

**OMA06: STATEMENT CONTAINING THE ORDER MAKING
AUTHORITY'S COMMENTS ON THE OBJECTION**

1 Context Planning Ltd on behalf of Dormie Holdings Ltd

1.1 *“The presence of the gate and signage [at point Z on the Site Plan contained at OMA04] are overt, effective acts evidencing the landowner’s lack of intention to dedicate any public right of way.”*

1.2 Members of the public will have bypassed the locked gate using a nearby stile and have walked 10 metres past the gate and signage along a recorded right of way before they reached the Order Route. Consequently, a notice or locked gate at point Z on the Site Plan does not objectively demonstrate a reasonable user would have understood that the landowner had no intention to dedicate the Order Route. All 57 users stated that they had never seen any notices on or near the Order Route discouraging use of the Order Route; this indicates that those users did not understand the notice or locked gate at point Z on the Site Plan to be referring to the Order Route.

1.3 *“Where access has, notwithstanding the above, taken place during the 20 year period, a decisive interruption of access took place between 2012 and 2014 during restoration works at Charmydown Lodge”*

1.4 The Authority made the Order on the grounds that there was a reasonable allegation that the Order Route was a public footpath. However, at the confirmation stage the applicable test is the balance of probabilities, and the Authority agrees that the evidence does not demonstrate that on the balance of probabilities the Order Route has not been actually enjoyed without interruption during the Relevant Period.

1.5 *“The surrounding public rights of way network includes BA21/9, with spurs to the north west and south east of Charmydown Lodge.”*

- 1.6 The availability of alternative routes in close proximity to the Order Route does not negate the possible existence of rights over the Order Route. Whether there is a need for the Order Route is not a legally relevant consideration in the determination of the opposed Order.
- 1.7 *“Historic plans do not depict a public route along the corridor now claimed.”*
- 1.8 The Authority agrees that there is no historical, documentary evidence in support of the existence of public rights over the Order Route. The documentary evidence indicates the existence of a building across the Order Route from 1884 to 1999 but this is disputed by the user evidence.
- 1.9 *“In April 2012 substantial restoration works commenced at Charmydown Lodge to reintroduce a residential use within the building. As a precursor to these works, the driveway forming the claimed route was fenced off and sealed in order to prevent any public access during these works.”*
- 1.10 The Temporary Traffic Regulation Orders and Notice effective between 2012 and 2015 and the photographs of Heras-type fencing around the development site support the assertion that the Order Route was inaccessible during that period.

2. Virgin, Sky and Vodaphone

- 2.1 Virgin, Sky and Vodaphone are statutory undertakers who each stated that their plant is not affected by the Order
- 2.2 The Authority does not feel there is any need to comment on these neutral representations.