BEDFORD BOROUGH COUNCIL – REPORT TO THE ASSISTANT DIRECTOR OF ENVIRONMENT & COMMUNITIES

SUBJECT: Determination of a representation that public highway rights subsist along the way known as Guru Ravidass Lane, off Ashburnham Road, Bedford.

1 EXECUTIVE SUMMARY

1.1 Guru Ravidass Lane runs from Ashburnham Road to The Avenue, Bedford. It carries no recorded public rights of way; that is, it is not included on the Council's list of streets maintainable at public expense (as maintained under s.38 of the Highways Act 1980), nor is it recorded on the Council's Definitive Map and Statement of public rights of way.

1.2 The fact that no public rights are recorded is not, in itself, proof or evidence of there being no such public rights. Public rights of way for non-mechanically propelled vehicles, ridden horses and pedestrians are recorded on the Definitive Map and Statement (DM&S). The DM&S was originally drawn up in the early 1950s under the provisions of the National Parks and Access to the Countryside Act 1949 (the 1949 Act). It is now maintained and kept up-to-date under the terms of the Wildlife and Countryside 1981(the 1981 Act).

1.3 Guru Ravidass Lane is situated in an area of Bedford which was formally exempted from the terms of the 1949 Act by the Secretary of State at the time of the original survey. For that reason, there is no Definitive Map upon which any public minor highway rights which may exist over Guru Ravidass Lane would be recorded.

1.4 In June 2011 the owners of the lane, the Sri Guru Ravidass Bhawan and Community Centre (SGRB), erected gates at the eastern end of the lane where it joins with The Avenue. These gates were erected in order to alleviate crime and anti-social behaviour. The owners had consulted with the Council before erecting the gates, and the Council supported the action based upon its role as community safety champion and the fact that the way was not recorded as public highway.

1.5 The Council's position in 2011 as stated by the Director of Environment was that the lane was not recorded on the Definitive Map. Legally, however, the lack of recorded rights is without prejudice to the possible existence of unrecorded rights. The subsequent claims of use mean the Council has now to determine whether a public right of way exists and, if so, of what status.

1.6 The blocking of the lane by the gates in June 2011 led to complaints being directed to the Council from aggrieved members of the public who had been using the way for many years and who considered the lane to carry a public right of passage.

1.7 As much of the evidence both for and against the existence of public rights along GRL is in the form of witness statements, it was decided by the Council to proceed by way of processing the evidence as though it were an application under s.53(5) of the Wildlife and Countryside Act 1981 for an order to modify the Definitive Map and Statement. The consequence of using this process is that if the evidence supports a reasonable allegation that the way may be a public path then both sides would have the opportunity of testing the other's witnesses at a Public Inquiry before a final decision is made.

2 RECOMMENDATION

2.1 That an order be made under the terms of s. 53(2)(b) of the Wildlife and Countryside Act 1981 consequent upon the occurrence of an event under s.53(3)(c)(i) of that Act; namely, the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over the land in question. See map at appendix 1.

3 REASONS FOR RECOMMENDATIONS

3.1 Early in 2011 the trustees of the SGRB approached the Council regarding a proposal to erect lockable gates at the end of GRL where it joins The Avenue. This proposal was to help combat crime and anti-social behaviour associated with the accessibility of the lane. As GRL was not recorded by the Council as public highway, the Strategic Director for Environment and Sustainable Communities wrote back supporting the proposal.

3.2 In June of 2011 the proposed gates were erected. The appearance of these gates provoked complaints from a number of members of the public who stated that they had been using the way without hindrance for many years. In support of their contention that GRL was public highway, 13 members of the public completed and submitted to the Council Rights of Way User Evidence Forms (see appendices 2i – 2xiii).

3.3 In response to these complaints the Council sought advice from a specialist public rights of way consultant. Her conclusion was that there was a *prima facie* case that GRL was a public highway of at least public footpath status, and possibly a vehicular carriage way. This conclusion was based on two main evidential pillars:

(a) That GRL was shown as un-shaded, and therefore omitted from the valuation for the surrounding heridataments, in the valuation plans drawn up under the terms of the Finance Act 1910, implying that the lane was considered by the valuer as being separate from the land being valued and therefore not contributing to the value of the surrounding land. There is case law which, in two particular cases, has held that the reason for ways being un-shaded on the 1910 valuation plans is that they were considered at the time to be public highways. For an extract from the 1910 Finance Act valuation plan see appendix 3.

(b) That there was sufficient evidence of public use as of right and without interruption to raise a presumption under s.31 of the Highways Act, or at common law, that the way may be deemed to have been dedicated as a public highway.

3.4 The Council's view as at November 2012, and strongly informed by the advice of the consultant, was outlined in the report to the Strategic Director for Environment and Sustainable Communities of that date (see background papers). The Council's position at that time was that in light of the *prima facie* case of highway status, it was duty bound as highway authority to seek the removal of the gates as being illegal obstructions to the highway.

3.5 Having communicated the Council's determination to seek the removal of the gates to the SGRB, the Council received further representations and evidence from SGRB's legal advisors in December 2012. The new evidence consisted of a 1973 extract from the title for the former drill hall property which now forms the temple and community centre, and a photograph of large gates at the Ashburnham Road end of the lane from when the property was a drill hall; see appendices 4 and 5. The gates were alleged to have been in place as late as 1992 when the SGRB acquired the property. The implication, if this was the case, being that such gates would have been incompatible with alleged highway status, and that they would have prevented any public use of the lane while they were in situ such as to counter any claim of 20 years' user.

3.6 In light of the new evidence, it was decided to put on hold the proposed enforcement action to remove the gates whilst the evidence was investigated; see the supplementary report to the Strategic Director of January 2013 as listed in the background papers to this report.

3.7 The extract from the title deed was considered not to be relevant, as it is too late to affect the implications of the 1910 valuation documents, and was too early to affect 20 years' user by the public immediately prior to 2011. An aerial photograph from June 1991 (see appendix 6) was examined. From this, it was evident that the gates were not in situ at that time. None of the user witnesses could remember these gates. **It is my view that the gates at the Ashburnham Road end of GRL were not in position at any time during the 20 years prior to the lane being blocked in June 2011**.

3.8 Having investigated the new evidence and concluded that it did not materially affect the Council's position, the previous determination to seek the removal of the new gates was re-affirmed; see supplementary report to the Strategic Director of March 2013 in the background papers to this report. At this stage, the Council's view on the SGRB's request that the dispute be pursued by means of a Definitive Map Modification Order (DMMO) rather than by enforcement action was considered. However, it was felt at that stage that that would add 6 to 12 months onto the time needed to resolve the dispute, when the matter had already been live for nearly two years. Also, crucially, at that stage the SGRB had submitted little if any substantive evidence which could counter the evidence of long usage as of right by the public.

3.9 On 19th April 2013 officers of the Council met with trustees of SGRB, their legal advisor and several Borough Councillors. This meeting was envisaged by the Council officers as an opportunity to explain the reasoning behind the Council's decision to serve notice for the removal of the gates. However, at this meeting, the SGRB handed over a bundle of evidence including statements from members of the public who said that their use of the lane had been challenged by people associated with the SGRB.

3.10 The presentation of evidence which directly contradicted that of the users was significant. The Council were now faced with a conflict of seemingly credible evidence. The SGRB's legal advisor also renewed his request for the Council to use the DMMO procedure so as to allow the SGRB the opportunity to force a Public Inquiry and so be able to test the Council's witnesses by means of cross-examination. Upon reflection following this meeting, the Council formed the view that in light of the newly submitted evidence the SGRB's request was a reasonable one and that the fairest way of resolving the dispute was to follow a procedure which would allow either party a right of appeal and, if it came to it, a

chance to test each other's witnesses at an inquiry. For that reason, following the April meeting the Council determined to abandon its former intention of taking enforcement action and instead to resolve the dispute using the DMMO procedure at s. 53 and Schedule 15 of the 1981 Act.

NB For a full explanation of the requirements of s.31 of the Highways Act whereby a public right of way may be deemed to have been dedicated by means of 20 years' user by the public see paragraph 4.11.

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…

3.11 In order for a way to be deemed to have become dedicated as a public right of way by right of long use, the route has to be of such a character that its use could give rise at common law to a presumption of dedication. This means that the route must be clearly identifiable, as there is no generally applicable right to roam over private land (other than in strictly prescribed circumstances according to the terms of the Countryside and Rights of Way Act 2000) and that use which gives rise to a public right of way cannot itself be illegal use. Walking over private land is not illegal use; it is at most an act of civil trespass against the owner.

3.12 **I am satisfied that GRL constitutes a way over land which could give rise to a presumption of dedication at common law**.

"…has been actually enjoyed by the public …"

3.13 For a way to be deemed to have been dedicated there has to be the requisite evidence of use. That use has to be by the public at large, and not a section of the public or only identifiable individuals: *Poole v Huskinson* (1843). In practical terms this requires the Council to have regard to the relationship of the users to the owner(s) of the land. So, for example, use merely by employees or relatives of the landowner would not constitute use by the public.

3.14 None of the user witnesses has any apparent or identifiable connection with the current or previous owners of GRL. The 13 individuals who submitted evidence forms, and the 10 of those who were interviewed by the Council, should, in my view, be seen as representative of the wider body of users. It is apparent from even casual observation that GRL has been used by many more people than the 13 who have given formal evidence. Each of those witnesses interviewed said that they had seen other members of the public using GRL. For details of those witnesses interviewed see appendices 7i – 7x.

3.15 **I am, therefore, satisfied that GRL has been actually enjoyed by the public.**

|"…as of right …"

3.16 The term 'as of right' has been held by the courts to refer to the old Latin phrase "*nec vi, nec clam, nec precario*", meaning no public rights should accrue through use by force, nor where the use was secret as the landowner would not know of it and so could not take action to prevent it. The final requirement is that use is without permission; that is, that the use is not 'precarious'.

3.17 Prior to the erection of the gates in June 2011, GRL was open and unobstructed. No evidence has been submitted to suggest that any public use prior to that date was carried out by force.

3.18 **Mr Redmond** (appendix 7vii) said his use was always open and he would regularly see people associated with the temple and community centre. **Mrs Redmond** (appendix 7viii) said that she used to regularly see people associated with the temple and community centre on Sunday mornings. She would say 'hello' or 'good morning' to them. **Mrs Kavanagh** (appendix 7iii) said that she sees cars going along the lane to the car park, or people walking to the temple. No one has ever said anything to her. Sometimes they have nodded hello, but they have never said or done anything to suggest that she shouldn't have been there. **Mr John Kavanagh** (appendix 7iv) said that he has been seen by people associated with the temple and community centre so they have had the opportunity to challenge him, but have never done so. **Mr Kenneth Kavanagh** (appendix 7v) said that he often sees people from the temple and community centre; some would talk, some wouldn't. They were very friendly and they didn't say anything at all about him being there. **Dr Durrant** (appendix 7ii) said that he has never been challenged when using the way though he has been seen doing so by people associated with the temple and community centre. **Mr McGivern** (appendix 7ix) said that he nods hello to people associated with the temple and community centre when he sees them. **Mrs Worthy** (appendix 7x) said that although she does not recall ever seeing or meeting anyone from the temple and community centre, she went "..blandly and blindly…" on her way, clearly not being stealthy to avoid detection. **Mrs Hamilton** (appendix 7i) said that she would often see people associated with the temple and community centre. She would always say hello, and they would usually return her greeting. For the witness user evidence forms see Appendix 2, and for the interview write ups see Appendix 7.

3.19 None of the witnesses said that they had sought or been given permission to use the way.

3.20 Permission, or 'licence' for the public to use the way doesn't necessarily have to be stated explicitly, but may be inferred from the landowner's actions, but such permission must be communicated to those using the way by means of "overt and unequivocal conduct" House of Lords in *R (Beresford) v Sunderland City Council* 2004.

3.21 The question of whether or not the evidence submitted supports a conclusion that the actions of the SGRB could or should be construed as constituting an implied revocable licence is bound up with the issue of 'interruption' as detailed in the following section. **Consequently, I shall deal with the issue of implied licence (or permission) and 'as of right' at the same time as that of interruption at paragraph 3.39 below.**

<u>"…without interruption…"</u>

3.22 For a way to be deemed to have been dedicated the 20 years' user as of right must have been without interruption. The meaning <u>in law</u> of this term has been the subject of consideration by the courts and the resulting case law has not given us as clear an understanding of the scope and application of this term as more modern case law has for related issues such as non-intention to dedicate and 'as of right'. For a fuller explanation of the relevant case law, see section 4 below.

3.23 For an act of the landowner to constitute an act of interruption under the meaning of s.31 of the 1980 Act, the public must be intentionally and actually stopped from using the way for a period of time. There is no requirement for such acts to be consciously directed at denying the existence of public rights or to communicate such a denial to those using the way. It is sufficient if the act is done intentionally to stop public access and was successfully implemented.

3.24 This raises the question of whether the evidence submitted shows that GRL has been intentionally and actually closed to public traffic for periods between June 1992 and June 2011.

3.25 The SGRB claim that public use of GRL was interrupted on frequent occasions when events such as festivals and weddings were held at the bhawan. The SGRB submission is that stewards were appointed on these occasions and that they stopped those not taking part in the event from using the way.

3.26 SGRB have submitted significant quantities of documentary evidence to demonstrate that they regularly hold events and festivals which include many people and which involve processions beginning in GRL. There are photographs of such processions gathering in the lane by the bhawan, and proceeding down Ashburnham Road and Midland Road. A letter of 11th September 2008 from the SGRB to local residents relating to Ravidassia Mela mentions that fair ground rides will be located at the Avenue end of Guru Ravidass Lane, and that the lane will be totally closed at this point and inviting them to attend (see appendix 8). There is a similar letter with similar contents dated 3rd August 2009 (see appendix 9). Also submitted was a notice dated 4th July 2010 which states:

"NOTICE
Guru Ravidass Lane
CLOSED
For road works
From **7 am Saturday 17th July**
For one day only
Apologies for any inconvenience caused and thank you for your co-operation and understanding
Management SGRS"

(See appendix 10).

3.27 SGRB submitted a letter and supporting documentation from S. Pell Builders Ltd. (see appendix 11). In this letter, dated 26th April 2013, Mr Pell states that in February 2008 he was responsible for erecting the base and carrying out the brick work surrounding the flag pole at the front of the bhawan. Mr Pell states that for the two weeks it took to carry out the work the lane was closed off for health and safety reasons. Mr Pell's statement is accompanied by a number of photographs (also at appendix 11) showing the scale of the works concerned.

3.28 At appendix 12 is a letter dated 18th April 2013 from a Mr Norman of Kempston Building Services. Mr Norman says that during the winter of 1992 he repaired large holes on the lane. Mr Norman said that the holes were the result of lack of maintenance and, possibly, of soil testing. Some of the holes ran the entire width of the lane and were up to 4 feet deep in places. The lane was completely impassable at the time to vehicles and pedestrians. The work took about three weeks and during that time materials and equipment completely blocked the lane making it completely impassable.

3.29 A letter dated 20th April 2013 from Avtar Kumar (see appendix 13) contains a statement to the effect that Mr Kumar was a self-employed contractor who carried out surfacing work on GRL in July 2010. Mr Kumar says that he surfaced the whole of GRL during the week of 4th July 2010 and that the lane was completely closed to the public with notices installed on both sides of the lane. No one was able to walk through during this period.

3.30 A statement from Mr Gurmel Chambers dated 26th April 2013 (see appendix 19) states that he was president of the SGRB in 1992 when the site was purchased and that, if his memory serves him correctly , it would have been impossible to use the lane from the Avenue end. While work was being carried out to make the area safe and usable the lane was, he says, completely blocked by barriers with notice put up informing that no through excess (sic) was permitted.

3.31 Amongst the evidence submitted by the SGRB are 21 pro-forma statements from people who have, at various times, acted as steward for events at the temple and community centre (see appendix 14). Although pro-forma, they are individually signed. The statements read:

"To whom it may concern

This is to confirm that I, _____

Of:

_____

_____

This is to confirm that on __ / __ / __ I was the head steward wearing a high vis jacket.

The event at the time was _____

My duty was to stop and send back anyone not involved with Ravidassia Community Centre, walking through the Guru Ravidass Lane, Bedford.

I am willing to testify to this statement."

3.32 The following table gives the name of the steward, the date of the event, the type of event and the date the statement was signed:

NAME	DATE OF EVENT	TYPE OF EVENT	DATE SIGNED
Ram Sarn Suman	08.09.2006	Lift opening ceremony	27.04.2013
Ram Sarn Suman	09.1102007	Bhogh	27.04.2013
Satveer Badhan	05.12.2008	Religious programme	30.04.2013
Satveer Badhan	12.01.2007	Lohri celebrations	22.04.2013
Hanj Raj Nighah	01.01.2006	New year celebrations	
Hanj Raj Nighah	31.12.2007	New year celebrations	
Pritam Chand Badhan	17.03.2006	Religious	

		programme	
Pritam Chand Badhan	19.08.2007	Ravidassia Mela	
Mohinder Sandhu	04.03.2007	Guru Ravidass birthday celebration	
Mohinder Sandhu	01.01.1999	New year celebrations	
Baldev Nighah	31.12.2006	New Year celebrations	25.04.2013
Rana Ladhar	05.11.2006	Diwali fireworks celebration	27.?.2013
Mohan Singh	30.12.2005	New year celebrations	25.?.2013
Jaswinder Kumar	10.09.2006	Religious programme	22.?.2013
Jaswinder Kumar	14.03.2008	Guru Ravidass birthday celebrations	22.?.2013
Roop Lal Paul	13.01.2007	Lohri celebrations	20.04.2013
Chaman Lal Paul	11.01.2008	Lohri celebrations	25.04.2013
Chaman Lal (sic)	03.02.2006	Trustees Akhand Path	25.04.2013
Satpal Paul	03.11.2006	Guru Nanak birthday celebrations	25.04.2013
Ram Murti Bhatoa	05.02.2006	Religious programme	28.04.2013
Ram Murti Bhatoa	28.08.2008		28.04.2013

3.33 There are also pro-forma statements to the effect that the signatory's child was married at the SGRB and that the bhawan provided a head steward who wore a high vis jacket and whose main job was to stop anyone walking through [the lane] who was not invited to the wedding. The lane had a road closed sign at both ends, there were coaches blocking [the lane] completely at the Avenue end making it completely impassable to pedestrians. The dates given are 21st March 2009, 24th May 2009, 6th June 2009, 21st January 2006, 2nd August 2008, 1st May 2011, 9th June 2007 and 20th June 2010; (see appendix 19).

3.34 Also included at appendix 19 is a document headed 'public notice' dated 12th March 2006 stating that the Ravidassia Community would be celebrating the birth anniversary of Sri Guru Ravidass Ji from 17th to 19th March 2006 and that: "…for these 3 days [the lane] is [would be] closed to any vehicles or pedestrians."

3.35 Finally, the SGRB submitted a petition signed by 200+ people all purporting to confirm that:

> "we the undersigned are regular visitors of Sri Guru Ravidass Bhawan & Community Centre and have attended the venue on a regular basis for a number of years. We are strongly of the view that Guru Ravidass Lane (GRL – off Ashburnham Road) is a Private Road and the (sic) over time have seen the Management Committee stopping the general public from using GRL We have, over the years, given contributions to allow GRL has been (sic) maintained over time, and have seen its use restricted for periods of time during maintenance, such as filling various pot holes since the site was purchased in 1993 (sic). We have witness (sic) the road being cordoned off in it's entirely (sic) for several days and even weeks for the

safety of the Community Centre. We have also regularly seen the road blocked on at least 4 festivals during the year for several hours and often several days, as well as at other events which we have attended, to included (sic) weddings, birthday parties and other celebrations. During these times, we have witnessed the road being blocked with no access by car or foot whatsoever for either member (sic) of the community centre or the public at large."

3.36 In order to be significant in meeting the test of the Act, the evidence in favour of the public's use of the way having been interrupted must show that the public's use was actually physically interrupted.

3.37 Looking at the evidence provided by the users of the way we see that

- **Mrs Hamilton** (appendix 7i) says she has encountered festivals, weddings and events but has never encountered any stewards and was never stopped from using the lane;

- **Dr Durrant** (appendix 7ii) says he has come across coaches parked in the lane but that they were no impediment to use

- **Mr Kenneth Kavanagh** (appendix 7v) says that he has encountered festivals and events but that he picked his way through the crowds without challenge;

- **Mrs Redmond** (appendix 7viii) says that she once encountered buses and mini-buses and people milling on the lane but walked through with no problem;

- **Mr McGivern** (appendix 7ix) says that he has not been stopped or encountered anyone stopping users during events, but that he wouldn't use the lane during an event out of an innate sensitivity;

- **Mrs Worthy** (appendix 7x) says that she has encountered festivals and weddings but that she just had to pick her way round them on her bike and did so unchallenged, there being no stewards stopping people.

3.38 It may, of course, be that none of these members of the public went to GRL on the particular days specified in the pro forma statements mentioned above, but it is SGRB's position that the same practice was followed at every festival and that evidence that stewards were appointed is, consequently, also evidence that public use was interrupted. The statements from the user witnesses listed in the previous paragraph, however, if taken at face value would suggest that if stewards were appointed as claimed by SGRB, this was not necessarily sufficient to bring about an actual and effective interruption of public use.

3.39 **In my view, the evidence submitted by the SGRB, when compared with that of the user witnesses does not show, on the balance of probabilities, that public use of GRL was actually interrupted such as to satisfy the requirement of s.31 of the 1980 Act**. This does not mean as a finding of fact that none of the SGRB's actions was an interruption under s.31, but that the contradiction between the evidence of the SGRB and that of the user witnesses cannot be resolved without a tribunal of fact having the opportunity to test that evidence by means of oral testimony and cross-examination. As for the

question of whether these acts of 'interruption' by and on behalf of SGRB mean that the public use has not been 'as of right', the same conflict of seemingly credible evidence for and against suggests, in my opinion, that the SGRB's actions cannot be seen as "overt and unequivocal conduct" such as to lead users of the path to infer that their use was by implied licence from the landowner.

"… for a full period of 20 years…"

3.40 The period of 20 years referred to in subsection (1) of s.31 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) or otherwise.

3.41 In this case there are two events which could be taken to constitute an act capable of bringing the public's right to use the way into question. Firstly, the erection at the Avenue end of GRL of a notice of intention to erect the gates; secondly, the erection of the gates themselves.

3.42 The SGRB submitted a copy of a notice dated 2nd March 2011(see appendix 15), the text of which states:

PUBLIC NOTICE
PLEASE BEWARE THAT THE MANAGEMENT IS
INSTALLING A METAL GATE ACROSS

GURU RAVIDASS LANE

AND IT WILL BE CLOSED OFF, AT THE AVENUE SIDE OF
THE ROAD, IF ANY HAS ANY VIEWS, PLEASE CONTACT

OM PARKESH OR TARSEM PAUL
AT THE COMMUNITY CENTRE

3.43 The Borough Council advised the SGRB to erect such a notice so that if the public had been using the way, they would be fore-warned of the closure and could assert any rights they believed they may have accrued before the gates were erected and thus potentially avoid a dispute such as the one which actually ensued. Such was the intention behind the Council's advice. It is not known what the trustees themselves envisaged when they erected the notice.

3.44 Three user witnesses refer to this notice. **Mrs Kavanagh** (appendix 7iii) said that she recalls a notice being put up on the gates when they were first erected saying something about the way being private property. She is adamant that the notice was on the gates themselves and that it did not pre-date the installation of the gates. **Dr Durrant** (appendix 7ii) mentioned seeing a small white laminated notice saying that the road was private shortly before the gates were put up. **Mrs Hamilton** (appendix 7i) recalls seeing a paper notice attached to the wall at the eastern end of the way in late April or early May 2011 saying that Guru Ravidass Lane was a private road and that it would be closed on 16th May.

3.45 The gates themselves were put up in June 2011, and were immediately apparent to all who tried to use the way. It was the erection of the gates which prompted the initial complaints from Mr Kavanagh and Mr and Mrs Hamilton (Mr Hamilton is now deceased).

3.46 There can be little or no serious dispute that the erection of the gates was a clear and unambiguous assertion of the owners' view that the public had no right to use the way. The question is whether or not the earlier notice could be said to have been capable of bringing the public's right to use the way into question.

3.47 For the right of the public to use the way to be brought into question the act or acts relied upon had to be of such a character that they were ***likely*** to have come to the attention of ***some* of the users** so as to be **seen by them as challenging their *right* to use the way**.

3.48 This test is a twofold one. Firstly, was the act likely to come to the notice of some of the users and, secondly, would it be seen by them as challenging their use.

3.49 In this case we have only 2 witnesses out of 13 who recall seeing the small notice prior to the gates being erected. Neither seemed to conclude from reading the notice that their right to use the way was being brought into question. The notice referred to the road being closed off, it did not specifically mention pedestrians or say unambiguously that the public did not have a right of way on foot or otherwise.

3.50 **Having regard to the ambiguity of the March 2011 notice, the fact that it was seen by so few of the witnesses and the unambiguous and universally acknowledged act of June 2011 (the erection of the gates) I am of the view that the small notice erected sometime between March and May 2011 was <u>not</u> an act capable of bringing the public's right to use the way into question. The relevant act was the erection of the gates themselves in June 2011. The relevant 20 year period for the determination of deemed dedication, therefore, is June 1991 to June 2011.**

<u>"…unless during that period there is sufficient evidence of a lack of intention to dedicate…"</u>

3.51 During the period June 1991 to June 2011 the following witnesses have claimed to have used GRL as of right and without interruption:

Name	**First use***	**Last use**	**Type of use**	**frequency of use***
Jane Hamilton	1985	2013	<u>foot</u> / bicycle	2/3 per week
Alan Durrant	1987	2013	foot / bicycle	1/2 per week
Zofia Durrant	1987	2013	foot	3 per week
Joan Kavanagh	1969	2013	foot	1 per week
John Kavanagh	1972	2013	foot	2 per month
Kenneth Kavanagh	1969	2013	<u>foot</u> / car	1 per week
Martin Redmond	Late 1990s	2013	foot	1 per week
Alison Redmond	Mid – late 1990s	2013	<u>foot</u> / car	2 per week
James McGivern	1987	2013	<u>foot</u> / bicycle	1 per week
Laura Worthy	1986/87	2013	<u>foot</u> / bicycle	1 per week
Russell Dymock	1993	2010	<u>foot</u> / bicycle / car	1 per month

Pauline Dymock	1990	2006	foot / car	1 per month
William Hamilton	1985	2011	foot / bicycle	2/3 per week

*Where witnesses have used the way by means other than on foot, the frequency of use, and date of first use, refers to their use on foot only and is a rough estimate of the frequency of use averaged over the whole period of use.

3.52 From the table in the paragraph above it can be seen that a representative sample of the public have enjoyed the way (mainly) on foot for a full period of 20 years between June 1991 and June 2011.

3.53 **For the reasons detailed above, I conclude that a presumption has been raised that the way known as Guru Ravidass Lane has been dedicated as a public footpath.**

3.54 This being the case, the onus of rebutting the presumption passes to the owners of the lane. In order to rebut this presumption, SGRB must show that **during the period June 1991 to June 2011** they took overt and contemporaneous actions such as to **bring it home to those using the way** that they had no intention of dedicating it as a public right of way. That is, it is not sufficient for them to say now, after the event, that they had no intention to dedicate the way. They have to be able to show that they actually demonstrated a lack of intention to those using the way during the relevant 20 year period.

3.55 Possible methods of showing a lack of intention to dedicate are: depositing a statutory declaration with the surveying authority under the terms of s.31(6) of the Highways Act 1980; erecting and maintaining notices visible to the public of a nature inconsistent with the dedication of the way as a highway; challenging and turning back users; giving specific individuals or groups explicit permission to use the way; or by blocking the way off one day a year and/or charging a toll on that day.

3.56 SGRB have not made a deposit under s.31(6) of the Highways Act 1980.

3.57 They have erected a sign saying ‘private road’ at the Ashburnham Road end of GRL. However, the wording of such a notice is ambiguous. It is very common for public footpaths and bridleways to run over private carriage roads. A notice saying private road is likely only to suggest that the public cannot drive vehicles along the way, not that they cannot walk the route. It is very easy to erect unambiguous signs which say no public right of way. Also, it is not clear whether the private road notice was in place before the gates were erected. **For these reasons, I do not accept the ‘private road’ sign as being sufficient evidence of a lack of intention to dedicate.**

3.58 I have seen no evidence that specific individuals or groups have been explicitly given permission to walk GRL.

3.59 SGRB have submitted evidence of having challenged users of the lane. 11 people submitted signed statements to the effect that they had been challenged whilst using GRL; see appendix 16.

Halil Mataj (appendix 16i) of Braemar Ct Bedford was stopped on 24th May 2009 in the late afternoon. The road was closed and a community member

stopped Mr Mataj and told him that GRL is private property and that he does not have any right over the road. He was asked to turn back to Ashburnham Road.

Behar Mataj (appendix 16ii) of Braemar Ct Bedford was stopped in the early evening of 2nd August 2008 by a community member who told him that GRL is private land and that he had no right to walk over it. He was asked to turn back into Ashburnham Road.

Baldev Basra (appendix 16iii) of Fearnley Crescent Bedford was stopped on 11th January 2008 by the car park attendant of the community centre who informed him that GRL is private property and he has no right to walk over it. He was told to turn back to Ashburnham Road.

Nirmal Chandhar (appendix 16iv) of Brett Drive Bedford was walking back to his car from the train station when he was approached by a man who said that he was a committee member of the community centre. He was told to go back, but he had been parking in the community centre car park (presumably with permission ?) for 12 years. This challenge happened in December 2006.

Satnam Sundar (appendix 16v) of Wadsworth Courts Bedford was approached on 20th October 2006 along GRL by a man who said he was the Secretary of Guru Ravidass Sabha. He asked "do you have a right to be walking on this private property ?" Mr Sundar was collecting his car from the community centre's car park. The Secretary said "…this is private property and we would ask you not to walk along here again. You are in fact trespassing…"

Kersi Vandriwala (appendix 16vi) of Spenser Road Bedford was confronted on GRL in the spring of 2005 by people subsequently identified as committee members of the community centre. Ms Vandriwala was asked why she was using the lane, and was informed that GRL was a private road belonging to the community centre and that she was not allowed to use the lane without permission and was turned back.

Marcello Famiglietti (appendix 16vii) of Honeyhill Road Bedford was stopped on GRL during May 2005 whilst walking with a friend. The person who stopped him, he now knows, was a committee member of the community centre. Mr Famiglietti remembers the date and incident well as it was his 40th birthday and he was going into town to celebrate. Mr Famiglietti was informed that GRL is a private road. He apologised and went back to Ashburnham Road and went via Woburn Road instead.

Shamim Miah (appendix 16viii) of Woburn Road Bedford can recall at least 2 occasions where he or she has attempted to cross GRL and has been stopped by people purporting to be the owners of the community centre who have told him or her that the way is a private road and not to be used by members of the public. On both occasions he or she was turned back. Shamim Miah is an employee of Premier Solicitors, the legal advisors of the SGRB in the current dispute, but otherwise has no affiliation with the group and is not of their religion.

Abdul Rashid (appendix 16ix) of Woburn Road Bedford says that on a few occasions he has been stopped when attempting to use GRL. He recalls one occasion when an Asian person with a blue scarf on his head specifically told

him that he could not use the road unless he was using the community centre or was owner of one of the flats on Ashburnham Road.

Dr Dita Rathore (appendix 16x) of Clapham parks her car at the community centre to use the station. She works in London as a dentist and has done for 10 years. When she first enquired about parking she was told the lane was a private road, and when she actually started parking there she was stopped and asked why she was using the lane by several people from the community centre. When she explained that she was parking there she was allowed to continue. Her being challenged obviously reduced over time as people came to recognise her, but still does happen from time to time.

Martin Stirling (appendix 16xi and appendix 18) of Oakley was approached during January 2010 by a man who said he was the secretary of the Guru Ravidass Sabha. Mr Stirling told him he was there to pick up his car from the car park whereupon he was told "…this is private property and we would ask you not to walk along here again. You are in fact trespassing…".

3.60 A letter from a **Rasham Nighah** dated 8th January 2013 contains a statement to the effect that this person's son's pre-wedding party was held at the GRL community centre on 8th October 2010. At about 9.30 – 10 pm Mr Nighah personally stopped three 'young males' attempting to go through the gathering on GRL. Mr Nighah insisted that the trespassers turn back onto Ashburnham Road because GRL was not a public road. After an exchange of words the young men eventually accepted that they were on private land and turned back. See appendix 17.

3.61 We have here a fundamental contradiction of seemingly credible evidence. The user witnesses, listed in paragraph 3.51 above, claim to have used GRL openly and frequently over many years, but have never been stopped or challenged, have never been given permission and have never seen any signs, notices or structures inconsistent with the dedication of the way as a public footpath. Conversely, in paragraph 3.5* above we have a group of witnesses who claim to have been personally challenged by representatives of SGRB and turned back on the grounds that they were trespassing.

3.62 In my view, this type of evidential contradiction is just the kind of situation the Court of Appeal had in mind when deciding the *Emery* case in 1997 (see paragraphs 4.5 to 4.8 below). Applying Owen J.'s reasonable allegation test from *Bagshaw* and *Norton* and reasonably discounting the evidence from one side (the landowners') and reasonably accepting the evidence from the other (the public's) then the allegation is a reasonable one. There is no documentary evidence which must cause the claim of public rights to fail.

3.63 **For these reasons I conclude that there is a <u>reasonable allegation</u> that the way known as Guru Ravidass Lane has been dedicated as a public footpath during the period June 1991 to June 2011.**

3.64 For the sake of completeness, I shall consider whether or not a case for public rights could be made out at common law. Common law differs from section 31 of the Highways Act in that long user is merely evidence from which it <u>may</u> be inferred that the landowner has dedicated a way as a highway. Unlike the statute provision, there is no requirement to draw this inference from the user evidence. At statute law, the onus is on the owner to <u>prove</u> that they <u>didn't</u> have

an intention to dedicate, whereas at common law the onus is on the public to prove that the owner did have an intention to dedicate.

3.65 **Bearing in mind the abundant evidence of GRL being closed to users for events, festivals and works, it would, in my view, be difficult to infer from the landowners' actions the existence of a positive intention to dedicate. Consequently, I do not think that a case has been made out for GRL having public highway rights at common law.**

Documentary evidence

3.66 As well as the user evidence submitted, I have also viewed all available relevant documentary evidence. The only documents of any real relevance are those associated with the valuations carried out under the terms of the Finance Act 1910 and the Rating Valuation Act 1925. The 1910 Act introduced an incremental duty on the 'unearned' increase in value of property. Every property in the country was to have a base line valuation then when the property was sold there would be duty to be paid on the increase in value above the base line. The 1910 Act is more relevant in the present context than the 1925 Act as there is case law which deals explicitly with that Act in terms of is applicability to public rights of way.

3.67 The valuer's plans for both the 1910 Act and the 1925 Act show GRL as un-shaded. That means that the valuer considered GRL to be separate from the surrounding hereditament, and not part of the land to be valued; no more and no less. In the *Agombar* and *Fortune* cases (see paragraph 4.9 below) the High Court and the Court of Appeal respectively found the Finance Act 1910 documents compelling evidence of the existence of a public road. Having said this, I think that GRL can and should be distinguished from both these cases. In *Agombar* there was tithe apportionment evidence which corroborated the view that the way in question was a public road, and so reinforced that interpretation of the Finance Act evidence. In *Fortune* there was a whole raft of corroborating evidence. In cases where there are other documentary sources suggestive of the way being a public road, it is reasonable to infer that the way in question was omitted from the valuation on account of it being considered to be a public road. However, in the absence of any such corroborating evidence I think it unsafe to conclude that a way is a public road where the 1910 Act evidence is the sole or principal foundation of that conclusion.

3.68 **In my view the documentary evidence is of little help in determining the status of Guru Ravidass Lane.**

4 IMPLICATIONS

(a) Legal

4.1 Guru Ravidass Lane is owned by the trustees of the Sri Guru Ravidass Bhawan and Community Centre. This is not disputed by the Council. However, the very nature of public rights of way is that they are intangible rights which the public have acquired over otherwise private land. The fact that the lane is privately owned, therefore, is of no significance in terms of whether or not it also carries public highway rights.

4.2 The area of Bedford in which Guru Ravidass Lane is situated was formally exempted from the original survey of public rights of way carried out in the early 1950s under the terms of s.35(4) the National Parks and Access to the Countryside Act 1949 (NPACA 40). For that reason there is currently no Definitive Map and Statement for that area.

4.3 Surveying authorities are required by s.55(3) of the 1981 Act to produce Definitive Maps and Statements for all areas for which no previous survey has been carried out. This is done by means of the s.53 Definitive Map Modification Order process. If, therefore, an order were to be made and confirmed adding Guru Ravidass Lane to the Definitive Map, that one order would constitute the new map and statement which would then need to be populated by means of the routine 'continuous review' process of s.53 of the 1981 Act.

4.4 S. 53(2)(b) and 53(3)(c)(i) of the 1981 Act require the Council (the surveying authority) to modify the Definitive Map and Statement by order if it discovers, or is presented with, evidence which, when considered with all other relevant evidence available to it, shows that a right of way which is not shown in the map and statement **subsists or is reasonably alleged to subsist** over land to which the map relates.

4.5 The Court of Appeal, in *R v. Secretary of State for Wales ex parte Emery* [1997] considered the issue of what constituted a 'reasonable allegation' in this context, and approved the decision of the High Court in the cases of *R v Secretary of State for the Environment ex parte Bagshaw* [1994] and *R v The Secretary of State for the Environment ex parte Norton* [1994].

4.6 In the *Bagshaw* and *Norton* cases Owen J. said that the wording of s.53(3)(c)(i) of the 1981 Act ("…subsists or is reasonably alleged to subsist…") clearly implies two tests, the second of which clearly requires a lower standard of proof than the first. Test A is whether or not a public right of way has been shown, on the balance of probabilities, to subsist. If so, then an order should be made to add the way to the Definitive Map and Statement. If Test A is not met, then the Secretary of State (in the *Bagshaw* and *Norton* cases) or the Council, in this case, should consider Test B. Test B is whether or not a reasonable allegation has been made out that the way subsists. If so, then the Council should make an order to add the way to the Definitive Map and Statement. So, what constitutes a 'reasonable allegation' ?

4.7 In the *Emery* case the issue before the court at first instance was whether the Secretary of State had erred in law in not directing the relevant Council to make an order based upon Owen J.'s Test B. In that case there were very many witnesses who claimed to have used a way for many years without interruption, but the current landowner had statements from a previous owner saying that he had challenged walkers and asserted his lack of intention to dedicate the way to the public. In the *Bagshaw* case Owen J. had said that in cases where there is conflicting evidence, the reasonable allegation test is satisfied if a reasonable person, having considered all the evidence available, could reasonably allege a public right of way to subsist.

4.8 The *Rights of Way Law Review* [September 1997 section 8.2 page 75] commentary on the Court of Appeal decision in the *Emery* case is worth quoting at some length:

"If the evidence is conflicting, but reasonably accepting one side and reasonably rejecting the other, the right would be shown to exist, it is reasonable to allege the right. It may be reasonable to reject the evidence on one side when it is only on paper, and the reasonableness of that rejection may be confirmed or destroyed by seeing the witnesses at the Inquiry.

The Court of Appeal approved the relevant passages in Owen J.'s judgment. The test is not satisfied if a reasonable person would say that the allegation that a right of way subsists was bound to fail, for example, where conflicting evidence on one aspect was immaterial because documents showed decisively that the claim was bound to fail on another aspect. **But where the applicant produces sufficient user evidence to support a statutory claim, and there is a conflict of apparently credible evidence in relation to one of the other issues which arise under s.31, the allegation is reasonable**, and the Secretary of State [or in this case, the Council] should so find, **unless there is documentary evidence that must inevitably defeat the claim**."

[Emphasis added]

4.9 The High Court and the Court of Appeal respectively considered the evidential value of the Finance Act 1910 valuation plans in the context of public rights of way disputes in *Robinson Webster (Holdings) Ltd v Agombar* [2002] and *Fortune and Others v Wiltshire County Council and Another* [2012]. For a discussion of the relevance of these cases to this matter see paragraph 3.67 above.

4.10 Section 32 of the Highways Act sets out how the Council must approach the question of whether or not a way has been dedicated as a highway, or as in this case, a highway of a different status:

"A court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified by the circumstances…".

4.11 Section 31 of the Highways Act sets out the mechanism by which a path or way may be dedicated as public highway by means of presumed dedication after public use for 20 years:

"(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.

(1A) Subsection (1) –
(a) is subject to section 66 of the Natural Environment and Rural Communities Act 2006 (dedication by virtue of use for mechanically propelled vehicles no longer possible), but

(b) applies in relation to the dedication of a restricted byway by virtue of use for non-mechanically propelled vehicles as it applies in relation to the dedication of any other description of highway which does not include a public right of way for mechanically propelled vehicles.

(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 as aforesaid passes –
(a) has erected in such manner as to be visible by 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 the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway."

4.12 Highways may also be established under Common Law. At Common Law, a landowner must be shown to have intended to dedicate the right of way over his land. The question of dedication is purely one of fact and public user is no more than evidence, which has to be considered in the light of all available evidence. Public use will not, therefore, raise the inference of dedication where the evidence in its totality shows that the public right of way status was not intended.

4.13 At Common Law, there is no specified period of user, which must have passed before an inference of dedication may be drawn. It is necessary to show, in order that there may be a right of way established, that the route has been used openly, "as of right", and for so long a time that it must have come to the knowledge of the owners of the fee simple that the public were so using it as of right.

4.14 If the landowner has done exactly what would be expected from any owner who intended to dedicate a new highway, the time may be comparatively short. However, as a matter of proof at Common Law, the greater the length of user that can be demonstrated, the stronger the inference of dedication will (usually) be.

4.15 In the case of *R v Secretary of State for the Environment ex parte Dorset County Council* [1999] NPC 72 Dyson J was called upon to consider, among other things, the issue of what was capable of constituting a bringing into question. He said that for the right of the public to use the way to be brought into question the act or acts relied upon had to be of such a character that they were ***likely*** to have come to the attention of ***some*** **of the users** so as to be **seen by them as challenging their use**.

4.16 The case law around the issue of what the term 'interruption' in s.31 means in law is neither as clear nor as conclusive as it is for other aspects of s.31.

4.17 In *Merstham Manor Limited v Coulsdon and Purley UDC* [1937] Hilbery J. concluded:

> "As it is actual enjoyment which must be without interruption, one would suppose that the interruption contemplated must be actual. One can scarcely interrupt acts except by some physical act which stops them. I

therefore think that the word “interruption” is properly to be construed as meaning actual and physical stopping of the enjoyment, and not that the enjoyment has been free of any acts which merely challenged the public right to that enjoyment.”

4.18 In *Jones v. Bates* [1938], Scott j. said:

> “The next requirement of the statute, ‘without interruption’, means that the *enjoyment* of the right must not have been interrupted. If for the statutory period members of the public have used the way as of right, and their exercise of that right has in fact not been interrupted, then the statutory consequence follows…..A mere absence of continuity in the *de facto* user proved will not prevent the statute from running…No interruption comes within the statute unless it is shown to have been an interference with the enjoyment of the right of passage.”

4.19 The Court of Appeal considered the issue of ‘interruption’ in the case of *Lewis v Thomas* [1950]. Evershed MR said of the High Court’s decision in *Jones v Bates*:

> “in the mind of [Scott LJ] “interruption” means what it says: it means interruption in fact. On the other hand, in my judgment the presence or absence of a challenge may well be a relevant circumstance in determining whether in truth there has been interruption in fact. The illustration was given during the course of argument of a road which was interrupted and entirely blocked by some broken-down vehicle…It is obvious that in such a case no court would hold that there was such an interruption as was intended by the section. In the forming of that conclusion, the circumstances in which the barring of the way took place and the complete absence of any intention to stop anybody from going along it would, I think, be a relevant circumstance. Reading the evidence and the judge’s judgment I come to the conclusion that he really did no more… than to refer to [the tenant’s] state of mind as one of the relevant circumstances to be considered, like the occasions and the times when the gate was locked, in arriving at his decision whether there had in fact been interruption. I agree that a barring, and particularly a deliberate barring, of a way for an appreciable period would not necessarily lose its effect merely because no one happened to try to use the way during that period. But here the only user in controversy is use by farm vehicles and cattle…and such use is very improbable at night…In all the circumstances... I think that it was open to [the judge] to find ..’no interruption’, and that the locking was done at such times only as would not be likely to interrupt and did not in fact interrupt (as it was not intended to interrupt) the user of the track for farm vehicles and cattle.”

4.20 Also in the judgment in *Lewis v Thomas* Cohen LJ said:

> “…the reference to interruption…is to the fact of an interruption, and the question of intention is primarily relevant if, and only if, the owner seeks to prove no intention to dedicate. None the less, intention may be involved in the question whether a particular act is or is not interruption. Thus, padlocking a gate is prima facie an act of interruption; but I doubt whether it could be held to be so if the interrupter fixed on the gate a notice that the key would be found hanging on the gate post. **The question is**

whether having regard to the circumstances, the locking of the gate constitutes interruption".

[Emphasis added]

4.21 Finally, in a more recent case, *Rowley v Secretary of State for Transport, Local Government and the Regions* [2002], Elias J said of *Lewis v Thomas*:

> "The Court of Appeal held that in determining whether or not there was an interruption within the meaning of the relevant legislation (a predecessor of section 31) it was merely necessary to establish that there was an interruption in fact. If there were such an interruption, then the fact that the interruption had been created for some other reason than to block the pathway or to make its use more difficult was irrelevant.
>
> However, the court concluded also that the intention with which a particular act is done may have a bearing on the question whether or not there is an interruption in fact."

(b) Policy

4.22 This report does not relate to any general policy of the Borough Council, but reflects a course of action decided upon in the individual circumstances of the case in order to resolve a dispute in an open and fair way and to enable all parties to have their evidence considered prior to any binding decision being made.

(c) Resource

4.23 In general terms the case has no extraordinary resource implications. It is likely to result in the holding of a Public Local Inquiry, but such events are relatively routine matters in the resolution of disputed Definitive Map and public rights of way matters. If the Council elects to be represented at the inquiry by third party legal advisors then there is likely to be a requirement for funding in the region of £5,000 for the Inquiry.

(d) Risk

4.24 There is risk for the Council in seeking to make an order as there is if it refuses to make an order. In a dispute such as this one, it is inevitable that one side, either 'public' or landowners, will be vindicated. There is an inherent reputational risk in such a state of affairs that the Council may be criticised for not acting more forcefully and or more quickly in favour of whichever party is eventually shown to have been in the right. Such a risk cannot be avoided. By resiling from its earlier determination to serve notice on the SGRB for the obstruction of what at the time the Council considered to probably be highway, the Council chose instead a course of action which, although more drawn out, is both fairer and more likely to resolve the dispute without unnecessarily alienating the 'losing' party and one which may be resolved by means of Public Inquiry rather than the more expensive and divisive court action which is very likely to have followed service of notice. In other words, the DMMO procedure is a slower, but ultimately fairer and less risky method of resolving the current dispute.

(e) Environmental

4.25 There are no environmental implications to this report.

(f) Equalities Impact

4.26 There are no equality impacts associated with this report. A Definitive Map Modification order under the 1981 Act does not change anything, but merely seeks to recognise and record the correct legal situation; it does not impose or extinguish any public or private rights. This conclusion is notwithstanding the fact that the trustees of SGRB have, on several occasions, articulated their view that the complaints relating to their gating of GRL are mischievous and racially motivated.

4.27 I have seen no evidence of a racial motivation underlying the complaints from members of the public who have used the way. As purely a matter of fact, the members of the SGRB are overwhelmingly of South-Asian ethnicity, and the witnesses in favour of public highway status are predominantly white European and of Roman Catholic religion. This is so because the SGRB is, of course, a religious organisation, and because GRL provides a convenient route for those resident in the Shakespeare Road and surrounding area of the town to get to and from the Roman Catholic churches in Woburn Road and Midland Road. Beyond this factual dimension, I have not seen or heard, or inferred, any racially motivated animus against the SGRB during the investigation of this case. The obvious explanation for the complaints is that the complainants feel a genuine grievance against the owners of GRL. All the complaints have been articulated in a reasonable way and have been directed against what the owners of SGRB have done, not against whom or what they are.

5 SUMMARY OF CONSULTATIONS AND OUTCOME

5.1 The sole external consultee in a DMMO case is the parish council. As GRL is situated in the town of Bedford there was, of course, no parish council with which to consult.

6 WARD COUNCILLORS' VIEW

6.1 Councillors Fensome and Bagchi made joint representations as follows:

- They believe that the trustees were not aware of the existence of the purported right of way when they bought the land.
- The evidence from neighbours is no stronger than that of the temple.
- The trustees have enclosed and maintained the land in the belief that it is theirs to make secure.
- The gates have made The Avenue a much more pleasant and secure place to live, this is particularly important with the imminent opening of the large sheltered block opening onto The Avenue.

- It is quite clear to them that the trustees have tried to co-operate with residents and that they are 'good neighbours'.

Title: The determination of a proposal to make an order to add a public footpath to The Definitive Map and Statement for the formerly unsurveyed area of Bedford along the way known as Guru Ravidass Lane, under the terms of s.53 of the Wildlife and Countryside Act 1981.	
Report Contact Officer:	*Martyn Brawn*
File Reference:	**BED/25**
Previous relevant minutes:	*Not applicable*
Background papers:	• *Draft report to Executive Director for Environment and Sustainable Communities of November 2012* • *Draft report to Executive Director for Environment and Sustainable Communities of January 2013* • *Draft report to Executive Director for Environment and Sustainable Communities of March 2013*
Appendices:	*Appendices 1 – 18 in one bound volume* *Appendix 19 in second bound volume.*

Seen (optional)		*Signature*	*Date*
Parks and Countryside Manager	Simon Fisher		

Approved:*		*Signature*	*Date*
Assistant Director Environment & Communities	Steve Tomlin		

Reason (if other than for reasons set out in report)	

Refused:*		*Signature*	*Date*
Assistant Director Environment & Communities	Steve Tomlin		
Reasons for refusal:			

*** One of these boxes MUST be completed by the decision-maker**