



# **Alleged Public Bridleway From R/W 144 To Sheets Heath, Woking**

## **Local Committee for Woking 06 April 2005**

### **KEY ISSUE:**

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

This report recommends the making of a Map Modification Order (MMO) to add to the DMS a bridleway from R/W 144 to Sheets Heath as shown 'A'-'B'-'C' on drawing no. 3/1/79 H36a. (Annex C)

### **SUMMARY:**

In August 2004 Mrs Diane Beach on behalf of the Chobham Riders Association submitted an application for a Map Modification Order (MMO) to add a bridleway leading from R/W 144 to Sheets Heath. It is considered that the evidence shows that bridleway rights can reasonably be alleged to exist over the route.

## **OFFICER RECOMMENDATIONS:**

The committee is asked to agree that:

- a) A Map Modification Order be made under Section 53 and 57 of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement to include the route shown 'A'-'B'-'C' on drawing no. 3/1/79 H36a. (Annex C) The route shall be known as Public Bridleway 413.
- b) If objections are maintained the Order be submitted to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

## Introduction and background

- 1 Following Surrey County Council's refusal to maintain the route, which is not currently recorded as public right of way, Mrs Diane Beach on behalf of the Chobham Riders Association submitted an application for a MMO to add a bridleway leading from R/W 144 to Sheets Heath. The application was accompanied by 17 public way evidence forms.

### Description of the route

- 2 The path commences at point 'A' its junction with Public Bridleway 144 on Staffordlake Common and proceeds in a southerly direction along a wide enclosed track to point 'C' on Sheets Heath.
- 3 The claimed route is situated in a damp, low lying area, with a small brook running alongside and over it. There is a concrete footbridge beside the ford at point 'B'.
- 4 Both Sheets Heath and Staffordlake Common are on the register of common land held under the Commons Registration Act 1965 and are subject to Section 193 of the Law of Property Act 1925. Section 193 provides that members of the public shall have rights of access for air and exercise to the land. In the case of R v SSE exp Billson (1998) it was established that the right included horse riding, where no other enactment exists to prevent this.

### Public user evidence

- 5 To date a total of 17 people have completed user evidence forms, collectively showing equestrian use from 1952 to 2003 and pedestrian use from 1966 to 2003, with 9 showing equestrian use for 20 years or more and 6 showing pedestrian use for 20 years or more. (See Bar Chart **ANNEXE B**). Frequency varies from weekly to 12 times a year. Users state they used it as part of a circular ride or walk incorporating other public paths.
- 6 None of the users had been verbally challenged, stopped or physically turned back. Similarly none could recall seeing any notices or signs that prohibited their use. However 12 mention that the route was muddy and could be impassable when the brook overflowed.

### Land Ownership

- 7 The land crossed by the claimed route is unregistered. All the frontagers, chairman of Sheets Heath Residents Association and Woking Borough Council who own the heath were invited to comment.

- 8 The only frontager who responded, confirmed that she was not aware of any action being taken to prevent public use of the land. Woking Borough Council stated that they had no objection to the application.

### **Historical evidence**

- 9 In an 1866 Ordnance Survey return of all commons and open spaces within a radius of 25 miles of London, Sheets Heath is reported as has always been open to the public with freeholders, copyholders and their tenants enjoying rights of herbage, turbary and gravel.
- 10 In 1900 there were proposals to regulate use of Sheets Heath by applying byelaws to the common. The byelaws do not prevent riding over the common unless it does damage to it. These byelaws were not repealed when the dedication under the Law of Property Act took place.
- 11 There are many references to Sheets Heath in the minutes of Woking Borough Council's committee meetings, mainly relating to the use of the heath by the War Office for training purposes (1930 til about 1995) and responsibility for the maintenance of Sheets Heath Estate roads. During the 1920's and 30's there are references to the bad state of the claimed route (described as footpath) owing to an overflowing brook. At that time the surveyor was asked to carry out maintenance to the footbridge. This could imply that at the time the borough considered that pedestrian rights existed over the route.
- 12 In 1988 when planning approval was given for riding stables at Sheets Heath Farm, the applicant was advised that it was forbidden to ride on the heath.

### **Historical map evidence**

- 13 It is not known precisely when the claimed route first came into existence, but it is shown on historical mapping dating back to 1719. On the 1841 Woking Tithe Map and apportionment and the first edition of 1:2500 scale Ordnance Survey map surveyed in 1871 the claimed route is braced with the heath, indicating that it was part of the heath. The 1896 and 1973 OS maps show a footbridge at point 'B'.
- 14 On plans prepared under the provisions of the Finance Act 1910 the land over which the route runs is included in hereditament 4785. This covers an area of some 65 acres for which a deduction of £130 was made for rights of way. The then owner of the land was Lord Onslow. It is however not possible to ascertain if the deduction was made only for public footpath 13 which crosses the heath or if it included the claimed route as well.

### **Definitive map records**

- 15 The claimed route does not appear in lists of public paths that appeared in the Woking Borough Council minutes of 1887, 1904, 1910 and 1913.
- 16 In 1936 Woking Borough Council deposited a plan with the County Council under the Rights of Way Act 1932 showing all the paths they considered to be public. The plan does not show the path and there are no records that the path was among those put forward at any relevant stage in the compilation of the DMS in 1952 or its subsequent reviews in 1959 and 1966.

### **Financial implications**

- 17 The cost of advertising a Map Modification Order would be approximately £800, which would be met from the County Council's Rights of Way budget.

### **Sustainable development implications**

- 18 Although there would be no direct impact on traffic movements, the addition of the route to the DMS would have an overall benefit to the local rights of way network. There are no economic implications.

### **The Human Rights Act 1998**

- 21 Under the Human Rights Act 1998, local authorities are required to act, as far as possible, in a way that does not breach rights contained in The European Convention on Human Rights and must interpret primary legislation, such as the Wildlife & Countryside Act 1981, in a manner that is compatible with the Convention, unless the requirements of the legislation mean that it could not have acted any differently. Any interference with a convention right must be in accordance with the law.

The most commonly relied upon Articles of The European Convention are Articles 6, 8 and Article 1 of Protocol 1. These are specified in Schedule 1 of the Act:

Article 6 provides the right to a fair and public hearing. Officers must be satisfied that the application has been subject to proper public consultation and that the public have had an opportunity to make representations in the normal way and that any representations received have been properly covered in the report.

Article 8 of the Convention provides the right to respect for private and family life and the home. This has been interpreted as the right to live one's personal life without unjustified interference. Officers must

consider whether the recommendation will represent such an interference.

Article 1 of Protocol 1 provides that a person is entitled to the peaceful enjoyment of his possessions and that no-one shall be deprived of his possessions except in the public interest. Possessions will include material possessions, such as property, and also user rights. Officers must consider whether the recommendation will affect the peaceful enjoyment of such possessions.

- 22 In the circumstances the above recommendation to is not considered sufficient to engage Article 8 or Article 1 of Protocol 1 of the Convention. As such, the recommendation is not in breach of the 1998 Act and does not have any Human Rights Implications.

## Conclusion and reasons for recommendations

- 23 A decision on this claim must be made on the legal basis set out in **ANNEXE A** to this report and the only relevant consideration is whether the evidence is sufficient to raise a presumption that public rights exist.

- 24 Other appropriate legislation to consider in respect of the section which crosses Sheets Heath is :-

- a) Section 139(1) of the Law of Property Act 1925 states that:

*“Members of the public ..... have rights of access for air and exercise to any land which is ..... manorial waste or common which is wholly or partly situated with an area which immediately before 1 April 1974 was a borough or urban district .... “.*

The case R v Secretary of State for the Environment exp Billson [1999] confirms that access by horseback is included in the right. However the right was subject to any other Act, scheme, provisional order or byelaws regulating the land.

- b) the Byelaws mentioned in paragraph 10.

- 25 For the claim to succeed on the basis of user evidence the claimants must have used the route as members of the public and not because they have permissive or private rights over it. They must also have used it openly and without hindrance by the landowner for a sufficient time to establish a public right.

- 26 To prevent the acquisition of public rights a landowner or his agent must take action, which makes it clear to the public that their use of the path is not “as of right”. Such action could include erecting unambiguous

notices, locking gates across the path at a time when the public might be expected to be using it, or any means specifically directed at preventing public use without permission.

- 27 It is also possible to add a route to the Definitive Map on the basis of documentary evidence, for example, clear dedication by the owner or inference that dedication has taken place. There is no such evidence in this case.
- 28 It was evidently not the intention of riders when they reached point 'C' to turn around and go back along the same route, but to continue onto Sheets Heath as part of a longer or through route. As the heath is a place of public resort for pedestrians & riders (subject to the byelaws), it is considered that the user and documentary evidence is sufficient to raise a presumption that public bridleway rights exist over the route.

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BACKGROUND PAPERS: All documents quoted in the report

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