



OFFICER REPORT TO LOCAL COMMITTEE (TANDRIDGE)

ALLEGED PUBLIC BRIDLEWAY ALONG FOOTPATH 25 (TATSFIELD) BETWEEN CLARKS LANE AND THE AVENUE, TATSFIELD

29 JUNE 2012

KEY ISSUE

The County Council has a duty under Section 53 of the Wildlife and Countryside Act 1981 (WCA 1981) to modify the Definitive Map and Statement (DMS) if it discovers evidence which on balance supports a modification.

SUMMARY

Mrs Ann Hayes has submitted an application for a Map Modification Order (MMO) to add a bridleway along the route of Footpath 25 (Tatsfield) between Clarks Lane and The Avenue to the Surrey County Council DMS.

It is considered that the evidence shows that a public bridleway is reasonably alleged to subsist over the route. A legal order to modify the DMS should therefore be made.

OFFICER RECOMMENDATIONS

The Tandridge Local Committee is asked to agree that:

- i. Public bridleway rights are recognised over the route 'A'-'B'-'C' on Drg. No. 3/1/33/H22 and that the application for a MMO under sections 53 and 57 of the Wildlife and Countryside Act 1981 to modify the DMS by the addition of the a bridleway is approved. The route will be known as Public Bridleway No. 25 (Tatsfield).
- ii. A MMO should be made and advertised to implement these changes. If objections are maintained to such an order, it will be submitted to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

1. INTRODUCTION AND BACKGROUND

- 1.1 On 3 July 2007, Mrs Ann Hayes of the Tatsfield Bridleways Association, submitted an application under WCA 1981 for a MMO to add a bridleway to the DMS. The application was accompanied by 21 user evidence forms. For legal background see **Annex A** to this report.
- 1.2 The claimed route, shown on Drg. No. 3/1/33/H22 (**Annex B**) commences at point 'A', which is located at the junction of footpath 25 (Tatsfield) and Clarks Lane, and proceeds in a northerly, then north easterly direction through point 'B' to point 'C' for a total of 443 metres to reach The Avenue. A previous claim had been submitted in 1971.

2. ANALYSIS

STATUTORY TEST

- 2.1 In order to establish a public right, it must be possible to show 20 years of use, 'as of right', that is, not by force, secrecy or with permission, and that the use was 'without interruption'. If this test can be satisfied, the Council must then decide whether this deemed dedication is rebutted by sufficient evidence to show that there was no intention on the part of the landowner during the 20 year period to dedicate the route.

PUBLIC USER EVIDENCE FOR THE ROUTE:

- 2.2 Twenty-one people have completed public user evidence forms, collectively showing use of the route on horseback from 1950-2009. Officers interviewed two of these claimants.
- 2.3 Individual use of the route varies considerably from as little as once a year to every day. The longest individual period of continual usage was 55 years by Mrs Anne Hayes.
- 2.4 Evidence of Bridleway rights along the route was previously brought to the Councils attention in 1971, when three user evidence forms were submitted showing equestrian use between 1920 and 1971. Between 1983 and 1987 a further 30 were received, although some of the claimants had given more than one form. Of these older evidence forms, only two are still available and one (form ten) has very little information.
- 2.5 The majority of the claimants used the route primarily for purposes associated with recreation, such as for pleasure and part of a circular route. Two claimants also used the route to get to the farrier, in 'The Old Granary Forge' located next to point 'A'.
- 2.6 None of the claimants had ever been stopped or questioned in their use of the route by whatever means. Mrs Williams, whilst being interviewed stated that her use of the route had been challenged recently but only by the sister of the owner of the farriers. Mrs Williams also recalled a parallel route being laid out but says that it was very rutted, not nice to use and more suited to walkers. Nobody else mentions using a parallel route.

- 2.7 Mrs Hayes recalls a large log being placed across the route in 1971, but was able to jump it. She does not remember how long the log was there for but does not believe it was there long.

LANDOWNERS EVIDENCE

- 2.8 Most of the land crossed by Footpath No. 25 (Tatsfield) is registered to Surrey County Council, and is managed by the Surrey Wildlife Trust. Mr M M Cerullo owns the southern section of the path from Clarks Lane through the property 'The Old Granary Forge'. Mr Cerullo is a farrier and general smith.
- 2.9 The County Engineer, in a letter dated 3 December 1986, stated that in 1971 the County Valuer, on the behalf of the landowner, erected a 'No Horses' notice and two barriers to prevent equestrian use. It is also stated by the County Valuer that since the 70's a permissive route ran alongside Footpath No. 25, and it was this route that horse riders were using. It is not known how long this route existed. As the claim is for rights acquired between 1951 – 1971, the existence of any parallel route after that time is not relevant. A map contained in the 2000 – 2005 Management Plan, supplied by the current ranger for the land, shows a permissive horse ride over the route of the footpath.
- 2.10 Mr Cerullo replied (in November 2007) stating that he had owned the property for over 25 years, and that when first purchased there was no access to the rear. He said he had to employ a machine to dig out a bank for access to be made possible and does not agree that access has been available since 1950. He says he totally opposes the upgrading to a bridleway on the grounds that the right already exists.

DEFINITIVE MAP

- 2.11 The 1952, 1959, and 1966 Definitive Maps show a footpath labelled '25' following the same route as appears on the ground now. There is no evidence that there were any objections to its inclusion on the DMS as a public footpath in 1952 or to any of its revisions in 1959 and 1966. The current Definitive Map, with the relevant date of 29 September 2004, has the route of Footpath No. 25 (Tatsfield) shown running along the same line.

HISTORIC EVIDENCE

- 2.12 The route of Footpath No. 25 (Tatsfield) can be seen as a pecked line labelled 'FP' on the County Series Map, dated 1897, and on the Godstone Rural District Map of 1929. The route is not visible on Roques Map 1770, Lindley Crosleys Map 1793, Colonel Mudgets Map 1816, Greenwoods Map 1823, or the Tithe Map, 1843.
- 2.13 The route of the claimed bridleway appears on the Ordnance Survey Maps dated 1897, 1912, 1964 and 1966 as a double pecked line in the same location as exists today, labelled 'FP'.

PREVIOUS CLAIM

- 2.14 Evidence of Bridleway rights along the route was previously brought to the Councils attention in 1971, when two user evidence forms were submitted showing equestrian use between 1920 and 1971. This may have followed the erection of notices and stiles by the County Valuer in 1971, designed to prevent

use by horse riders. Seventeen people completed evidence forms in 1983 and 1985/86. The majority of use shown was in the 1960's and 70's. The evidence was considered 'scanty' and the number of persons too few to prove that rights had been acquired at that time. On 10 February 1988, the Tandridge Area Highways Sub-Committee agreed with the officer's recommendation that bridleway rights should not be recognised due to insufficient evidence.

3 CONSULTATIONS

- 3.1 Tandridge District Council were consulted and stated that their position remained the same as when they were previously consulted in February 1988, that they had no information and no observations to make.
- 3.2 Tatsfield Parish Council's response to the consultation was to suggest creating a parallel bridleway route to avoid difficulties associated with horses hooves churning up the path during bad weather. They also understood that the Surrey Wildlife Trust had dedicated the route as a permissive horse ride, and that Statutory Declarations were submitted.
- 3.3 The British Horse Society Representative states that she used the route in both 1977 and 1978. She states that at that time there was no blockage or prohibitive signs and that there were many small yards in the area that would have used the route.

4 FINANCIAL AND VALUE FOR MONEY IMPLICATIONS

- 4.1 If a MMO were to be made, the cost of advertising it would be approximately £1200 and would be met from the County Council's Countryside Access budget. If objections are received to any order and a public inquiry held, then costs in the region of £4,000 might arise. These costs are fixed by our duties under Schedule 15 of the Wildlife and Countryside Act 1981. If no order is made there are no direct costs to the Council.

5 EQUALITIES AND DIVERSITY IMPLICATIONS AND THE HUMAN RIGHTS ACT

- 5.1 Local Authorities are required to act to uphold European Convention rights which are now enforceable in British courts as a result of the Human Rights Act 1998. Primary Legislation, of which the Wildlife and Countryside Act 1981 is an example, may require the County Council to act in a particular way. While the Council must interpret primary legislation in a way that is compatible with Convention rights that duty does not apply if the County Council could not have acted differently. In this instance it is first necessary to consider whether the action recommended to Members touches on a Convention right. The making of this order may affect the rights of the landowner/occupier (see paragraphs 2.31 - 2.48) under Article 8 of the Convention, the right to a private and family life and Article 1 of Protocol 1, the right to peaceful enjoyment of one's possessions. The Act makes it clear that such rights may only be interfered with in a way that is in accordance with the law. Here the action by the County Council as surveying authority is prescribed by law as detailed in paragraphs 8.1 and 8.3 of this report and Annex 3 of this report. As such the recommendation to the Members is not considered to be in breach of the 1998 Act

6 CRIME AND DISORDER IMPLICATIONS

- 6.1 Such issues cannot legally be taken into account when making a decision if the public have acquired rights or not.

7 CONCLUSION AND RECOMMENDATIONS

- 7.1 A decision on this claim must be made on the legal basis set out in Annex A to this report. The only relevant consideration is whether the evidence is sufficient to raise a presumption that public footpath rights exist. Other issues such as amenity, safety or convenience are irrelevant.
- 7.2 Under Section 53 of the Wildlife and Countryside Act 1981, *“the authority shall make such modifications to the Definitive Map and Statement as appear to them to be requisite in consequence of the discovery of evidence which (when considered with all other relevant evidence available to them) shows that a right of way which is not shown on the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates”*.
- 7.3 There appears to be no specific documentary evidence to indicate that public rights of any sort exist over the route, hence the claims must rely on user and landowner evidence either by statute or common law.
- 7.4 Section 31 (1) of the Highways Act states that: *“Where a way over any land other than a way of such character that use of it by the public could not give rise at common law to any presumption of dedication has actually been enjoyed by the public as of right and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it”*.
- 7.5 The public’s right to use the route was first called into question in 1971. During that year the County Valuer erected signs saying ‘No Horses’ and a barrier. It has been stated that a parallel permissive route ran alongside the footpath at this time, which is the route that horse riders were using, although there is no evidence of this. The relevant 20 year time period is therefore between 1971 and 1951. Prior to 1971 there are no claims of attempts to prevent the acquisition of bridleway rights over the route.
- 7.6 In April 2002 the County Council as landowner made a Statutory Declaration under Section 31(6) of the Highways Act 1980, which safeguards the route against the acquisition of rights from the point of deposit. There are no records of any previous statutory declarations.
- 7.7 The matter of alleged bridleway rights was brought to the Tandridge Area Highways Sub-Committee on 10 February 1988. The recommendation was that bridleway rights should not be recognised, due to an insufficient amount of use between the challenge in 1971 and the 20-year period prior to it. The committee agreed with the decision. In the report it states that a total of 33 evidence forms were submitted showing an extensive period of bridleway use of the footpath, although some claimants had filled out more than form, and only 9 can show equestrian use before 1955. Only two of these forms are still available for inspection, which show horse riding use on the route between 1954 and 1964 and ‘prior to the 50s’ as a child.

- 7.8 Of the user evidence forms currently held, only one person used the route for the entire period. Twenty people claim to have used the route at some point during that period. Several of the users rode the route with a riding school. The barrier erected in 1971 was mentioned in the user evidence, but it was said that it was not there for long and could be negotiated. There is no mention of a parallel route except for in the notes of the interview with Mrs Williams. She says that a route was laid out parallel to the claimed route, but it was very rutted, not very nice to use and was more suitable for walkers.
- 7.9 It is concluded, on the balance of probabilities, that public bridleway rights can be reasonably alleged to subsist over the route 'A'-'B'-'C', between Clarks Lane and The Avenue on the basis of use by the public between 1951 and 1971.
- 7.10 The Tandridge Local Committee is asked to agree that:
- i. Public bridleway rights are recognised over the route 'A'-'B'-'C' on Drg. No. 3/1/33/H22 and that the application for a MMO under sections 53 and 57 of the Wildlife and Countryside Act 1981 to modify the DMS by the addition of a bridleway is approved. The route will be known as Public Bridleway no. 25 (Tatsfield).
 - ii. A MMO should be made and advertised to implement these changes. If objections are maintained to such an order, it will be submitted to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

8 REASONS FOR RECOMMENDATIONS

- 8.1 The evidence shows that a public bridleway is alleged or is reasonably alleged to subsist over the route 'A'-'B'-'C' on Drg. No. 3/1/33/H22.

9 WHAT HAPPENS NEXT

- 9.1 If Committee decides that an order be made and objections are maintained to that order, it will be submitted to the Secretary of State for confirmation.
- 9.2 If Committee decides that no order be made, the applicant will have opportunity to appeal to the Secretary of State for Environment, Food and Rural Affairs against this decision.
- 9.3 If the Committee resolution is against Officer's recommendations then they should record the reasons and cite evidence for the decision. This will make it easier to explain the decision should the matter proceed to public inquiry or appeal.
- 9.4 All interested parties will be informed about the decision

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BACKGROUND PAPERS: All documents quoted in the report. File may be viewed upon request.

