

**APPLICATION TO UPGRADE TO BRIDLEWAY THE PUBLIC FOOTPATHS NUMBERED 129
BYFLEET, 3 WISLEY (PART) AND 566 WISLEY (KNOWN AS MUDDY LANE)**

This case involves the claim for a change in status of an existing public right of way which crosses the Borough Council border of Guildford and Woking. It would be usual to take Rights of Way cases to the Local Area Committee however, because it would involve two Committees we have been advised to bring it to Planning and Regulatory Committee instead. This is in accordance with section 9.2 of the Surrey Code of Best Practice in Rights of Way Procedures

The County Council has a duty under Section 53 of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement if it discovers evidence which can be reasonably alleged to support a modification.

An application was received in 2013 from Woking Cycle Group represented by Carole Frost and Elmbridge Cycle Group represented by George James for a Map Modification Order to modify the DMS by the upgrade to a public bridleway of the public footpath that runs from Sanway Road, Byfleet to the Byfleet/Wisley parish boundary (Public Footpath No.129 Byfleet) and the public footpaths from the Byfleet/Wisley parish boundary to Wisley Lane, Wisley (Public Footpath No's 3 (part) and 566 Wisley). The route claimed is shown as A to H on the plan in the Committee Report, at Annexe A. This route will be referred to as Muddy Lane for ease.

The only relevant consideration when determining this matter 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 future use of the land are irrelevant. This is set out in Annexe C.

In this instance the challenge to the public's right to use the route was taken to be 2006, which is the date when the landowners of part of the land over which the path runs, Mr Salaman and Mr Garland, bought the land and began to stop users from using the route by any means other than on foot. This meant that the 20-year period as set out in the Highways Act 1980 has been taken to be 1986 – 2006. Other landowners of land over which the route runs have either not responded to consultation, have indicated that they have taken no steps to prevent access or have no opposition. One landowner, Mr & Mrs Woodruff indicated that they were in favour of it becoming a bridleway and felt that the route had been used by the public by other means than on foot.

Since the Countryside Act 1968 bicycles have been able to use public bridleways legally. Recent case law (*Whitworth & others v Secretary of State for Environment, Food & Rural Affairs*, [2010] EWCA Civ 1468) has clarified the impact of this where there is sufficient evidence of use by bicycles to record a public right. The case states that bicycle use since 1968 could lead to bridleway rights as a landowner, on seeing bicycles using a route, would conclude that they were exercising the rights given to them in the 1968 Act to cycle on a bridleway.

The majority of the evidence supplied to the investigation related to use of the route by members of the public on bicycles and the investigation looked at the volume and frequency of that use.

At this point I need to draw the attention of the Committee to the evidence from Mr & Mrs Kaile – numbers 23 and 24 on the user evidence graph in Annexe D. These residents of Muddy Lane completed user evidence forms and were interviewed and spoke about their use of the route on bicycle. However they also indicated to me that they have a private right of access which they purchased from a previous landowner which allows them access from Wisley Lane, along footpath 566 to their property. This private right of access means any use that they made of Muddy Lane

from their property south to Wisley Lane would not be as a member of the public and should not have been included in the analysis.

If we remove Mr & Mrs Kaile's evidence from the analysis we find that there are now 38 users that have used the route on a bicycle during the 20 year period, there are still 14 that have used it for the full 20 years and now 12 for more than 50% of that period. Number of trips per year were still 347 at the start of the 20 year period, and by the end were 323 (not the 551 as referred to in the report)

The evidence from Mr Salaman and Mr Garland as landowners and from users indicates that from 2006 there is significant and substantial evidence of a lack of intention to dedicate any higher rights over Muddy Lane. However, the only evidence for any lack of intention to dedicate prior to 2006 is Mr Salaman and Mr Garland's assertion that there was clear signage on site prior to their ownership, and Mr Drummond's reference to public footpath signs being present. None of the users refer to ever having seen such signs.

The evidence of lack of intention to dedicate is not considered sufficient to counter the evidence of use, which even with the removal of Mr & Mrs Kaile's evidence is considered sufficient during the relevant 20 year period to reasonably allege that there has been a deemed dedication of the route as a bridleway.

Due to changes in the legislation brought about by the Natural Environment and Rural Communities Act 2006, it is not possible for use by mechanically propelled vehicles to give rise to vehicular rights over the route so the route cannot therefore be considered a Byway. There is some documentary and anecdotal evidence to indicate that the route may carry public Restricted Byway rights, however whilst the evidence for higher rights is suggestive, it is not thought that it is sufficient to reasonably allege that the route should be recorded with Restricted Byway status.

For the majority of the route it is felt that the widths described in the current definitive statements accurately describe the route as used by bicycles and that these widths should be maintained. However, there is evidence that the section used by the public on bicycle underneath the motorway bridge was only that of the lower section. It would be appropriate for this section (D-E), therefore, to be recorded as having a width of 5m (being the width between the bollards on the eastern side of the lower path and the bridge posts on the western side).

Notwithstanding the evidence for statutory deemed dedication of the route as a public bridleway, it is thought that there is sufficient evidence of use, coupled with no clear act of contrary intention prior to 2006 for bridleway rights to have been acquired over the claimed route at common law. In addition it is thought that the actions of the Safer Guildford Initiative to improve the surface specifically with a view to cycle use is an indication of acquiescence and lends support to evidence at common law for a public bridleway along the claimed route.

In conclusion it is my view that, by virtue of the use by the public on bicycle, public bridleway rights have been acquired over the route claimed and shown between A-H on plan at Annexe A to the committee report.

I therefore ask the Committee to agree that Public Bridleway rights are recognised over the route A-H on the map in Annexe A, and that a Map Modification Order under sections 53 and 57 of the Wildlife and Countryside Act 1981 be made to modify the Definitive Map and Statement.