

**SURREY COUNTY COUNCIL****LOCAL COMMITTEE** (Guildford)**DATE:** 12 MARCH 2014**LEAD OFFICER:** DEBBIE PRISMALL  
SENIOR COUNTRYSIDE ACCESS OFFICER**SUBJECT:** ALLEGED PUBLIC FOOTPATH BETWEEN BOXGROVE ROAD  
AND EPSOM ROAD (GUILDFORD)**DIVISION:** GUILDFORD SOUTH-EAST**SUMMARY OF ISSUE:**

An application has been received for a Map Modification Order (MMO) to add a footpath between Boxgrove Road and Epsom Road, Merrow, Guildford to the Surrey County Council Definitive Map and Statement (DMS).

It is considered that the evidence shows that neither a public footpath, nor a right of way of any other status, can reasonably be alleged to subsist over the route. As such no legal order to modify the definitive map and statement should be made.

**RECOMMENDATIONS:**

**The Local Committee (Guildford) is asked to agree that:**

- (i) No public footpath rights are recognised over A – B – C – D on Drg. No. 3/1/75/H48 and that this application for a MMO under sections 53 and 57 of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by the addition of a footpath is not approved.
- (ii) In the event of the County Council being directed to make a MMO by the Secretary of State following an appeal by the claimant, the County Council as surveying authority will adopt a neutral stance at any Public Inquiry, making all evidence available to help the inspector to determine the case.

**REASONS FOR RECOMMENDATIONS:**

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. In this instance the evidence does not support the making of an MMO.

## **1. INTRODUCTION AND BACKGROUND:**

- 1.1 Mrs Annelize Kidd has submitted an application for a Map Modification Order (MMO) to add a footpath between Boxgrove Road and Epsom Road, Merrow, Guildford to the Surrey County Council DMS. The claimed route runs between points A – B – C – D as shown on Drg. No. 3/1/75/H48 (**Annex A**).
- 1.2 It is considered that the evidence shows that neither a public footpath, nor a right of way of any other status, can reasonably be alleged to subsist over the route. As such no legal order to modify the definitive map and statement should be made.

## **2. ANALYSIS:**

### PUBLIC USER EVIDENCE FOR THE ROUTE:

- 2.1 Section 31 of the Highways Act 1980 provides that the claimant's evidence must show that the route has been enjoyed by the public for a 20-year period, calculated retrospectively from the point at which that use was first challenged. The use must have been without force, secrecy or permission. Public use can also lead to the acquisition of public rights at common law. In such cases the use must have been sufficient to raise a presumption that the landowner had intended to dedicate the route. The background to Map Modification Orders is attached at **Annex B**.
- 2.2 28 people completed public user evidence forms, spanning a period of 56 years from 1955 to 2011. Individual use on foot varied from 2/3 times per year to 300 and most days. Of the 28 users, 7 (forms 10, 16, 23, 24, 25, 26 & 27) gave evidence of use in excess of 20 years. 1 of these was to visit a school friend (form 27) All of those who had completed forms had used the route on foot, however 1 had also ridden a bicycle over it. The majority have used the route to walk to the shops or school. It has also been used for recreation and exercise, visiting friends in Meads Road, as a member of a walking group, for access to the Downs and avoiding walking beside the main roads. 17 started using the route after being told about it/ or noticed others using it. 3 (forms 7, 8 & 16) people had found the gate locked at one time. 6 (forms 1,12,17,18,19 & 27) stated they used the route to visit friends in Meads Road or deliver to residents.
- 2.3 Officers interviewed 3 of the claimants. From these interviews and from evidence in the forms it is clear there has always been a gate at the Epsom Road end. Only 5 people in their forms said there was no gate. 22 claimants refer to there being a "Private" sign at the Epsom Road end, although 10 say it has only appeared recently.
- 2.4 2 of the claimants also included the route of Green Lane in their claim forms. 1 (form 18) had used both routes, Meads Road and Green Lane, from 2005 – 2010. The other 1 (form 19) had used both routes from 1972 to date. It is considered there is insufficient evidence to consider Green Lane as part of the claim.
- 2.5 A summary of the user evidence received can be found at **Annex C**.

## LANDOWNERS EVIDENCE

- 2.6 A Land Registry search shows that the route runs across unregistered land.
- 2.7 Mr A C Hall of 29 Meads Road, one of the local residents has undertaken research that shows the whole estate (properties in Meads Road and Green Lane) has been in continuous private ownership since before 1895. A C Burlingham and E E Taylor developers purchased the land including the road and alleyway in 1933 and then sold off the house plots. The developers retained ownership of the land occupied by Meads Road, Green Lane and the alleyway until 1935 when R Dickie and H J Foot, Builders Merchants purchased the Title. The duties and responsibilities of the house owners on the estate are set out in the original Title and Land Registry documents and are still exercised today. These relate to street lighting, surface water drainage, road and path maintenance, the gate at Epsom Road end, the private notices at each entrance and the general upkeep of the estate, its privacy and security. The Residents (GreenMeads Residents Association (GRA)) have taken legal advice and been advised that they could claim presumptive ownership as they have maintained the roads and path as if they were the owners.
- 2.8 The Residents state the alleyway (C – D) was put in to provide access for the developers and builders to Epsom Road and for residents to have private access to the road and Downs. The builders yard was in Downs Road, the other side of the Epsom Road. They say there has always been a gate, which demonstrates the private nature of the path. In the deeds of properties on the estate it says the path is for the purposes of residents. Mr Holmes, 11 Green Lane, states that when he bought his house in 1975 the previous owner told him the estate was private with a pathway to the Epsom Road. In 1975, the sign at the Epsom Road end said 'Private No Admittance'.
- 2.9 Mr Hall states that recent solicitor's searches for house purchasers still verify the original Title and record the private status of the estate, its roads and road entrances. Residents, especially members of the GRA, state they have always endeavoured to challenge strangers, which they say is difficult because they get abuse and ignored. Mr Hall said in 1971 when he lived at his previous property, No. 1 Boxgrove Lane, he occasionally walked through out of curiosity until he was stopped one day. The resident reminded him the road was private and asked not to use it. Residents are always concerned about security with strangers walking through.
- 2.10 In 1999, the existing wooden gate and notice across the path at Epsom Road were completely renewed by the residents. The replacement notice read 'Private, No Public Right of Way'. Both the gate and notice were vandalised several times and were replaced with a metal gate in 2012 to resist vandalism and make it easier to fit a lock if necessary. The gate has been locked on a small number of occasions since 1975 for maintenance purposes. The last occasion in 2011 was for one day after posting notices in advance to demonstrate its private nature.
- 2.11 The Residents state that there have always been signs at all 3 entrances – Meads Road, Green Lane and Epsom Road – saying 'Private Pathway No Entry' or 'Private Road – No Parking' or 'Private Road – No parking – No Access to Epsom Road'. In 2011 the principal sign at each entrance was

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changed to read 'Section 31 Highways Act 1980, PRIVATE, No public right of way'.

- 2.12 Mr Holmes, former chairman of the GRA, states that over the years there has been little public use of the path. In recent years this has increased with members of the public taking their children to school. The GRA sent a letter to the Head teacher denying access, who then gave instructions that parents and children were not to use the estate. Mr Holmes has said that the residents would not have needed private rights granted in their title deeds if public rights existed. He states that there is consistent evidence from residents dating from 1941 that there has been a gate at the Epsom Road end. For that period of time there has been displayed a notice, stating "Private.. No admittance". The gate has been secured for periods upwards of 24 hours over at least a 30-year period to allow maintenance of the path.
- 2.13 Mr and Mrs D Ramsden, 33 Meads Road, have stated that when they moved into their property in June 1976 Meads Road and Green Lane both had signs at the entrance saying 'Private Road No Parking'. There was a sign on the gate leading from the Epsom Road saying 'Private'. When they first moved in, residents who didn't recognise them challenged them by saying it was a private road and they shouldn't be walking there. Their title deeds show "the dwelling house 33 Meads Road together with a right of way at all times for all purposes in common with others entitled thereto over and along the said Meads Road aforesaid and over and along the path giving access to Epsom Road and also over and along the road called Green Lane". Since living in Meads Road they have contributed to the costs of a number of new gates on Epsom Road and large sums to the maintenance of the road.
- 2.14 Mrs Cawley, 137 Epsom Road has lived at the southern end of the path for approximately 18 years. When they moved in they enquired about the alleyway beside the property and were satisfied that it was private and its use limited to the residents of Meads Road and Green Lane. She says there has always been a 'Private' sign on the gate.

### DEFINITIVE MAP

- 2.15 No public rights appear on the Definitive Map or in the Definitive Statement.

### HISTORIC EVIDENCE

- 2.16 The alleyway route does not appear on the 1880, 1912 or 1934 O.S. County Series Maps. It appears on it's current line on a 1965 and subsequent Ordnance Survey maps.

### **3. OPTIONS:**

- 3.1 The committee can agree with the officer recommendation, in which case no order would be made and the route would not be added to the DMS.
- 3.2 Where the County Council decides not to make an order, the decision can be appealed to the Secretary of State. If such an appeal resulted in a public inquiry the County Council would normally take a neutral stance.

- 3.3 Alternatively, if they are of the view that there is sufficient evidence to reasonably allege that public rights exist, the committee may disagree with the officer recommendation. Should this be the case a resolution will be needed indicating why the committee consider that public footpath rights exist over the route.
- 3.4 The decision can only be made on the basis of the evidence submitted as interpreted under the current legislation. Matters such as security, privacy, safety or convenience are not relevant (see Annex B)

#### **4. CONSULTATIONS:**

- 4.1 The GreenMeads Residents' Association were consulted and their comments have been included in paragraphs 2.6 – 2.14 above. Guildford Borough Council and the Open Spaces Society made no comments and the Ramblers' stated they had no objections to the application. Borough Councillors Matt Furniss and Nikki Nelson-Smith were consulted and made no comments. Mark Brett-Warburton had no additional information on the claim. Legal Services have been consulted on this report.

#### **5. FINANCIAL AND VALUE FOR MONEY IMPLICATIONS:**

- 5.1 The cost of making an order is not a relevant factor in this decision. The County Council is under a duty to make a MMO to add a route to the DMS where evidence is discovered which, taken as a whole, is sufficient to reasonably allege the existence of a right of way.
- 5.2 Having said this, if the committee were to agree with the officers' recommendation that no MMO should be made there would be no direct costs to the County Council. If that decision were to be successfully appealed then the Secretary of State could order the County Council to make a MMO. This is likely to cost in the region of £1200, which would be met from the County Council's Countryside Access Budget. If objections were received and a Public Inquiry held costs in the region of £1000 would be met from the same budget. Most costs are fixed by our duties under Schedule 15 of the Wildlife and Countryside Act 1981.

#### **6. EQUALITIES AND DIVERSITY IMPLICATIONS:**

- 6.1 There are no equalities and diversity implications. These are irrelevant factors under the current legislation.

#### **7. LOCALISM:**

- 7.1 This issue is not relevant and cannot be considered under the current legislation.

**8. OTHER IMPLICATIONS:**

Area assessed:	Direct Implications:
Crime and Disorder	None of these are relevant considerations under the current legislation
Sustainability (including Climate Change and Carbon Emissions)	
Corporate Parenting/Looked After Children	
Safeguarding responsibilities for vulnerable children and adults	
Public Health	

**9. CONCLUSION AND RECOMMENDATIONS:**

- 9.1 Any decision must be made on the legal basis set out in **Annexe B** to this report. The only relevant consideration is whether the evidence is sufficient to raise a presumption that a public right of way exists. Other issues such as security, privacy, safety or convenience are irrelevant.
- 9.2 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”.
- 9.3 Section 31 (1) of the Highways Act 1980 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”.
- 9.4 The period of 20 years referred to in sub-section (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 that is by a notice, by the making of a schedule 14 application, by blocking the route or otherwise.
- 9.5 Although the gate at Epsom Road has been occasionally closed for maintenance purposes after prior warning, only 3 of the claimants mention having found it locked (forms 7, 8 & 16). The relevant calling into question must therefore be the submission of Mrs Kidd’s Schedule 14 application, which was received in August 2011. The relevant 20-year period is therefore considered to be 1991 to 2011.

- 9.6 Twenty-one residents in Green Lane, Meads Road and Epsom Road state there has been a 'Private' notice erected at the Epsom Road end of the alleyway on the gate during and in excess of the 20-year period. The resident of 11 Meads Road says they have observed the notice there for 71 years. Residents state that there have always been signs at all 3 entrances – Meads Road, Green Lane and Epsom Road – saying 'Private Pathway No Entry' or 'Private Road – No Parking' or 'Private Road – No parking – No Access to Epsom Road' and 'Private' (gate at Epsom Road). In 2011 the principal sign at each entrance was changed to read 'Section 31 Highways Act 1980, PRIVATE, No public right of way'. Photographs taken by a Council employee in late 1999/ early 2000 show a wooden gate with a sign on it saying 'Private no public right of way' at the Epsom Road end.
- 9.7 Section 31(3) of the Highways Act 1980 states: "Where the owner of the land over which any such way as aforesaid passes - (a) has erected in such manner as to be visible to persons using the way a notice inconsistent with the dedication of the way as a highway, and (b) has maintained the notice after the 1st January 1934, or any later date on which it was erected, the notice, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway."
- 9.8 In accordance with the legislation it is considered that the 'Private' notice on the gate at the Epsom Road end is sufficient to indicate a lack of intention to dedicate public rights. By being placed on the gate it would have been visible to all those opening the gate to walk through to access the alleyway. The Private Road notices at Meads Road and Green Lane alone may not have been sufficient to prevent public footpath rights as the public would normally interpret the word 'road' as signifying a way for vehicles. However, the one at Epsom Road leads onto the part of the claimed route that is only accessible to walkers and no other type of traffic.
- 9.9 In the circumstances it has been concluded that public rights have not been acquired either by virtue of section 31 of the Highways Act 1980 or at common law.
- 9.10 The Guildford Local Committee is asked to agree that:
- i. No public rights are recognised over A-D on plan 3/1/61/H9 and that this application for a MMO under sections 53 and 57 of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by the addition of a footpath is not approved.
  - ii. In the event of the County Council being directed to make a MMO by the Secretary of State following an appeal by the claimant, the County Council as surveying authority will adopt a neutral stance at any public inquiry, making all evidence available to help the inspector to determine the case.

<b>10. WHAT HAPPENS NEXT:</b>
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- 10.1 All interested parties will be informed about the decision. If the recommendations are agreed no legal order will be made. The applicant will have opportunity to appeal to the Secretary of State for Environment, Food and Rural Affairs against this decision.

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- 10.2 If the Committee decides that an order should be made and objections are maintained to that order, it will be submitted to the Secretary of State for confirmation.
- 10.3 If the Committee resolution is different to the officer's recommendation the reasons and evidence for the decision should be recorded. This will explain the Council's actions should the matter proceed to Public Inquiry.

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**Contact Officer:**

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**Consulted:**

See section 4.1.

**Annexes:**

A Drawing No. 3/1/75/H48

B Legal background

C User evidence summary

**Sources/background papers:**

File 'CP546' and all contents, including the application, all correspondence and representations, responses to consultations, landownership details, user evidence, legal cases, assorted mapping documents can be viewed by appointment.

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