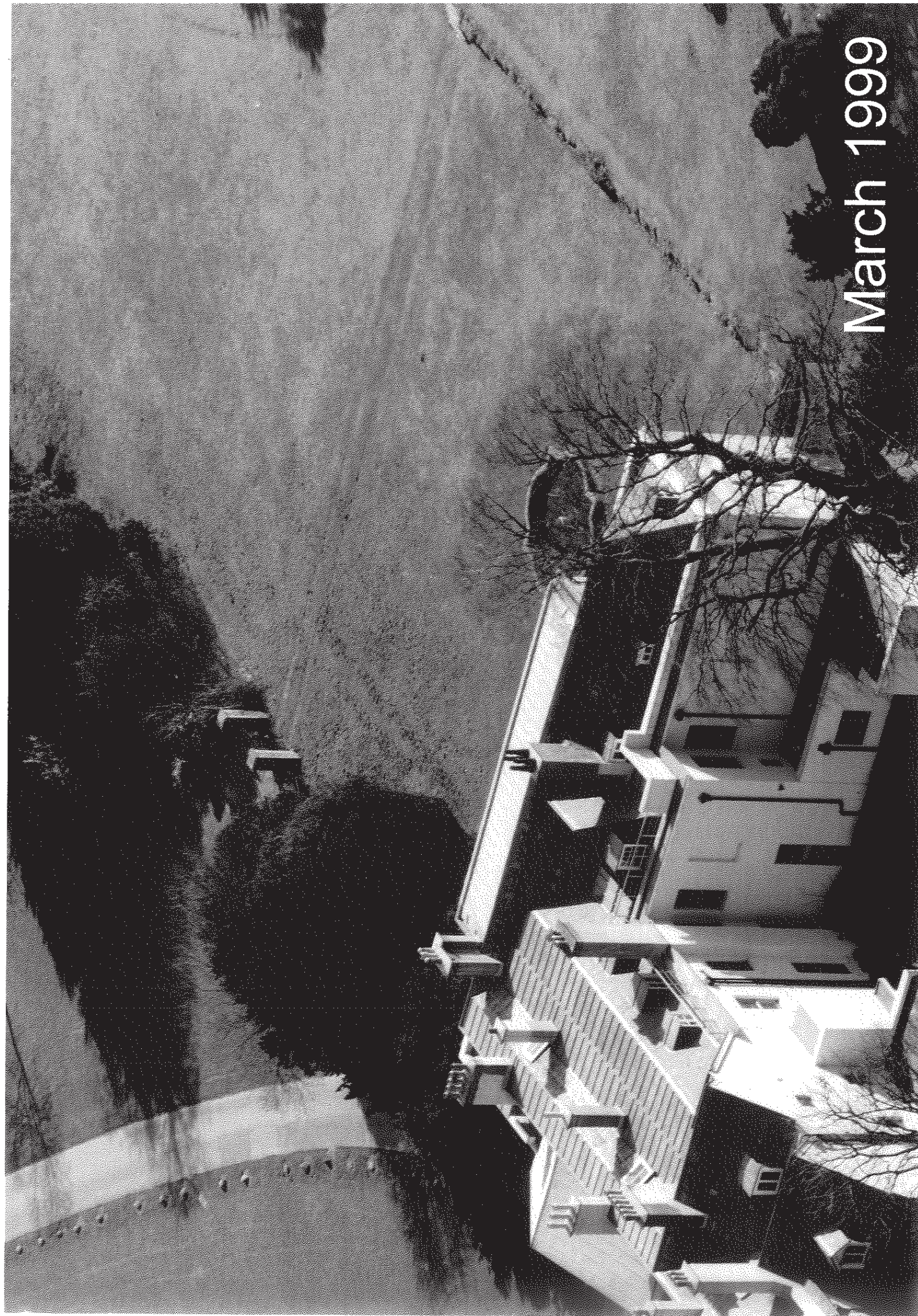
A handwritten signature in dark ink, appearing to read 'Phil Purvis', with a long horizontal stroke extending to the right.

Phil Purvis

14,9,2011

Ref 1588

Attached: Aerial photograph taken in March 1999.  
Debra May's letter dated 12<sup>th</sup> February 2007.  
My letter to Debra May dated 21<sup>st</sup> February 2007.



March 1999



INVOICE No.180399..

Date 18/3/99

*Denny Rowland*

INDUSTRIAL, AERIAL & SPORTS PHOTOGRAPHER

*'Coombers' West Chiltington Lane, Broadford Bridge,*

*Near Billingshurst, West Sussex RH14 9EA.*

*Tel./fax-01798-813239 Mobile-0956-883969*

*E.Mail dennyrowland@Compuserve.com*

*Phil Purvis  
13 Petworth Rd.  
B'ton BN1 8LQ*

*Your Order No.*

*fax. 11/3/99*

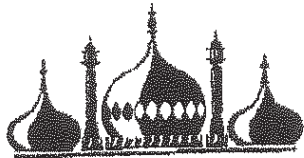
*Ref.*

*To:-*

*supply aerial survey of Stanmer Pk.*

*£120=00*

Please make Cheque payable to D.Rowland.



**Brighton & Hove**

ENVIRONMENT

Planning Strategy & Projects Group  
Brighton & Hove City Council  
Hove Town Hall, Norton Road  
Hove BN3 3BQ

Cherrywood Investments Ltd  
75 Church Road  
Hove  
BN3 2BB

Date: 12<sup>th</sup> February 2007  
Our Ref: DM/s106/StanmerHse06-7  
Your Ref:  
Phone: (01273) 292295  
Fax: (01273) 29-2379

e-mail: [Debra.may@brighton-hove.gov.uk](mailto:Debra.may@brighton-hove.gov.uk)

Dear Cherrywood Investments

**Section 106 Agreement 12<sup>th</sup> July 2006 – Stanmer House**

I refer to the above legal agreement, of which Cherrywood Investments are identified as the 'Developer' and specifically the covenant under sub-clause 3.4 in relation to the right of way, shown on 'Plan C' as attached to the said agreement.

The specific obligations of this covenant require that the "Developer shall ensure that the part of Property shown on the attached Plan marked C (having a width of 3 metres)", "shall remain open to the public at all times from dawn to dusk for the purposes of access to the adjacent land" and "that nothing in this sub-clause 3.4 will permit the Developer to terminate the right of way".

It has been brought to my attention that this covenant is not being complied with, in that the right of way remains gated, with no such alternative route having been agreed by the Council. Therefore I formally request your urgent attention in this matter to ensure that the ongoing obligations of sub-clause 3.4 are carried out, the requirements of which are enforceable by law.

Yours sincerely

Debra May  
Developer Contributions Officer  
**Planning Strategy & Projects Group**  
City Planning

c.c Tim Squire – Rights of Way Officer  
Hilary Woodward – Senior Lawyer  
Rachael Hobman – Development Control

Telephone (01273) 290000

Director of Environment: Jenny Rowlands

**Phil Purvis**  
ARCHITECTURAL TECHNICIAN

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Date : 21/02/2007  
Our Ref : 1588  
Your Ref : DM/s106/StannerHse06-7

**COPY**

Debra May  
Planning Strategy & Projects Group,  
Brighton & Hove City Council,  
Hove Town Hall,  
Norton Road,  
Hove. BN3 3BQ

Dear Debra May,

RE: STANNER HOUSE, STANNER PARK, BRIGHTON.

Your letter dated 12/02/2007 concerning the Section 106 Agreement for Stanner House, namely the right of way access the garden area has been forwarded onto us.

At present we have a Planning Application under consideration which may have an effect on this right of way.

There is a meeting being arranged by Planning Officer Rachael Hobman to discuss this and other outstanding applications and we will be in touch again when this has taken place.

Should you require any further information please do not hesitate to contact us.

Yours sincerely,



Phil Purvis  
for Purvis Draughting Ltd.

Copy to : Cherrywood Investment Ltd.



September 9, 2011

**To whom it may concern**

I am a director of Cherrywood Events Limited, which organises functions and events at Stanmer House in Stanmer Park, Brighton. I have worked at Stanmer House for Cherrywood Events Limited since February 2006.

In September 2004, I took a number of photographs of Stanmer House and its gardens and surroundings, including the photograph a copy of which is attached to this statement. It shows a large stone block lying immediately behind the double gates in the eastern boundary of the gardens of Stanmer House, preventing the gates from being opened.

I do not hold a record on the digital camera with which I took the photograph of the date of the photograph. However, I did save the photograph, along with a number of other photographs I took, on my PC and the date on which the photograph was saved on my PC is shown on the highlighted line of the attached printout.

I recall that we arranged for the stone block to be removed some time in June 2006 as the gates needed to be opened for a function being held in the gardens.

I am aware that I am making this statement in connection with an application by others to Brighton & Hove City Council for an order to modify the Definitive Footpath Map to include a public footpath crossing the gardens of Stanmer House.

A handwritten signature in black ink, appearing to read "Samantha Holland".

Samantha Holland  
Director

Dated: Sep 9<sup>th</sup> 2011

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	DSC00402	03/09/2004 07:33	JPEG Image	2,002 KB



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JPEG Image	Tags: Add a tag	Dimensions: 2592 x 1944	Title: Add a title	Comm



**WILDLIFE AND COUNTRYSIDE ACT 1981 CLAIMED PUBLIC RIGHT OF WAY  
WITNESS STATEMENT**

**Name:** Mr David West  
**Address:** 67 Mackie Avenue, Keymer, Hassocks, West Sussex, BN6 8NJ  
**Tel:** 01273 842731  
**Occupation:** Retired Farmer  
**Age:** 68

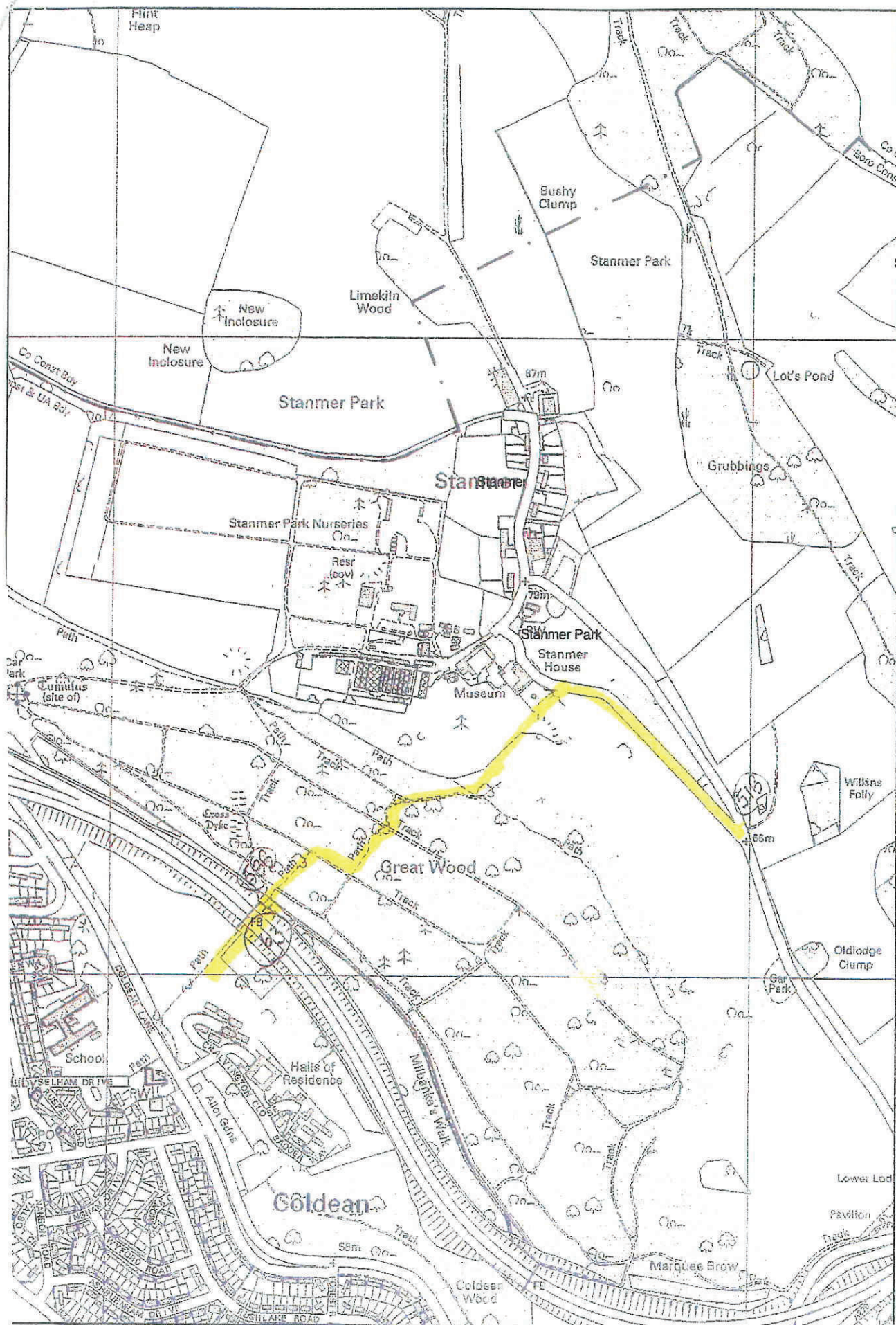
1. I refer to the recent application to Brighton & Hove City Council to modify the definitive footpath map for the area by adding the footpath shown coloured yellow on the attached plan.
2. I do not work for Mr Holland and never have.
3. My grandfather and father rented Home Farm, Stanmer Park in 1949 from Brighton Corporation, and I worked on the farm from 1958 on leaving school until I left Stanmer in September 2005, when the Council wanted to incorporate most of the farm into open access and extend the park. I lived in the farmhouse at Home Farm from 1967 to 2005. For this reason, I have known and have been very familiar with Stanmer House and its gardens for a very long period of time.
4. From 1950 until approximately 1980, few people went into the pleasure garden next to Stanmer House as it was regarded as part of the Manor with four families living in flats. Three of the families moved to the village when the west wing of Stanmer House (30 rooms) was demolished due to dry and wet rot in the mid 1950's.
5. Anyone seen in the pleasure garden would have been ordered out by either the ground staff, the two park policemen who patrolled the park 12 hours a day, or the game keeper who walked the estate carrying his shot gun.
6. Since at least as far back as 1958 when I started working on the farm, there have always been a pair of gates in the position of the present ornamental iron gates in the middle of the north east boundary of the pleasure garden. The present gates (which can be seen in the attached photograph) were installed in the 1970's so as to replace the old gates which had been there since before 1958. Until the 1980's, the gates were shut, except when the park police were patrolling the garden or the ground staff working in it. The garden used to be fenced until the fence became

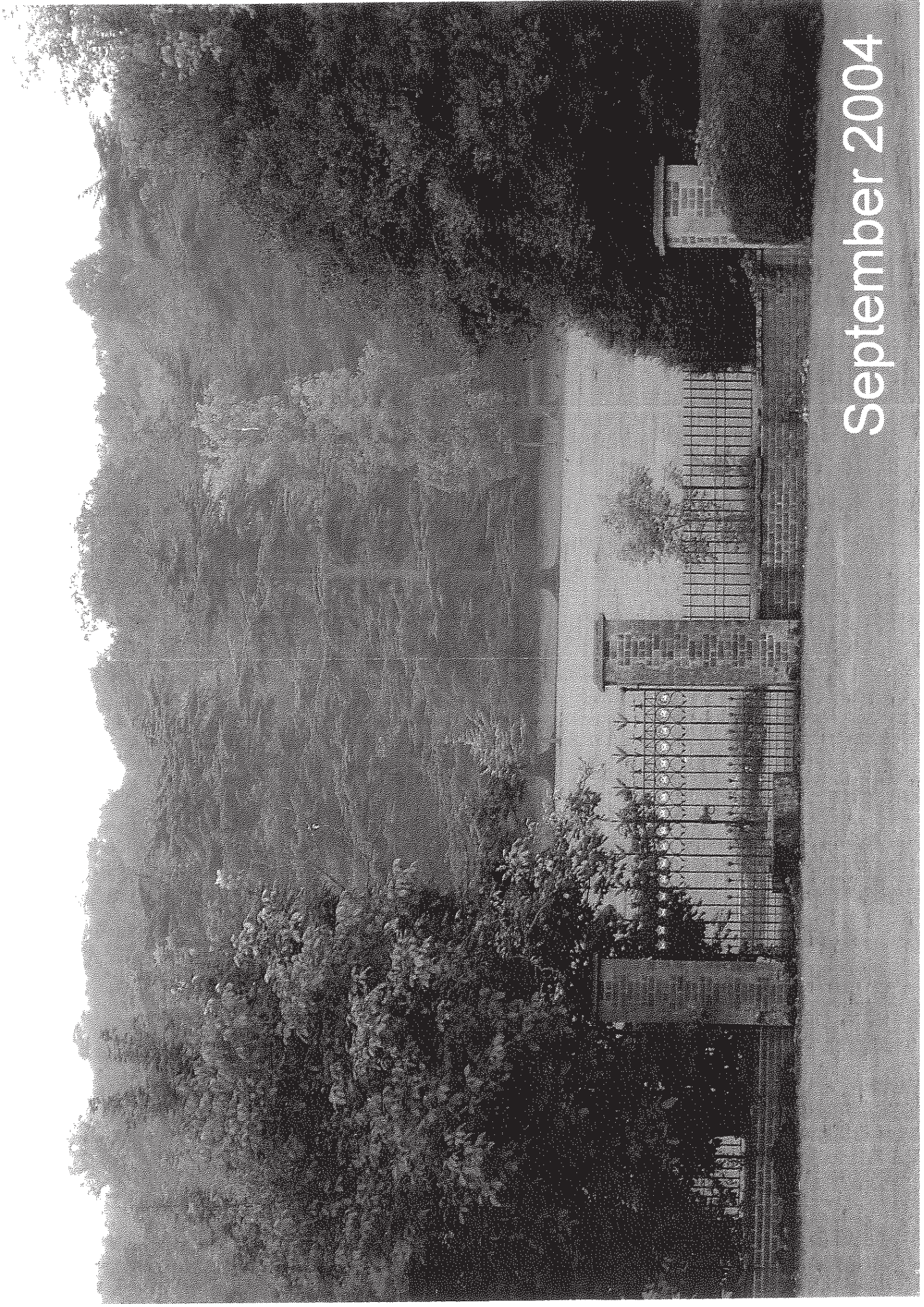
dilapidated when the Council took it down. Over a period of time hedges and trees grew around the boundaries making access to the garden difficult.

7. From 1965 until 1981 the University of Sussex used the house as a library during the Harold Wilson Government and occasionally I saw people in the pleasure garden, but they did not enter through the ornamental double gates, but by a small gate on the left hand corner at the front of the house.
8. At the beginning of the 1980's, the University of Sussex students held their summer ball in the gardens and the large ornamental fountain was broken as a result.
9. After the university left in about 1981, the council did allow the public to use the pleasure garden for a period of time. However, when Stanmer Nursery was no longer required to produce plants and flowers for Brighton & Hove and the park policemen withdrawn and the ground staff and the forestry team reduced, the demise of Stanmer House and the pleasure garden began. Travellers made an unauthorised entry into the gardens. Stolen cars came into the park nightly and were set on fire, some on the boundary hedge/trees of the garden that left large holes, others were burnt out by the gates.
10. Therefore about 12 years ago, the Council arranged for the gates to be locked and got people from the nursery to lay a large stone block behind the gates to prevent them being opened. The block can be seen on the attached photograph. I believe the block was laid about 12 years ago because around that time, at the request of the Caretaker, Mrs Ann Markwick, I myself placed a large sarsen stone at the door of the House to stop stolen cars being driven into it (I remember one of the two Victoria lamp posts either side of the front door was broken by a car). When I left Stanmer in 2005, the stone block shown on the attached photo was still there.
11. As far as I am aware, there has never been a right of way through the pleasure garden gates. No one has ever suggested to me that there was a right of way.

.....*David West*.....

**David West**





September 2004

St. Mary's Barn  
Ridge Road, Falmer,  
Brighton, East Sussex, BN1 9DL  
Telephone: (01273) 670833

To Whom it May Concern

6<sup>th</sup> September 2011

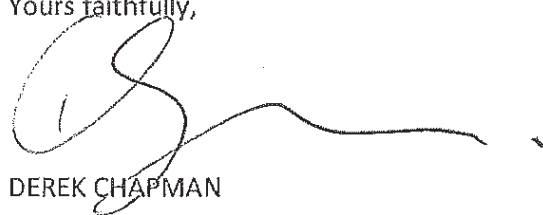
Dear Sirs,

***Re: Stanmer House – Gardens***

With reference to the above, I was brought up in Brighton and visited the park with my family many times in the 1960's and 70's and went to Stanmer Secondary School and often ran past it when doing cross country runs for P.E. I can never recollect the gardens being open and it was an area which we were never allowed into, even when the house became derelict I cannot remember open access. I believe there were signs erected mentioning no ball games or dogs etc.

I hope this is of some assistance.

Yours faithfully,

A handwritten signature in black ink, appearing to be 'Derek Chapman', with a long horizontal flourish extending to the right.

DEREK CHAPMAN

**E S Huxham & Partners**  
**Court Farm Falmer East Sussex BN1 9PB**

Vat no. 315 746 750    Mobile 07802453842

1-9-2011

Dear Sir.

Ref. Footpath across the Lows of Hammer House.

I was born in Falmer over 66 years ago & I never saw  
the path over the Low open to the Public. I would walk  
down to Hammer Church on a Sunday Evening with my mother.  
& we would always meet the Park Police Keeping Order.  
& Making sure that nobody would be around the House etc.  
This was in the Fifties. Before I was old enough to Drive,  
& as far as I know the Lows have never been open  
to the Public for Access.

Yours

E. S. Huxham.

115 Borden Lane  
Sittingbourne  
Kent  
ME10 1BX

**Stanmer Park House**

Tuesday, 18 August, 2011

It was very interesting visiting Stanmer Park again as being born and bred in Brighton and living for over 30 years there I remember well many visits to the park.

I can confirm that from the 1950s till the end of the 1980s there was no public access across the property of Stanmer House. The gates were locked and only a trespasser sneaking through the trees would get illegal views of the garden and house.

The park keepers were very keen to keep the public away and moved on any loitering youngsters or adults. Why would you need to go through the property? The rest of the park was given to public enjoyment and you could easily walk round the outside of the property to access the woods or any other area.

Even on organised scout hikes we were not given access through the gates as the designated route was around the boundaries.

I have no interest one way or the other as to who should have access, but as a Brighton lad now residing in Kent I can only say it is good to see the grand old building being put to a decent use.

Regards  
Philip Chibeba  
DoB: 1<sup>st</sup> July 1952  
Occupation: Oil Industry Technical Representative.



