

APPLICATION FOR A DEFINITIVE MAP MAKING ORDER: STANMER PARK

Response of the DMMO applicants to the Statement of Adams and Revers, Solicitors, on behalf of Cherrywood Investments (28.9.11)

Response to Point 1

The applicants agree that there has never been a public footpath crossing Stanmer House garden, although there is clear evidence of a footpath marked on an 1873 Ordinance Survey Map (Colson Stone Report, 2003/4). As OSS and Definitive Maps are usually in accord, it appears to be an oversight that the path in question was not entered onto the definitive map. The point of the Application is to invoke the Public Highways Act 1980 31 (1) (see below) in order make a Definitive Map Making Order (DMMO) and put the footpath on the definitive map, thus making it a public footpath:

31 (1) Where a way over any land, other than a right of way of such a character than any 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 (calculated retrospectively from the date when public use of the way is brought into question), 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.

Response to Point 3

Cherrywood Investments (CI) argue that the Application can be resisted:

(a) If there is evidence that use of the path was ‘permitted’, (i.e. only used by permission of the landowner, rather than ‘as of right’) or (b) ‘if there is sufficient evidence that there was no intention during that period to dedicate it (i.e. evidence that CI took steps to prevent the path become a public right of way by informing the public, verbally, in writing, or by using obstructions, that it was private).

Argument (a)

This argument, constructed by the tenuous linking together of various precedents, appears to be as follows:

Using a path ‘as of right’ implies that usage could be refused. Usage of the Stanmer path could not be refused, because - following its allocation by the Council in 1953 as public walks and pleasure grounds - the public had the right to walk wherever they liked in the park. The statement argues that the latter right means that the former right is foregone.

This argument is extraordinary – in effect saying that walkers could not use the path ‘as of right’ because they had the right to use it. This presents an attempt to circumvent the intention and spirit of the 1980 Highways Act, which was written so as to ensure that all paths that had regularly been used by the public could not be closed to them.

Argument (b)

The evidence submitted below presents irrefutable evidence that no steps were taken to prevent the usage of the path, by walkers, in the last 20 years – though successful attempts were made to prevent the settlement of the garden by travellers. These measures were not intended to prevent walkers from entering the garden and using the path, nor could they, or did they, prevent them from doing so.

Response to Point 4

Exhibit 1 – landowner evidence form completed by Michael Holland (MH) the owner and director of CI

In reply to Q2: *Have you seen, or been aware of, members of the public using this way?* MH replied: *only between 2007 and 2011.*

By his own admission, MH states that he was required to open the gates in Feb 2007 by the Council Enforcement Officer, i.e. any lack of use prior to that was because the gates had been closed in contravention of the Section 106 agreement (signed by MH as part of his lease agreement) stating that the *3 metre path shall be keep open to the public at all times from dawn to dusk for the purposes of access to the adjacent land.* The public continued to use the garden and path, even when it was wrongly closed, entering from the top of the garden, via a side gate or by walking between the trees and bushes.

In reply to Q5: Have you, or someone on your behalf, ever turned back or stopped someone from using the way? MH replied: *Yes, when we have a large event and the gardens are in use.*

This reply contradicts evidence given by MH when he applied to the Council for permission to close the path and lock the gates (BH2011/00286). At that point, MH had stated that children, standing on the path next to the inner railing (erected within the garden south of the fountain), threw stones and shouted insults to bridal parties – something they could not have done had they been turned back or prevented from entering the gates and using the path.

Long term residents of Stanmer Village do not recall the gates being locked for such events, and evidence is required to substantiate MH's claim that this was the case. Presumably, he will have applied to the Council for permission to do so (as it contravened the Section 106 agreement) and these applications will be on record.

In reply to Q6: *Have you, or has someone on your behalf, ever told anyone using the way that it is not public?* MH replied: *Yes, although not one of the 318 persons who submitted public evidence forms has ever been challenged when using the path.*

In reply to Q7a: *Have you ever erected notices or signs stating that the way was not public?* MH replied: *Yes, although not one of the 318 persons who submitted public evidence forms can recall such notices.* In this case, his claim (Q7b) that the signs were often destroyed is irrelevant. However, it is the case that newly erected footpath

signs, creating a diversion to the contested path, were repeatedly knocked down by members of the public when the garden was enclosed and the gates locked in 2011. At this point, feelings were inflamed because the gates were locked and the garden enclosed, prior to CI being given permission to do so, even refusing to comply with requests from the enforcement officer to reopen them.

In reply to Q9: *Have you ever obstructed the way?* MH replied: *Yes*, and referred to the locking of the gates. He admits that this contravened the Section 106 agreement stating that the *3 metre path shall be kept open to the public at all times from dawn to dusk for the purposes of access to the adjacent land* and that the enforcement officer required him to open them. In this case, the only time the gates were locked was when this took place in contravention of the agreement signed by MH.

Exhibit 2 - Evidence of Phil Purvis (witness 1)

As an employee of CI, Mr Purvis cannot be regarded as an impartial witness.

The aerial photograph exhibit is unclear, and it is impossible to see if the gates are padlocked although it is clear they are closed. The footpath route is clearly visible.

Local residents (for example, Mrs Ann Markwick) as well as those regularly visiting the park at that time (for example, Mrs Naomi Stopps, Hollingbury resident) do recall the locking of the gates, and the positioning of a large stone to block them, for a short period following the occupation of the garden by travellers. The stone was clearly not to prevent walkers using the path, as it could not do so, but was effective in preventing caravans from so doing. Walkers continued to use the footpath, as the garden was not enclosed until Spring 2011 and it was easy to enter and exit it from any direction. Notably, walkers from Hollingbury entered the park via a dedicated footpath (53B) (which joins Hollingbury to Stanmer after crossing the road bridge) walking through the woods and down the steps to the footpath in question. At the end of the path they exited through a well-used track between the bushes.

Exhibit 3 - Evidence of Samantha Holland (witness 2)

MH's daughter cannot be regarded as an impartial witness.

Exhibit 4 - Evidence of David West (witness 3)

Local residents (note the evidence of Mrs Ann Markwick who has lived in the park for 60 years, firstly in Stanmer House and then in the village) disagree with Mr West's account, as do the 317 other persons who submitted public evidence forms.

Exhibit 5 - Evidence of Derek Chapman (witness 4)

Although there are numerous public evidence forms disputing Mr Chapman's statement, it anyway relates to the 1960's and 1970's and is not relevant to the use of the path in the last 20 years.

Exhibit 6 - Evidence of Mr Huxham (witness 5)

MH is the owner of Huxham's farm (Court Farm, Falmer) and he therefore has a financial connection with Mr Huxham.

Exhibit 7 - Evidence of Mr Chibeba (witness 6)

Mr Chibeba's evidence does not relate to the last 20 years.

The following statements were submitted after the submission of the original document, and are not therefore recorded on it.

Evidence of JP Garrett Electrical Ltd (witness 7)

Mr Garrett does not state whether or not he is or has been financially involved with CI, and this should be established.

Mr Garrett notes that if there had been a public footpath it would have been common knowledge to visitors at Stanmer Park – as indeed it is, with 318 individuals completing public evidence forms to this effect.

Evidence of Mr Jackson, Plumbing and Heating Services (witness 8)

Mr Jackson does not state whether or not he is or has been financially involved with CI, and this should be established.

Mr Jackson states that he can '*never remember seeing these gates open for public use*' although MH himself notes that they were open from 2007 to 2011

Evidence of Mike Medoza (witness 9)

Mr Mendoza states that he has always been aware of the gates adjoining the gardens being closed and chained until recently. On the contrary, the gates, according to Mr Holland, were open from 2007 to 2011. His statement therefore contradicts that given by MH

Evidence of Mrs Jan Young (witness 10)

Mrs Young states that '*in the earlier years I was aware that there was no public right of way going through the gate* (this is correct, but does not mean that the public did not walk 'as of right' through the gate and path), *but on my recent visits I have seen that the garden gates are now in use*'. Ms Young does not state how recent her recent visits were, but if they were during or after Spring 2011, the gates were closed.

Evidence of The Limehouse Lamp Co Ltd (witness 11)

Elliot Maurice, of the above company, provides numerous arguments as to why he thinks it is undesirable to have a footpath running through the garden of the house but his opinion on this issue is irrelevant. Though not an employee of CI, he has worked closely with Mr Holland. He cannot therefore be regarded as an impartial witness.

Regarding the sequence of events noted under Point 4 (page 4) the following comments are made:

- Although the University of Sussex were resident in Stanmer House between 1958 and 1981, numerous witnesses state that they do not recall the gates being locked during this period. Given the easy access to the path and unenclosed gardens, and heavy student traffic, there would have been little point in so doing. However, this period is not relevant to the 20 year period in question.
- It is agreed that regular access to the path and gardens took place after this date, only ceasing when CI locked the gates in contravention of the Section 106 agreement signed by them. **The existence of the 106 agreement presents clear**

evidence that a 3 metre footpath existed and was used, otherwise the Council would hardly have included such a clause and enforced it. It is impossible to imagine, that, following the lease of the house and gardens, the Council would have decided to dedicate a new route through the garden and protect this in the lease.

- As stated above, the large stone was placed in front of the gates to prevent entry to the garden by travellers' caravans. These measures were not intended to prevent walkers from entering the garden and using the path, nor could they, or did they, prevent them from doing so. It was clearly an attempt to prevent vehicles from entering and occupying the garden.
- Although the agreement was to lock the gates between dawn and dusk, villagers recall this only took place for a short period, after which the gates were always open.

Response to Point 5

A. Ms Jessica Hamilton, on behalf of the Council, stated that access had not been restricted to the gardens prior to the grant of lease to CI. Her statement is supported by 318 public evidence forms, but is claimed to be 'unreliable' specifically on the grounds that it differs to that submitted by CI. .

B. Mr Hugo Blomfield's (Countryside Manager) evidence, given on behalf of the Council, states that the gates were not known to him to be locked between 2005 and 2011. Given Mr Blomfield's role and daily presence in the park, his evidence is regarded as impartial, expert and highly relevant.

C. It is hard to understand what is meant by the statement that an 1816 picture, showing the path in use, is 'only a painting', particularly as it was included in a book published by the Pelham Family. Further, the route of the footpath is entirely clear on the picture.

D. The 318 Public Evidence Forms

Issue is taken with the statement that the forms are 'only signed statements', particularly as the majority of the respondents stated their readiness to appear at a public inquiry held by a representative of the Secretary of State. These witnesses did not decide to complete and sign lengthy and legally binding forms lightly.

The photographs presented do not show clear evidence of a padlock, although they do show evidence of a stone obstruction. However, it is accepted that the gates were locked for a short time, and an obstruction put in place, in order to prevent travellers entering the garden with caravans. As stated, these measures were never intended to prevent the public from entering the garden and using the path, and indeed could not and did not prevent them from doing so.

A strong refutation is made of the claim that there is no worn track across the claimed footpath. It is apparent on the aerial photograph submitted as evidence and has always been evident.

There is a clear rationale for the path. It leads from the gates in a direct line to the steps, and from there, via the woods, to Hollingbury estate. Mrs Naomi Stopps, resident of Hollingbury and a regular user of this path for the past 40 years states that she would never have dreamed of taking a more circuitous route between Hollingbury and Stanmer.

Of the 28 witnesses who said they had seen the gates locked, **all** made this statement after planning permission was given, early in 2011, to lock the gates. Many witnesses sought clarification regarding this question, noting that the gates had been locked early in 2011 but not before then. They were advised to answer the question with reference to the period preceding the DMMO order, and uniformly stated that they had not seen the gates locked. However, some witnesses completed their forms without asking for such clarification, and while this did not affect the response given by those who completed their forms prior to the closure in 2011, it did affect those who completed their forms after that date. Specifically:

- Form 223 (attached) states: *Have seen fences today (30.5.11) around Stanmer House, - erected illegally to stop us walking through to the village.* This took place after the DMMO application.
- Form 315 (attached) states that the witness has seen the gates locked *Today!* This took place after the DMMO application.
- Form 301 (attached) states that the witness has seen: *Temporary fence in position at either end* (clearly referring to the fencing erected by CI immediately following a successful planning application to enclose the garden). This took place after the DMMO application.
- Form 259 (attached) states that (she or he has) *once or twice seen the gates closed* (not locked). This took place after the DMMO application.
- Form 312 (attached) that the gates had been seen locked: *occasionally* (presumably when CI was holding an event and sought permission to close the gates).

Those 8 witnesses who have failed to fully complete the form should be discounted, leaving 310 valid forms. Of the 77 who have used the path over the past 12 years, this provides supportive evidence of path usage without hindrance, though not proof of the 20-year rule.

The fact that some witnesses said they have never noticed the gates at all is easily explained. Many members of the public reported that they had always walked through the opening to the path and garden, without noticing the gates (which, when wide open, are not obvious to those not looking for them), particularly those managing children, pushchairs etc. and talking to one another. Stanmer Preservation Society was frequently asked, prior to the closure of the gates, to point out the gates.

The statement that it is ‘patently obvious’ that the gates have been closed for a large part of the 12 years is strongly refuted. On the contrary, it is ‘patently obvious’ that they have not been closed, as proven by 318 (or 310) witnesses.

The statement that the 308 witnesses, who claim never to have seen the gates locked, is 'unreliable' is strongly refuted. Until proved otherwise, all signed statements, on behalf of the applicants or CI, should be seen as valid. This remark is seen as insulting to the witnesses.

It is agreed that the public often entered and exited the gardens, and used the path, by other means than the open gates. This included children who enjoyed playing in this garden, and those entering the garden through gaps in the bushes and trees.

Additional Comments

The Historic Landscape Survey and Restoration Management Plan for Stanmer Park was commissioned from the respected landscape architectural consultants, The Colson Stone Practice, as a result of a public survey in 1998 entitled, "A Vision for Stanmer." It was written and published in 2003/4 and made the following recommendations that are highly relevant to the Application:

Proposal 3: Reinstate footpaths through the Garden.

Reinstate the gravel footpaths through the garden in accordance with the layout shown on the 1st Edition Ordnance Survey Map of 1873 to re-establish a formal linkage between the Parkland, House and Great Wood.

The main garden path aligns with the access route secured across the levelled terrace under the terms of the Section 106 agreement relating to the restoration of the house. Evidence for this (and other) routes leading westwards is clear on the ground, although the paths have become grassed over.

Conclusions

1. The legal argument presented at the start of the document represents a tenuous linking of past cases in an attempt to find a way around the spirit and intention of the Highways Act 1980. This act sought to protect the interests of walkers, and aimed to prevent the closure of any path that had been in regular use for 20 years. The path in question clearly meets the necessary criteria.
2. The critical period of use is the 20 years preceding the DMMO (although there is ample evidence of prior use), i.e. from March 2001 to March 2011. During this period of time, the gates were only locked a. when CI contravened the Section 106 agreement, and b. when CI claims to have locked the gates for large events (although, had they done so, this is incompatible with MH's statement that the public entered the gardens and interfered with such functions). If however CI did lock the gates, they presumably sought permission to do so as this action would otherwise contravened the Section 106 agreement.
3. Mr Holland's claim to have hindered access, hinges upon two facts:
 - a. That the gates were locked (in contravention of the Section 106 agreement) from when MH took over the lease until he was forced to open them.

- b. The gates were locked, and a stone put in place, for a short period to prevent the entry of travellers' caravans. Again, this was not intended to prevent, could not prevent and did not prevent, members of the public from using the path and garden.

4. There is ample evidence that the path has been used historically, and is in use currently, and it impossible to imagine that the Council would otherwise have included and enforced a Section 106 agreement to that effect in the lease.

In fact, the path has existed since at least 1873, when it appeared on a first edition OS Map. This was accepted as evidence in the Colson Stone Report (2003/2004). The report also notes that there is clear evidence of the path though it is now grassed over.

The Colson Stone Report recommended that the path should be properly reinstated to establish a formal linkage between the house, parkland and great wood (following the route of the Application).

5. The photographs submitted show no evidence of the gates being locked but do show they are closed and clear evidence of the footpath.

6. Of Mr Holland's 11 witnesses:

Witnesses 1,5, and 11 had business connections with him, and the occupations of witnesses 7 and 8 suggest that they also had business connections with CI.

Witness 2 is MH's daughter

Witnesses 4 and 6 refer to the period of time prior to the 20 years in question

Witnesses 9 and 10 contradict the evidence given by the other witnesses, including that of MH.

It would be more convincing if MH had more witnesses, who were local, regular users of the park and independent of his family of company. When this small and questionable number of witnesses (two of whom made factual errors) is compared to the 318 (308) collected by the applicants, it is clear that the force of evidence rests with the Application. Of the 28 witnesses who said they had seen the gates closed, all made this statement following the date when the gardens were enclosed and the gates locked – after the date of the DMMO.

There are a significant number of Stanmer villagers who submitted forms, and they must be seen as having a more daily, and intimate, knowledge of the park than contractors, those living elsewhere, and those who have not visited the park for some years or are rarely in the park. This is evident by the erroneous statements made by two of CI's witnesses that the gates were closed and are now open.

7. Both Council employees state they have not seen the gates closed in period of time they have worked for the council. Of these, Mr Blomfield is a senior manager who works in the park.

In summary, there is clear and overwhelming evidence of public use of the path over the 20 year period in question, and no evidence of any attempt to stop park users (as opposed to travellers' caravans) using the path as of right. The outrage of the public, and unprecedented witness response, provides clear evidence to support the Application.

Jenny Lyon (for and on behalf of the Applicants)
Committee Member, Stanmer Preservation Society

1st November 2011

