

# Summary of Individual Executive Member Decisions taken on 25 May 2006

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**Individual Decision No:** ID1144

**Portfolio Member:** Councillor Anthony Stansfeld – Strategy and Performance, also responsible for Information and Community, Property and HR

## Salary Sacrifice – Childcare Scheme

Resolved that the proposed Scheme and its implemented be approved.

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**Individual Decision No:** ID1161

**Portfolio Member:** Councillor Geoff Findlay – Environment and Public Protection

## Food Enforcement Plan

Resolved that the Food Enforcement Plan be approved.

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**Individual Decision No:** ID1162

**Portfolio Member:** Councillor Geoff Findlay – Environment and Public Protection

## Trading Standards Performance Plan

Resolved that the Trading Standards Performance Plan be approved.

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**Individual Decision No:** ID1194

**Portfolio Member:** Councillor Goeff Findlay – Environment and Public Protection

## Thames Path National Trail at Purley on Thames Creation Orders

Resolved that the Council authorise the making of the Creation Orders on the Purley on Thames section of the Thames Path National Trail.

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**Individual Decision No:** ID1195

**Portfolio Member:** Councillor Goeff Findlay – Environment and Public Protection

## Claimed Public Right of Way, Kintbury

Resolved that the recommendation put forward in the report be not accepted for the reasons given in the attached Decision Paper. The DMMO for the route from Wallingtons Road, Kintbury along the access road to St Cassian's Centre and onto Balsdon Farm, where it forms Footpath 21, will not be implemented.

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*These decisions are eligible to be 'called-in'. However, if the decisions have not been 'called-in' by 5.00pm on 6 June 2006, then they will be implemented.*

**If you have any queries regarding these decisions, please contact:**

**Moira Fraser, Policy Executive on Ext 2045 e-mail: [mfraser@westberks.gov.uk](mailto:mfraser@westberks.gov.uk)**

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## Individual Decision on Claimed Right of Way at Kintbury

1. In assessing the evidence presented to support the recommendation to make a Definitive Map Modification Order (DMMO), I have considered the very full Individual Decision paper, the full supporting written evidence backing the Paper's conclusion, which I have studied in detail, and the legislation pertaining to the declaration of a DMMO.

### 2. Individual Decision

I am very surprised that as the Right of Way was first claimed by an Inkpen resident in 1970, there should have been no decision in the intervening years despite the consideration which has been given to more recent claims. I note in particular that Berkshire County Council considered the matter during the period 1986-1988 but that no definitive action was taken as 'there was no pressure from path users'.

### 3. Evidential Claims for Right of Way

In considering the evidence for making a DMMO, I note that the legal test is 'the balance of probabilities'. Some 47 Evidence Forms were completed by individuals who support the Right of Way in the period 1999-2000.

- In about 30% of these claims, however, the accompanying map which forms part of the evidence, either did not show the footpath or the maps were not signed and dated.
- Further, I am concerned that although follow-up interviews were held with 13 of those who put evidence forward, there was no record of any attempts to hold interviews with the much smaller number of people who then opposed the DMMO and have subsequently written in opposition to making such an Order. That evidence has not been tested in interview and one such individual complained to the Council in writing that his views had not been sought. No response was made to that individual.
- No evidence has been provided to me that the proposal was advertised either in the local newspapers or by placing notices on the path. Prior to the decision dated 25 May 2006, letters have been received indicating that the proposed Individual Decision Paper had been sent only to the St Cassian's Centre. That was in reply to a letter sent to Countryside by Brother Anthony. Other properties on the proposed route eg Wildacre, Balsdon Farm on Folly Road, Inkpen and Balsdon Grange Farm, Folly Road had not been informed that there was a recommendation that the route should be the subject of a DMMO.
- I have subsequently found out that an attempt was made to put the DMMO before an Executive Meeting in December 2003 – a matter which was not declared in the Individual Decision report. It would seem that very few people were informed of that proposal. In the words of one of those opposed to the making of an Order 'it appeared that the Council's strategy was to smuggle the matter through'. Whereas I do not accept that view, it is further evidence that the proposal to create a DMMO was perhaps not handled as openly as it might have been.
- Further, there is anecdotal evidence that the motivating force for declaring a DMMO originated in the years 1999 & 2000 when one of the proponents of the DMMO was living at the Lodge. It would seem that the pressure for a DMMO was not unconnected with the commercial viability of riding stables. Since that purchaser left the District I am not aware that there has been subsequent pressure to make a DMMO. Given this situation, I find it disturbing that those who opposed the DMMO, and who might have provided evidence opposing the creation of an Order

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had they known about it or been consulted, were not given the opportunity to comment. The Evidence Forms were, I understand distributed by one of those strongly in favour of making a DMMO. Whereas letters from the Council in June 2000 referred to the making of a footpath, the Individual Decision Report referred to a Public Bridleway.

- Evidence to support the claim by a number of individuals is I think questionable. A local Farm Manager notes that he walked the route daily for some 40 years. It would not be unusual for those owning properties and land on the route, and those working on such land and neighbouring properties, to use the claimed route, under 'tacit' permission. I do not interpret this as being free access for all.
- Further, evidence is given by some of those responding to the questionnaire that they were actually at times visiting properties on the route. The Evidence also sought to test whether those using the route had seen other people similarly using the route. Most noted that they had seen other people. That is not surprising given that there are a number of properties on the route and a number of people would have had every right to visit in connection with agricultural business, commercial deliveries, educational visits to St Cassian's Centre etc.
- Further, if the usage of the route as claimed on the Evidence Forms is translated to annual usage, the route must have been very busy indeed with many people using it to ride out daily.
- Whereas a number of individuals who completed the Evidence Forms recalled having seen notices at various times which indicated Private Access, others acknowledged having been turned back or seeking permission to use the route.
- A number of respondents (15), however, seemed to have paid scant attention to the second page of the form and had merely signed it having put 'no' in each answer when asked about signs on the route. From the evidence given on the forms and in letters, that there were undoubtedly signs in place for significant periods and I cannot understand why those who claimed to have been regular users of the route had not seen such notices. Their evidence that there were no notices displayed, and that they were never turned back or questioned, is in direct conflict with the written evidence of letters from, for example, the Brothers at St Cassian's. Where respondents claim to have used the route regularly I would have expected them to have made reference to notices which were in existence for they must have seen them.
- Further, it would seem that the use of the route by the riding community only intensified and became a problem to land owners on the route in the 1990s and a number of comments were received such as 'it is the only safe route with the traffic'. There is written evidence to the effect that new notices were erected and that people were turned back and cautioned in the 10 years period which culminated with the Evidence Forms being issued for completion. I am not aware that the Council has subsequently encountered any complaints or enquiries other than by landowners who wanted to know when and what decision would be made.

## 4. Assessment of the Evidence

On balance, I find that whereas there may have been unquantified use of the route by those having legitimate business, but those living in properties on the route and nearby, and by adjoining land and property owners, over a period of time. I accept the written evidence of those who state that at least part of the track was strictly private and used only by workmen, visitors and tradesmen. I find it difficult to equate this with widespread use by the general public which is claimed. Further, some members of the public may undoubtedly have been misled into thinking it was a Right of Way by the reported inclusion of the route on a Newbury District Council map displayed locally in Kintbury for a prolonged period of time.

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## Further Factors in the Decision

In making my decision:

- I am conscious that many years ago, the Courts legally closed the Right of Way and created a new footpath which runs parallel to the contested route. During my 40 minute site visit to St Cassian's, I noticed at least 2 groups of walkers using the path. I was not aware of any illegal use of the proposed route.
- The proposed route runs in parallel to Footpath 21 (FP21) in that it diverges from FP21 at Wallingtons and rejoins at Balsdon Farm. That point is not given any weight in the Individual Decision paper. In fact, whereas the paper makes the point that the proposed route meets FP21 at Balsdon Farm, there is no mention that it also joins FP21 just past Wallingtons Lodge and therefore the proposed route would duplicate FP21.
- Further, I am conscious that should a DMMO be made, an argument could then be raised for the diversion of the route on the grounds that St Cassian's provides educational courses and that the Countryside and Rights of Way Act 2000 allows for the diversion of the Right of Way where these compromise the safety of educational premises. There is little doubt that a strong case for diversion could be made if a DMMO was made given that the route would pass within yards of the ground floor dormitories used by young people attending residential courses at the Centre. The obvious diversion would be back to the present Footpath 21. Having diverted that portion of the contested route round St Cassian's Centre, the remainder of the track is of no particular value as a Right of Way.
- Further, I note from the supporting paper that were a DMMO to be made, the Council would subsequently be responsible for the upkeep of the surface of the route. Part of that route is presently a Private Road to the St Cassian's Centre. The route is very narrow and were it to be used regularly by horse riders, there would undoubtedly be a conflict with the agricultural, commercial and educational traffic legitimately using the track for entry to premises.
- It is argued in the Decision Paper, that were a DMMO to be made, those who contest that decision would then have the opportunity to appeal that decision. In such a case, however, both those who appealed the decision and the Council would be put to added expense.

**I do not lightly reject the advice of Officers. However, on the balance of evidence in this case, I judge there to be a very real conflict in some of the evidence submitted. Further, I do not believe that the Decision Paper sets out the facts in an unbiased way or that members of the public who oppose the creation of the proposed route have been kept fully informed of proposals by the Council or given a fair opportunity to make a contribution to that decision.**

**I do not intend, therefore, to make a DMMO for the route from Wallingtons Road, Kintbury along the access road to St Cassian's Centre and on to Balsdon Farm where it joins Footpath 21.**

Dated 25 May 2006

**Cllr Geoff Findlay**

Executive Member Countryside, Environment and Public Protection

Decision witnessed by:

**Maira Fraser, Policy Executive**

on behalf of the Head of Policy and Performance

on 24 May 2006