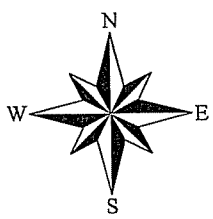
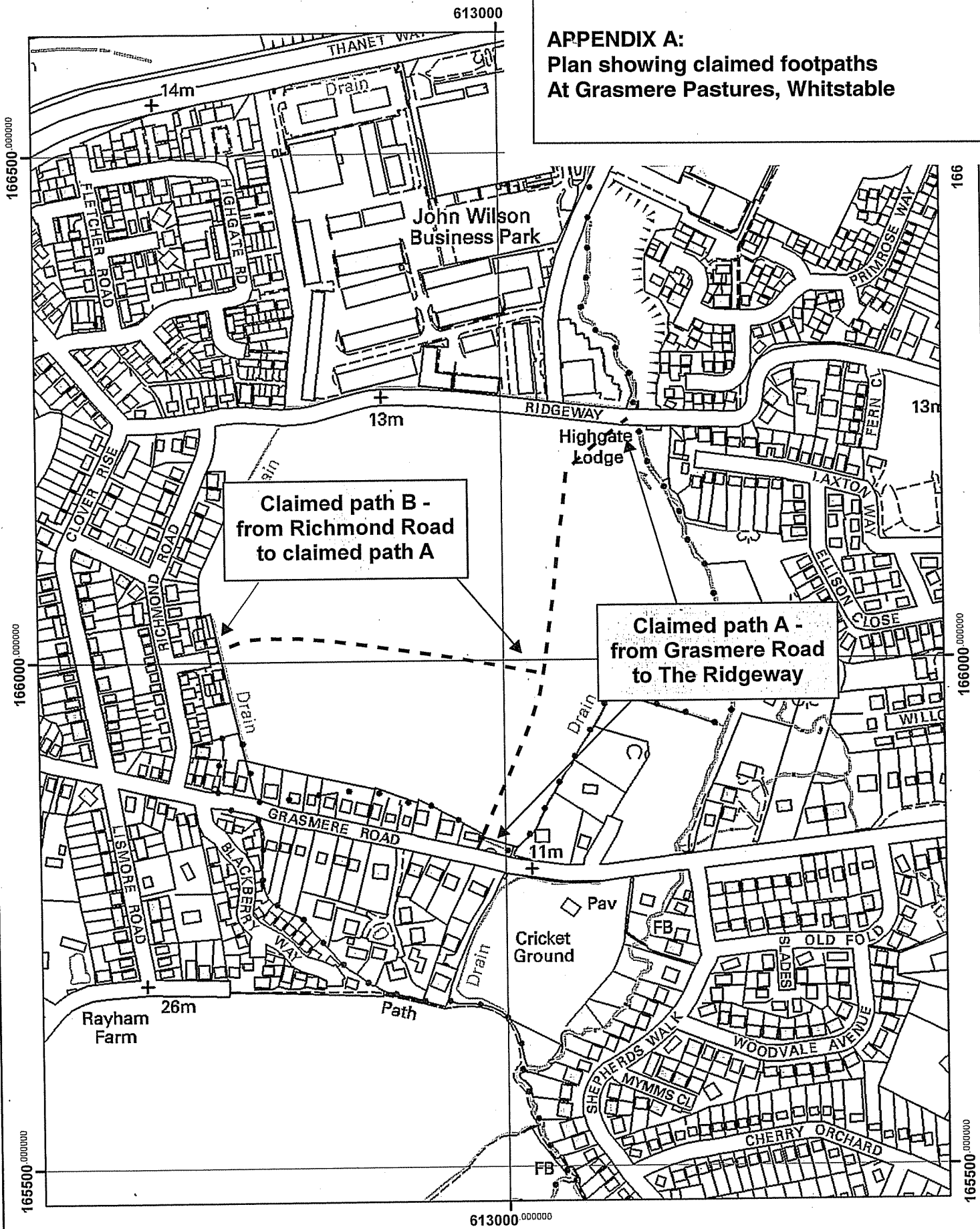


**APPENDIX A:  
Plan showing claimed footpaths  
At Grasmere Pastures, Whitstable**



Scale 1:5000

Claimed footpaths at Grasmere Pastures, Whitstable  
(shown in bold dashed lines)



**APPENDIX B:**  
**Aerial photograph showing Grasmere**  
**Pastures dated 1999**

166000 000000

612750 000000

612750 000000

613000 000000

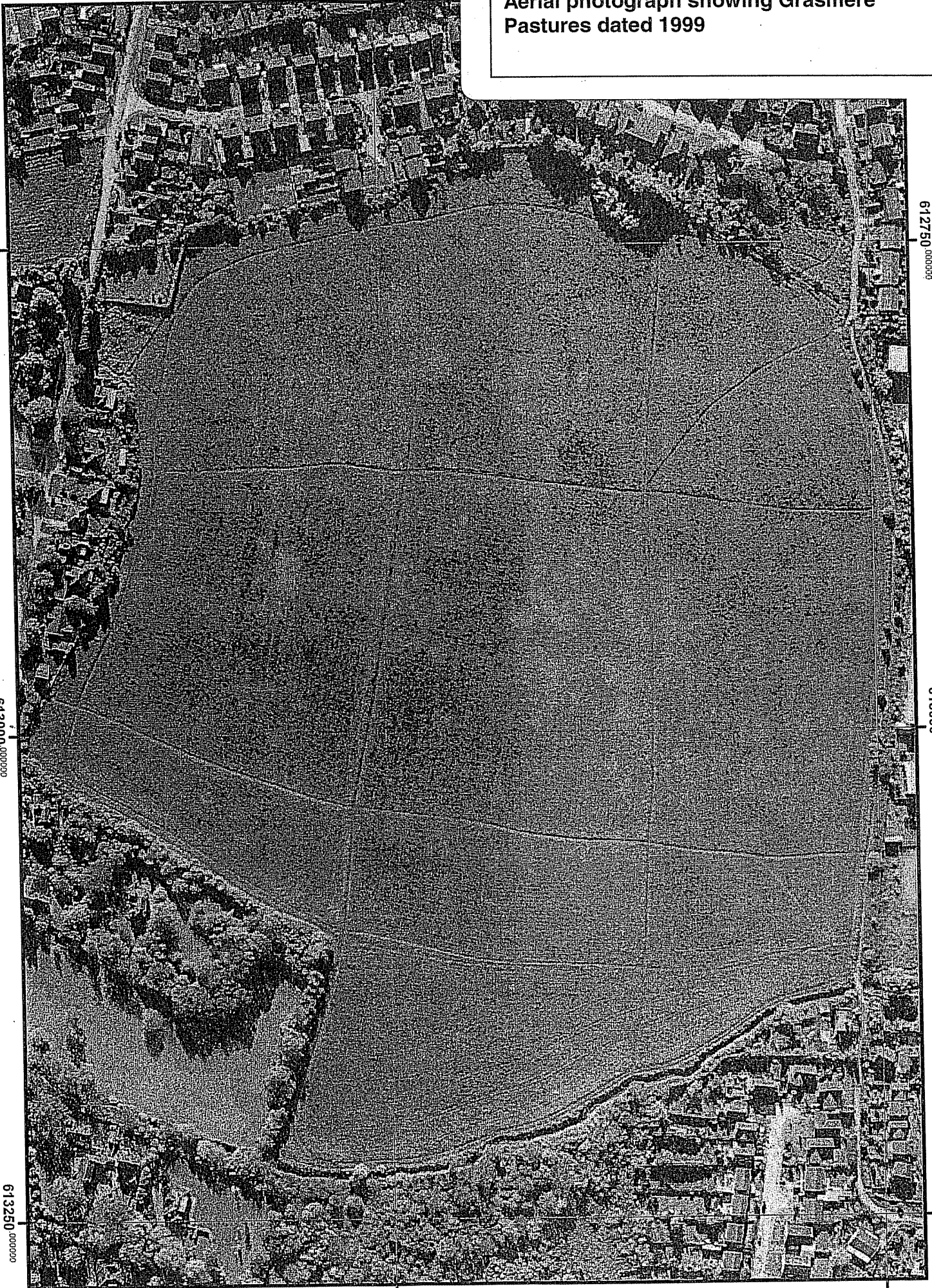
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**APPENDIX C:**  
Aerial photograph showing Grasmere  
Pastures dated 2003



**APPENDIX D:**  
**Table summarising user evidence**

USER	PATH(S) USED	PERIOD OF USE	NO. OF YEARS	FREQUENCY (on average)	MEANS OF USE	PURPOSE (e.g. walking to/from)	NOTICES	OBSTRUCTIONS/ CHALLENGES
*Mr. and Mrs. J. Abbey	A+B	1991 – 2008	(13)	Weekly (at weekends)	Foot	Access to shops (Sainsburys) and recreational walking	Sept 2004 – 'no trespassing' sign erected on Ridgeway at junction with Richmond Road	Trench dug in 2004
Mrs. Y. Ambrose	A	1984 – 2004	20	Daily or weekly	Foot	Walking and exercise		Never verbally challenged but fenced off in 2004
*Mrs. D. Appleton	A+B	1969 – 2008	(35)	Daily for dog walking, weekly to Sainsburys	Foot	Dog walking and access to Sainsburys	Notice on Ridgeway stating 'keep out – trespassers will be prosecuted' in 2004	Deterred from using route due to deep trenches and fencing in 2004
*Mrs. C. Baggs	A+B	1994 – 2008	(20)	Twice daily (morning and afternoon)	Foot	Dog walking, visiting friends in Grasmere Road	Notices at Ridgeway stating 'private land' – was a small notice that did not last long (2004)	Did not use field during Sept/Oct 2004 but fence was then broken and resumed use
D P Barker	A+B	1974 – 2004	30	Daily	Foot	Dog walking	None	None
Mr. J. Bayfield	A	1998 – 2004	6	Daily	Foot	Dog walking, access to Sainsburys and park at Chestfield		Blocked off 2004
Ms. P. Bloice	A+B	2000 – 2004	3	Daily	Foot or on horse	Dog walking & horse riding	None	None
Mr. P. Brewer	A	1980 – 2004	24	Not stated	Foot	Access to local shops, pub, cricket club and recreational walking		Fencing and barricades blocking access erected 2004
*Mrs. V. Brown	A+B	1988 – 2008	(16)	Twice weekly	Foot	Access to golf club, shops, the Barn and bus stop	None	Trenches and barbed wire (date uncertain)
Miss. L. Caddick	A+B	2001 – 2004	3	Weekly, then daily	Foot	Dog walking & exercise	None	None
Mr. P. Carter	B	1981 – 2004	23	Daily	Foot	Dog walking		
*Mr. and Mrs. Coombe	A+B	1988 – 2008	(16)	Weekly	Foot	Recreational walking, access to the Barn, visiting friends	None	Fencing and ditch in 2004, but did not stop use for very long

*Mrs. S. Corrigan	A	1980 – 2008	(24)	Weekly	Foot	Dog walking, access to Ridgeway to visit family in Chestfield	Notices erected stating private property in 2002	Fencing and trenches in 2002 and wire across exit onto Grasmere Road.
*Mr. and Mrs. R. Cove	A+B	1970 – 2008	(34)	Twice weekly	Foot	Visiting family in Chestfield, access to the Barn in Chestfield, walking for exercise	None	Trenches dug 2004
J. Cox	A	1960 – 2004	44	Occasionally	Foot	Exercise		
*Mrs. J. Cullen	A+B	1980 – 2004	(24)	Daily	Foot	Dog walking, access to Swalecliffe to visit Community Centre, B&Q, Sainsburys and Doctors Surgery	Notices erected by gate at Ridgeway in 2004	Fences and trenches in 2004
Mr. P. Cullen	B	1980 – 2004	24	Daily	Foot	Recreational walking and access to shops		Never challenged
Mr. T. Everitt	A+B	1992 – 2004	12	Daily	Foot	Dog walking	None	Barbed wire prevented access
*Mr. and Mrs. Farrington	A	1977 - 2004	(27)	Weekly	Foot	Access to Swalecliffe and Sainsburys	2004 - Notice stating 'private, no trespassing' erected	2007 – trenches dug
Mr. P. Fillary	B	1982 – 2004	22	Daily	Foot	Dog walking, recreational walking, access between South Tankerton and Chestfield	'private, no trespassing' notice erected along Ridgeway in August 2004	
Mr. and Mrs. Flaskett	A	1985 – 2004	19	Daily	Foot	Dog walking	Notice in 2004	Barbed wire fencing erected 2004
Mrs. B. Fortune	A	1976 – 2004	28	Weekly	Foot	Access to church in Chestfield		Field fenced in 2004
Mrs. W. Fraser	A+B	1993- 2004	11	Daily	Foot	Dog walking & take grandchildren to park	Sept 04 signs put up at Richmond Road entrance	Barbed wire fence erected
Mr. G. Gadd	A	1966 – 2004	38	Weekly then monthly	Foot	Dog walking	Notices erected 2004	

*Mr. and Mrs. R. Hamnett	B	1978 – 2004	(26)	Intermittent, sometimes 2/3 times per week	Foot	Recreational walking, visiting friends in Old Fold	'private land, no trespassing' signs on Ridgeway and Richmond Road	Sept 2004 – fencing and trenches
Mr. D. Hiblen	B	1986 – 2004	18	Twice weekly	Foot	Access to retail/medical/other facilities	Land has been fenced	
Mr. A. Hiscock	A+B	2001 – 2004	3	Daily	Foot	Access to the Ridgeway from Grasmere Rd	None	Ridgeway access barbed wire, Grasmere Rd access barrier put up
Ms. C. Holness	A	1976 – 2004	28	Daily	Foot	Dog walking		Never challenged
Mr. and Mrs. House	B	1984 – 2004	20	Twice daily	Foot	Dog walking	Notices appeared stating private property, no trespassing.	Barriers erected 2004
Mrs. D. Hughes	B	1984 – 2004	20	Twice daily	Foot	Exercising horse, dog walking, shortcut to Sainsburys/B&Q/ bus stop/Medical Centre		Never challenged
*Mrs. L. Hutchins	A+B	2003-2004	(1)	Daily	Foot	Dog walking, access to Sainsburys, doctors surgery and rugby club	Erected in September 2004 with fencing	Challenged by tenant and told were trespassing in 2004 (but not on claimed path)
Mrs. G. Kentfish	A+B	2002 – 2004	5	Daily	Foot	Dog walking, access to shops	None	None
E. B. Leo	A	1962 – 1998	36	Thrice daily	Foot	Dog walking		Never challenged
*Mr. and Mrs. P. Lennard	A+B	1985 – 2008	(19)	Twice daily	Foot	Dog walking, visiting friends in Primrose Way, access to Sainsburys, station	None	Fencing and trenches at Ridgeway 2004 but quickly found a way around obstructions
Mrs. J. Loveridge	A	1944 – 2004	60	Daily	Foot	Dog walking, exercise		
Mrs. M. Lucke	B	1974 – 2004	30	Weekly	Foot	Dog walking		Never challenged

Mrs. S. Maclurkin	A	1963 – 2004	41	Daily	Foot	Access and recreation.	Notices stating private property in 2004	Barbed wire around field and earth mound - 2004
Mr. J. Malster	B	1978 – 2004	26	Daily	Foot	Dog walking and shortcut to Chestfield		Fenced off in 2004
Mr. C. Marchant	A	1986 – 2004	18	Daily	Foot.	Dog walking		Barbed wire erected and access obstructed in 2004
Mrs. S. Marchant	A	1986 – 2004	18	Daily	Foot	Dog walking		No challenged to use
Mr. T. Marchant	A+B	2002 – 2004	2	Monthly	Foot	Access to shops and Medical Centre		Entrance blocked at Richmond Rd end by mound of soil and stones
*Mrs. D. Molloy	A+B	2000 – 2008	(4)	Weekly	Foot	Taking grandchildren to visit play park on Chestfield Road and exercise	None	2006 – ditch dug around edge of field
L. O'Neill	A	1976 – 2004	28	Daily	Foot	Dog walking	2 'private property – no trespassing' notices erected along Ridgeway	
Mr. and Mrs. Owens	B	1986 – 2004	18	Daily	Foot	Dog walking and access to shops/workplace	Aug/Sept 2004 – new sign erected at gates on Richmond Road stating 'private, no property'	Gates at Richmond Road padlocked in 2004
Ms. C. Phillips	A+B	1971 – 2004	33	Weekly	Foot	Dog walking, exercise	Yes (no date)	Fence went up, piles of mud
Mr. R. Pike	B	1987 – 2004	17	2/3 times per day	Foot	Dog walking		
M J Post	A+B	1999 – 2004	5	Monthly	Foot	Access to shops	None	None
S. Powell	B	1984 – 2004	20	Occasional	Foot		Fencing in 2004	
K. V. Ralph	A	1983 – 2004	21	Daily	Foot	Dog walking	Notices erected 2004	Barbed wire fencing erected 2004

*Mrs. M. Relf	A+B	1979 – 2008	(25)	Daily	Foot	Access to village facilities at Chestfield (e.g. newsagents), Sainsburys, dog walking	None	Trenched dug approx. 2005 but only prevented use for a few days
Mr. A. Rhodes	A	1968 – 2004	36	Daily	Foot	Access to Chestfield, Sainsburys and dog walking		Fenced off, barbed wire and earth mounds in 2004
Mr. M. Sanders	B	1983 – 2004	21	Daily	Foot	Through route to Chestfield from South Tankerton.		Locked gates 2004
Mrs. C. Shannon	B	1968/9 – 2004	35	Daily	Foot, horse-back	Dog walking, horse riding, cut through to visit relatives	Never challenged	
Mr. J. Shannon	A+B	1977 – 2004	30	Weekly & then daily last 11 years	Foot	Short cut to Ridgeway for shopping & visiting relatives	None	Ditches dug (but he does not consider them a barrier)
Mr. G. Smith	A	1965 – 2004	39	3-4 times per day	Foot	Dog walking		
*Mr. and Mrs. J. Spencer	A+B	1970 – 2004	(34)	Daily	Foot	Access to Chestfield, cricket club, shops and doctors surgery	None	Sept 2004 – fences erected. They were breached and trenched dug with large mounds of earth
Mr. R. Sprignall	A	1987 – 2004	17	Weekly	Foot	Exercise dogs, play with children		Fenced off in 2004
Mrs. C. Stevens	A	1983 – 2004	21	Weekly	Foot	Access to supermarket, doctors surgery and dog walking	Never challenged	Blocked at Grasmere Road end with rubbish
*Mr. L. Stevens	A	1983 – 2004	(21)	Weekly	Foot	Supermarket, doctors surgery, dog walking	Not on claimed route	Blocked with trenches and fencing
*Mr. J. Swain	A+B	1975 – 2008	(29)	Once a fortnight	Foot	Visit friends in Chestfield, access to the Barn, leisure walk	None	Trench and fencing approx. 2005
Mrs. L. Waking	A+B	1992 – 2004	12	Daily	Foot	Exercise, dog walking, & access to Chestfield	None	Sept 04 - barbed wire and trenches



*Ms. S. Wallace	A+B	1980 – 2008	(24)	Twice weekly	Foot	Access to golf club, the Barn and dog walking	None	Trenches and barbed wire (date uncertain)
*Mrs. E. Watkins	A+B	1998 -2008	(6)	Twice daily	Foot	Dog walking, access to Sainsburys, B&Q, doctors surgery, post office, the Barn		Trenches dug in approx 2005. Challenged by tenant in approx 2005
Miss. D. Webster	A	1959 – 2004	45	4-5 times per week	Foot	Access to Sainsburys and dog walking		Access blocked 2004
*Ms. M. Wickers	A+B	2000 – 2004	(7)	Daily	Foot	Dog walking, exercise, access to shops, rugby club, doctors surgery	Notices erected by gates on Ridgeway but did not look official so most people ignored them	Challenged by tenant in 2004, told land was private property (but not on claimed path)
Mr. N. Widdows	A+B	1999 – 2004	5	Monthly	Foot	Walking	None	Blocked off with barbed wire & earth
*Mr. and Mrs. J. Wiggins	A+B	1965 – 2008	(39)	Weekly	Foot	Walk to play park and the Barn in Chestfield, golf course and cricket club	None	Ditches dug (date not stated)
M. Wilkinson	A+B	2000 – 2004	7	Daily	Foot	Dog walking & cut through	None	None
Mrs. P. Willison	A+B	2001 – 2004	3	Twice daily	Foot	Dog walking & play with grandchildren	Sept 2004 - 2 signs along Ridgeway stating land was private	All access points were blocked with earth & fence went up
Mrs. V. Wilson	A	1980 – 2004	24	Twice daily	Foot	Dog walking		Never challenged

All users listed in the table provided user evidence forms that were submitted with the original application *except those shown in italics*. In total, 61 user evidence forms were submitted with the application and a further 9 witnesses were identified by the applicant during the investigation process.

Users marked with an \* were interviewed by a KCC Officer regarding their use of the land.

The original application was submitted in 2004 (which is also the 'date of challenge'), hence use of the land in the majority of cases is shown until 2004 (the year the forms were completed), however, it is likely that their use has continued beyond this date.

Those interviewed have continued to use the claimed routes until 2008 (the year they were interviewed) but the figure in the 'no. of years' column shows the number of years of use up until 2004 only and is shown in brackets. This is to ensure appropriate comparison with the other users who completed forms in 2004.

IN THE MATTER OF AN APPLICATION FOR M  
CONCERNING LAND AT GRASMERE PAS

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**STATEMENT OF OBJECTION**

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**1 Introduction**

- 1.1 This is the Statement of Objection of OW Presland Limited, Kitewood Estates Limited and Mr Norman Sands (*the Objectors*) to an application by Mrs. E. Watkins of 28 Richmond Road, Whitstable, Kent CT5 3HS (*the Applicant*) under section 53(2) of The Wildlife and Countryside Act 1981, to modify the Kent County Council Definitive Map and Statement made on 20 November 2004 (*the Application*).
- 1.2 There are two applications:
- a. Footpath A – running from Grasmere Road to Ridgeway across Grasmere Pasture;
  - b. Footpath B – running from Richmond Road to join Grasmere path to Ridgeway across Grasmere Pasture
- 1.3 It is noted that the witness statements submitted in support of the Application do not solely refer to Footpath A and Footpath B as described above and it is not clear whether the Applicant is seeking a modification of the Definitive Map so as to include the additional routes indicated, alternatively whether these have been drawn in error but were intended to reflect Footpath A and B as drawn by the Applicant. For the avoidance of doubt it is hereby confirmed that this Statement of Objection relates to all and any footpaths indicatively shown within the Application and supporting witness statements.
- 1.4 For ease of reference the alleged footpaths referred to in the Application are all shown on the Plan attached as Appendix 1

- 1.5 The first objector is the registered proprietor of Grasmere Pasture under Title No. K503254. The second objector has an option to purchase Grasmere Pasture and the third objector has a tenancy of Grasmere Pasture (herein referred to collectively as *the Objectors*).
- 1.6 The Objectors are represented by Sarah Taylor of Bevan Brittan LLP, Solicitors, of Fleet Place House, 2 Fleet Place, Holborn Viaduct, London EC4M 7RF to whom all correspondence and communications should be sent.
- 1.7 This Statement of Objection refers to documents and witness statements annexed hereto all of which shall be regarded as incorporated herein and form part of this objection within the meaning of the Commons Registration (New Land) Regulations 1969.

## 2 The Law

- 2.1 Without any admission as to the validity thereof the Application appears to rely on the paths being Public Rights of Way and proposes a modification to the Kent County Council Definitive Map and Statement under section 53 (2) of the Wildlife and Countryside Act 1981 (*the 1981 Act*).
- 2.2 Section 53(2) of the 1981 Act reads as follows:-

"(2) As regards every definitive map and statement, the surveying authority shall –

- (a) as soon as reasonably practicable after the commencement date, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence, before that date, of any of the events specified in subsection (3); and
- (b) as from that date, keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence, on or after that date, of any of those events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence of that event.

- (3) The events referred to in subsection (2) are as follows –
- (a) the coming into operation of any enactment or instrument, or any other event, whereby-
    - (i) a highway shown or required to be shown in the map and statement has been authorised to be stopped up, diverted, widened or extended;
    - (ii) a highway shown or required to be shown in the map and statement as a highway of a particular description has ceased to be a highway of that description; or
    - (iii) a new right of way has been created over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path
  - (b) the expiration, in relation to any way in the area to which the map relates of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path;
  - (c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows-
    - (i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way to which this Part applies;
    - (ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description; or
    - (iii) that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.

2.3 The Applicant must therefore establish that the rights of way by way of footpath subsist or are reasonably alleged to subsist over Footpaths A and B across Grasmere Pasture in accordance with Section 53(3)(c)(1) of the 1981 Act.

2.4 Section 31 of the Highways Act 1980 (as amended) (*the 1980 Act*) provides:-

"(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 have been 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, whether by a notice such as is mentioned in subsection (3) below or otherwise.*

(3) *Where the owner of the land over which any such way as aforesaid passes-*

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

(b) *has maintained the notice after the 1st January 1934, or any later date on which it was erected,*

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

2.5 The Application states that the alleged footpaths have become rights of way pursuant to Section 31 of the 1980 Act. This means that the Applicant must prove the following 3 limbs of the test provided by section 31 of the 1980 Act:

(1) the date when the right of way has been brought into question;

(2) that there has been use of a way by the public as of right;

(3) use of the way has been enjoyed retrospectively for 20 years without interruption

### 3 Summary of the Objectors' objection

- 3.1 The Objectors contend that the Applicant has failed to identify the necessary period of 20 years by reference to any commencement or termination date, and has failed to demonstrate the use of the paths by the public as a right without any interruption.
- 3.2 The Objectors now show why the Application fails to satisfy the requirements in section 31 of 1980 Act.

### 4 Date when the right of way has been brought into Question

- 4.1 Evidence submitted in support of the Application for Footpath A refers to the blocking of the access and erection of a barbed wire fence in September 2004 as well as the erection of 'trespass signs' (see the witness statement of L E O'Neil). These notices are stated by the witness to include the statement 'Private Property No Trespassing'.
- 4.2 In relation to Footpath B the evidence submitted in support of the Application refers to the erection of a fence in September 2004.
- 4.3 It is therefore the case that the Applicant would need to establish 20 years continuous use of both Footpaths before September 2004.

### 5 Use of a way by public as of right

- 5.1 Lord Hoffmann in the decision of the House of Lords in R v. Oxfordshire County Council, ex parte Sunningwell Parish Council [1999] 3 All ER 385 clarified the reference to use of a way 'as of right' where he stated:

*"It became established that such user had to be, in the latin phrase, nec vi, nec clam, nec precario: not by force, nor stealth, nor the licence of the owner... The unifying element in these three vitiating circumstances was that each constituted a reason why it would not have been reasonable to expect the owner to resist the exercise of the right – in the first case, because rights should not be acquired by the use of force, in the second because the owner would not have known of the user and in the third because he had consented to the user, but for a limited period."*  
([2000] 1 AC 335 at 350H-351B)

- 5.2 The presumption upon which the creation of a way by prescription is based is the combination of the fact of use coupled with acquiescence by the Landowner to this use. It is this that gives rise to a presumption that the Landowner intended to dedicate the use of the way to the public. The Applicant has to prove that the nature of the user was such that throughout the relevant period the owners of the land knew of the use of the way or ought to have known of such use and did nothing to stop it (see Lord Hoffman at p354 in the decision of the House of Lords in R v. Oxfordshire County Council, ex parte Sunningwell Parish Council).
- 5.3 Forcible user vitiates any claim to entitlement as of right. Forcible user includes not merely the violent exercise of user (e.g. the removal of an obstruction) but also any insistence upon a particular user in the face of continuing protest by the owner (see Newnham v Willison (1988) 56 P&CR 8 at 19).
- 5.4 A fence was erected around Grasmere Pasture by the Mr Sands on 5th October 2004. A year later, on 6th October 2005, a bund and trench was created on the boundary of the site. The fence, bund and trench have been breached and torn down in places. Any activities that are carried out by force are not nec vi, that is without force. If the local inhabitants continue to use the Footpaths across Grasmere Pasture by force, they do not do so as of right. The Objectors therefore contend that in the present case the local inhabitants did not pass through Footpath A and B "as of right".
- 5.5 The Objectors contend that there cannot be use of the land as public rights to way by way of footpath "as of right" and without interruptions in the circumstances of Grasmere Pasture having regard to the farming activities that have taken place over the years. The Objectors rely upon the witness statements annexed hereto at Appendix 3 of Norman Sands and Neil William Strand as to these farming activities. (It should be noted that these witness statements were prepared in connection with the Objectors' response to the Applicant's separate application seeking registration of Grasmere Pastures as a town or village green. The content of those two witness statements is however equally applicable to the application for modification of the Definitive Map.) As can be seen from these statements, Grasmere Pasture was put down to arable cropping until 1984 when peas and other crops were cultivated. Since 1984 an annual hay crop has been taken and every Spring the area is fertilised and sprayed. Witness statements in support of the Application

acknowledge that the land was leased as pasture (see the statement of Mr Dewis Hiblen):

- 5.6 Judicial interpretation on whether the use of land by public can be indulged "as of right", where the relevant land is also used for farming purposes, was given by Sullivan J. in R (Laing Homes Limited) v. Buckinghamshire County Council [2003] EWHC 1578; [2003] 3 PLR 60, where he was concerned with the use of some fields for taking an annual hay crop. He said (at paragraph 82) that:

*"Thus, the proper approach is not to examine the extent to which those using the land for recreational purposes were interrupted by the landowner's agricultural activities, but to ask whether those using the fields for recreational purposes were interrupting [the landowners' licensee's] agricultural use of the land in such manner, or to such an extent, that [the landowners] should have been aware that the recreational users believed that they were exercising a public right. If the starting point is, 'how would the matter have appeared to [the landowners]' it would not be reasonable to expect [the landowners] to resist the recreational use of their field so long as such use did not interfere with their licensee's ... use of them, for taking an annual hay crop."*

- 5.7 It is quite clear from the evidence of the persons making statutory declarations and the answers to the questionnaires by the local residents, in support of the Application, that they recognise that the agricultural activities which have been repeated annually have always had priority over, and their use of the paths have been subject to, these agricultural activities. Further, the witness statements annexed hereto, and referred to above, also make clear that the agricultural activities have never been subject to the use of the alleged footpaths by public, rather the agricultural activities have always had priority. The Objectors therefore contend that the local inhabitants have never enjoyed the paths "as of right" without interruptions as against the Objectors' use of Grasmere Pasture. It is therefore quite plain that there has not been any use "as of right".

## **6 Enjoyed Retrospectively for 20 years Without Interruption**

- 6.1 The evidence presented must establish that those accessing the land used the exact line of the footpaths claimed for a period of 20 years and without interruption.



- 6.2. The Objectors contend that 20 years of use of the precise alignment of the footpaths claimed cannot and has not been demonstrated to have existed by the Applicant.
- 6.3 The Objectors contend that the use of the alleged footpaths has been interrupted on an annual frequency since 1984 in the fertilising and spraying of the land every spring, and in the harvesting every summer as the Applicants stayed out of the way of the agricultural machinery and allowed the process to take place without challenge. They did not assert they had a right of way by foot on the land and in doing so supported the notion that the Objector's use of land took priority over their use and interrupted their use. In particular in 1989 and thus within the 20 year period, there is contemporaneous evidence that the entire field, including the perimeter, was cropped, ploughed, harrowed and reseeded during the year and so would have prevented all access whilst the hay grew. This is inconsistent with any intention by the owner to dedicate a footpath.
- 6.4 A recent application by the Applicant to register Grasmere Pasture as village green was dismissed on the grounds that the field was agricultural land and had been actively used for this purpose.

## **7 Conclusion and other matters**

- 7.1 The Objectors therefore contend that the requirements of a public right of way within the meaning of section 31 of the 1980 Act are not satisfied.
- 7.2 In conclusion the Objectors would state that
- (a) the use of the footpaths conflicts with the farming activities historically and currently conducted at Grasmere Pastures;
  - (b) the use of the footpaths by force of entry cannot be "as of right";
  - (c) Without prejudice to the contention at (b) above, the other requirement is not satisfied in any event. The Applicant has provided insufficient evidence to show uninterrupted use of the footpaths for 20 years commencing with the date when the way was first brought into question.

7.3 In the circumstances, the Applicant has not satisfied the three limb test contained in section 31 of the 1980 Act and therefore the Application should be refused.

**BEVAN BRITTAN LLP**

**29 AUGUST 2007**