



AGENDA

Kent County Council

REGULATION COMMITTEE MEMBER PANEL

Thursday, 29th November, 2007, at 1.00 pm Ask for: **Andrew Tait**
Darent Room, Sessions House, County Hall, Telephone **01622 694342**
Maidstone

Tea/Coffee will be available 15 minutes before the meeting

UNRESTRICTED ITEMS

(During these items the meeting is likely to be open to the public)

1. Membership: Mr M J Harrison (Chairman), Mr A D Crowther (Vice-Chairman), Mr I S Chittenden, Mr T Gates and Mr I T N Jones.
2. Declarations of Interest by Members for items on the agenda for this meeting.
3. Application to register a Claimed Footpath from The Freehold to Carpenters Lane, Hadlow. (Pages 1 - 10)
4. Application to register land as a new Village Green at Hartley Woods, Hartley (Near Longfield). (Pages 11 - 18)
5. Application to register a Claimed Footpath from the A227 to Byway NS285 at Meopham (Pages 19 - 38)
6. Other Items which the Chairman decides are urgent

EXEMPT ITEMS

(At the time of preparing the agenda there were no exempt items. During any such items which may arise the meeting is likely NOT to be open to the public)

Peter Sass
Head of Democratic Services and Local Leadership
(01622) 694002

Wednesday, 21 November 2007

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Claimed footpath from The Freehold to Carpenters Lane, Hadlow

A report by the Divisional Director of Environment and Waste to the Kent County Council Regulation Committee on 29 November 2007

Recommendation: I recommend that the County Council declines to make an Order to modify the Definitive Map and Statement by adding a Public Footpath running between The Freehold and Carpenters Lane at Hadlow.

Local Members: Mr. R. Long

Unrestricted item

Introduction

1. The County Council has received an application to modify the legal record of Public Rights of Way, known as the 'Definitive Map and Statement', by adding a route at footpath status running between The Freehold and Carpenters Lane at Hadlow.

Procedure

2. The County Council is the 'Surveying Authority' for Kent and is responsible for producing a Definitive Map and Statement of Public Rights of Way. The current Definitive Map and Statement were published on 1st April 1987. Under the Wildlife and Countryside Act 1981, the County Council is under an obligation to keep the Map and Statement under continuous review. The Countryside Access Objectives and Policy document (dated July 2005) sets out the County Council's priorities for keeping the Definitive Map and Statement up to date.
3. Applications to modify the Definitive Map of Public Rights of Way are normally made under section 53(5) of the Wildlife and Countryside Act 1981, which enables any person to apply to the surveying authority for an order to modify the Definitive Map and Statement by adding, removing, upgrading or downgrading a route.
4. The procedure for dealing with such applications is set out in Schedule 14 of the 1981 Act: it states that the County Council must investigate the matters stated in the application and, after consulting with every local authority whose area includes the land to which the application relates, decide whether or not to make the order to which the application relates. There is, however, nothing set out in law as to the exact specification of the investigation process and this may vary depending upon the circumstances of each individual case.

The application

5. The application has been made by Mrs. M. Davidson on behalf of the local Residents Association, known as the 'Freeholders Association' ("the applicant"). The applicant has applied for an Order under Section 53(5) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement for the area by adding at Public Footpath status a route running between The Freehold and Carpenters Lane at Hadlow.

6. In support of the application, the applicant has provided six user evidence forms completed by local residents as well as a further 16 letters of support. The application also includes various photographs showing the claimed route and what is said to be the remains of an old stile on the claimed route.

Description of route

7. The route subject to the application (“the claimed route”) runs in a generally south-westerly direction from its junction with Carpenters Lane for approximately 250 metres to its junction with The Freehold (opposite property number 18). The path crosses an area of land which forms a central island and is bounded on three sides by a residential street also known as ‘The Freehold’. The fourth side is bounded by Carpenters Lane. This ‘island’ consists of several discrete areas, including a (metalled) pub car park and allotments (owned by the Parish Council). The remainder of the land is either cultivated, covered in vegetation or left fallow.

MAPPING EVIDENCE

In order to ascertain whether there is any documentary evidence to support the application, I have, as part of the investigation process, interrogated the following historical maps:

First Edition Ordnance Survey 1:2500 Map and Book of Reference (circa 1860)

8. The First Edition 25” Ordnance Survey Maps and accompanying Area Reference Books were produced by Ordnance Survey in an effort to map the entire country at 1:2500 scale. They were essentially topographical surveys and were not concerned with landownership and rights, but do provide useful information as to the existence of the routes on the ground at that time.
9. The First Edition OS Map for Hadlow (dated October 1868) shows the The Freehold as a rural hamlet away from the main village of Hadlow. It is labelled ‘Fairfield’ and shows the land at the centre of The Freehold as being undeveloped (no footpath is depicted) and numbered 243, which appears in the Book of Reference as ‘Houses, yard, gardens, etc. (4.028)’.

Finance Act 1910 and Valuer’s Field Book

10. The Finance Act 1910 Maps and Valuer’s Field Books were documents which recorded the value of land holdings. The Act provided for the levying of a tax upon the incremental value of the land, and between 1910 and 1920 (when it was repealed), the whole country was surveyed in order to produce a comprehensive record of the site value of all land. Individual (private) land holdings were shown on the map in different colour wash with boundaries marked and hereditament numbers accorded to different parcels. The Valuer’s Field Books recorded details about every parcel of land and listed categories for which a reduction in the amount of tax payable on the land holding could be sought. One such category was for Public Rights of Way admitted to exist at the time by the landowner.
11. In this case, the Finance Act map also shows The Freehold marked as ‘Fairfield’. The land at the centre of the Freehold is shown colourwashed red and numbered 268 but no path is shown.

12. In the Valuer's Field Book, the land is described as 'Hadlow Freehold called Haugh Field... land let in small plots to tenants as gardens to their houses'. There is no deduction for Public Rights of Way.

Parish Maps (1950) and Draft Maps (1952)

13. In consequence of the National Parks and Access to the Countryside Act 1949, which required County Councils to prepare a Definitive Map of Public Rights of Way, Parish Councils submitted maps and statements showing the rights of way within their parish. Following consultation with the District Councils, the County Council then prepared a Draft Map from the information contained in the Parish Map.

14. The Parish Map of Hadlow (dated 1950) does not record a Public Right of Way over the claimed route, nor does the Draft Map of Hadlow (relevant date 1st December 1952).

Definitive Map (Relevant date 1st December 1952)

15. The National Parks and Access to the Countryside Act (1949) required County Councils to survey all land over which a Public Right of Way was alleged to subsist and prepare a map showing these routes. The first Definitive Map and Statement of Public Rights of Way for the County of Kent was published with a relevant date of 1st December 1952.

16. The route does not appear on the original Definitive Map for the County of Kent and nor is it shown on any subsequent editions.

DOCUMENTARY EVIDENCE

In addition to the historical mapping consulted above, I have also interrogated the following documents:

Inspector's report regarding the Village Green application

17. The Wildlife and Countryside Act 1981 requires that when investigating such applications, the County Council must consider 'all other relevant evidence available'. In this respect, I have considered the evidence which was put forward in the recent non-statutory Public Inquiry into the application to register the land as a new Village Green. Although this was an application concerning another area of legislation (the Commons Registration Act 1965), relevant evidence was heard and presented during the course of the Inquiry in respect of the claimed footpath. Since much of this evidence was subject to cross examination or provided in the form of Statutory Declarations, I am able to attach a good deal of weight to this and have done so. In particular, I have had regard to the findings in the Inspector's report at paragraphs 243-250 under the heading 'pathways' (attached at Appendix C).

18. The evidence presented at the Public Inquiry in relation to the claimed footpath suggested that it was part of a network of pathways on the site laid out between allotment plots, presumably to provide access and facilitate movement around the site. The Inspector accepted that such a pathway existed was not in dispute and

that there had been some use of the claimed route, predominantly by residents for whom it would have been convenient as a short cut (i.e. those who lived immediately opposite the route) and those holding allotments on the land.

19. What was not so evident (and indeed there was much debate at the Inquiry itself) was the extent of the actual use of the pathway and, in particular, the date at which a gap in the hedge (providing access to the path at the Carpenter's lane end) had been blocked up. The landowner gave evidence to the effect that the land was cleared and the hedgerow trimmed in March 2004, after which time measurements were taken on the land to assist with the ordering of fencing. This fencing was erected (thereby blocking off the path) in May 2004, as well as five notices indicating that the land was 'private property'; these quickly went missing and were replaced on a number of occasions during the course of 2004 and 2005.
20. However, evidence was also given that use of the pathway in earnest had ceased prior to the erection of the fencing in 2004 as there had also been an earlier challenge to use by way of the planting of a hawthorn hedge in the gap in the early 1990s by the landowner's father (who owned the land at that time). The Inspector found from the evidence available that the gap must have been blocked off for some considerable time before 2004 and concluded that the hawthorn hedge must have been planted in 1993/1994.

Photographs

21. A number of photographs were presented in evidence at the Public Inquiry and these are helpful in showing the route over a period of time. It is evident from these photographs that the character of the land at the centre of the Freehold has varied considerably over the last two decades. Copies of the relevant photos are attached as Appendix D and can be summarised as follows:
- *Photograph 1* is an aerial photograph from KCC's own records (dated 1990) and clearly shows the land subject to intensive cultivation. It is possible to make out a gap at the Carpenter's Road end of the path but there is no visible trodden trackway along the claimed route.
 - *Photograph 2* shows Mrs. Rutherford with her son standing on the claimed route. This image is undated but it is evident due to the size of the trees in the far background of the image (beyond the houses) that it was taken a perhaps few years prior to photograph 3 (i.e. the late 1980s). However, crucially, the image shows how overgrown the claimed route was as it passed over the allotments.
 - *Photograph 3* shows Mr. Rutherford senior standing on the claimed route. At the Inquiry it was suggested that photograph would have been taken in the early 1990s but prior to 1994 (when the cat in the photograph died). This shows a clearly visible path along the alignment of the claimed route.
 - *Photograph 4* is an aerial image showing property numbers 12 to 19 The Freehold and was taken in about 1997. By this stage, Mr. Rutherford's part of the land was no longer cultivated, having been cleared and become grassed over, and the claimed path had become merged into the adjoining land.
 - *Photographs 5 and 6* were taken by Mr. Rutherford in November 2003 (prior to the fencing off of the land) in relation to a proposed planning application. Photograph 5 shows Mr. Rutherford's land and once again there is no evidence of a worn track. Photograph 6 shows that there does not appear to be any gap in the hedge leading onto Carpenter's Lane.

CONSULTATIONS

Tonbridge and Malling Borough Council

22. Tonbridge and Malling Borough Council has been consulted but no response has been received.

Hadlow Parish Council

23. Hadlow Parish Council was consulted but no response was received.

County Councillor

24. Mr. R. Long was consulted and supports the proposal.

Borough Councillors

25. Cllrs. Anderson and Sergison were consulted. No response has been received.

User Groups

26. The local Ramblers' Association Representative, Mr. D. Wetton, was consulted and supports the application on the grounds that although the route is not likely to be used organised rambles, it would be beneficial to have legitimate public access to the heart of the Freehold to gain access to festive events organised by the local community. Mr. Wetton has local knowledge of the area, having lived in the village for over 30 years, and is aware that many of the residents of The Freehold use the network of paths on the central area of land either to access their allotments or to walk into the village centre.

USER EVIDENCE

27. In support of the application, six user evidence forms were submitted, along with a number of letters of support from local residents. These are summarised at Appendix E. The earliest evidence of use is in 1948, with use apparently continuing until 2004 when the landowner erected fencing around the section of the land in his ownership.

LANDOWNER

28. The majority of the land over which the path runs is currently owned by Mr. J. Rutherford who acquired the land in 2002 from his father, Mr. R. Rutherford. Mr. Rutherford senior purchased the land in 1983 from Mr. H. Neal, who had owned it since 1976. There is no information regarding ownership prior to 1976. A plan is attached at Appendix F showing the extent of Mr. Rutherford's land ownership.

29. Mr. J. Rutherford has objected to the application on the following grounds:

- That the path evolved through the private usage of a small number of people who lived in the Freehold and used the route to gain access to their allotment plots;
- That the entrance to the path was blocked up in the early 1990s by the planting of an impenetrable hawthorn hedge;

- That the cultivation of vegetables, gooseberry bushes and marrows would (at times) have been planted over the line of the path, thus forming a natural barrier; and
- That even if the path had been used as suggested by the applicants, such use would have been at best sporadic and isolated.

30. As the path exits onto The Freehold at its southern end, it traverses what is known locally as the 'ransom strip'. This is a strip of land of approximately two metres in width which separates the land at the centre of the freehold from the road itself. The origins of this are unknown and it has not been possible to trace the owner of this so called ransom strip. This has no direct bearing on the application, save to mention that, when the application was made, the applicant correctly sought the County Council's permission to post notices to the unknown landowner (as required by schedule 14 paragraph 2(2) of the Wildlife and Countryside Act 1981).

LEGAL TESTS

31. Section 53 of the Wildlife and Countryside Act 1981 states that where the County Council discovers evidence which, when considered with all other relevant evidence available to it, shows a right of way which is not shown on the Definitive Map and Statement subsists or is reasonably alleged to subsist over the land in the area to which the map relates, it shall, by Order, make such modifications to the Map and Statement as appear requisite.

32. Section 31 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 been actually enjoyed by the public as of right and without interruption for a full period of twenty years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it'. The period of twenty years referred to is to be calculated retrospectively from the date when the right of the public to use the way is brought into question.

33. Alternatively, a Public Right of Way may be established over a shorter period of time under Common Law. In **Mann v. Brodie (1885)**, Lord Blackburn considered that where the public had used a route "*for so long and in such a manner that the [landowner]... must have been aware that members of the public were acting under a belief that the right of way had been dedicated and had taken no steps to disabuse them of their belief, it is not conclusive evidence, but evidence which those who have to find the fact may find that there was a dedication by the owner whoever he was*", i.e. the dedication of a way as a Public Right of Way can be implied by evidence of use by the public (no minimum period is required) and of acquiescence of that use by the landowner.

Analysis

34. As there is no mapping or documentary evidence in support of the claim, the application rests solely on user evidence. Hence, in determining whether a right of way is reasonably alleged to subsist, it is necessary to have regard to the provisions contained within section 31 of the Highways Act 1980 (outlined above).

35. The first step is to identify the date upon which the right of the public to use the route was first brought into question. In this case, the landowner fenced the section of land in his ownership (including the claimed footpath) in 2004 and since this time it has not been possible to walk the claimed route in its entirety without having to climb over the fencing. At this time, notices were also erected along the fence line indicating that the land was 'private property'.
36. Whilst this action clearly brought the right of the public to use the route into question (and indeed was a clear indication that the landowner, at that time, had no intention to dedicate the route to the public) it was also suggested at the Public Inquiry that the right to use the route was first challenged in 1993/94 when the gap in the hedgerow at the Carpenter's Lane end of the claimed path was blocked due to the planting of a hawthorn hedge by the then landowner, thereby preventing public access. This is documented in further detail at paragraphs 245/246 of the Inspectors report (at Appendix C).
37. As such, if I were to take 2004 as the date upon which the right of the public to use the route was first brought into question, then there would not be a clear twenty year period of unhindered usage which could give rise to presumed dedication under section 31 of the Highways Act 1981. I have therefore taken 1993 as the date upon which the right of the public to use the route was first brought into question ('the date of challenge') and have considered very carefully the period 1973 to 1993 ('the material period') in my investigation.
38. At first glance, the user evidence appears to suggest that the claimed route has been in use for a number of years (at Appendix E). However, closer inspection of the evidence reveals that there are a number of potential problems. For example, of the six users who submitted user evidence forms, only four have used the route during the material period (two of whom were members of the same family) and five out of the six witnesses either themselves rented allotments on the land or had family members who did so. A number of letters of support have been received from local residents claiming to have used the route but many of these letters lack the specific detail required to build up a clear image of the use of the route.
39. There is also a serious issue regarding the accuracy of some of the user evidence and its applicability to the actual route in question. For example, one of those residents writing in support of the application stated that he had always used the path without hesitation since the mid-1980s. At the Public Inquiry, the same witness indicated that used the route two to three times per month to go to the corner shop [which closed in the early 1990s] and described the route he took as running along the south-western edge of the car park, then diagonally across to a gap in the hedge. This clearly refers to a different route.
40. The shortfalls in the quality and detail of the user evidence are, however, irrelevant given that there is a much wider issue of concern regarding the type of use of the claimed path. As mentioned above, many of those claiming to have used the route also held allotments on the land (in some cases immediately adjacent to the claimed path) and as such these people would, by necessity, have had a right of access. This presents significant difficulties in determining whether their use was attributable to a private right of access to the allotments or to a public right of passage between two highways. More importantly, it presents problems in terms of

assessing whether the use of the path would have appeared to the landowner as being that of a member of the public asserting a public right of passage.

41. There exist strong judicial precedents in this respect. In **Hollins v. Verney (1884)**, it was held that no actual user can be sufficient to satisfy the statute unless the use is sufficient enough to carry to the mind of a reasonable person (e.g. landowner) that a continuous right of enjoyment is being asserted and ought to be resisted. This sentiment was echoed by Lord Kinnear in **Folkestone Corporation v Brockman (1914)** who considered that “...while public user may be evidence tending to instruct dedication, it will be good for that purpose only when it is exercised under such conditions as to imply the assertion of a right, within the knowledge and with the acquiescence of the owner of the fee”. Finally (and more recently), in a case known as **Godmanchester (2007)**, Lord Hope stated that “I do not agree that use of the way by a handful of local residents is sufficient to amount to the assertion of a public right”.
42. For presumed dedication to occur, therefore, it should be obvious to the landowner that the route is being used by the public at large. It is not sufficient that the route was open to a particular class of person [e.g. to the residents of a particular street, to their visitors or to allotment holders]; it must be shown that the route was being used by the public at large or, at the very least, by a representative sample of the wider community. Indeed, as was held in the case of **Poole v Huskinson (1843)**, ‘there may be a dedication to the public for a limited purpose, but there cannot be a dedication to a limited part of the public’.
43. I accept that in many cases, by far the predominant use of a route is likely to be by the residents of the local community and indeed this has also been acknowledged in case law: In **R. v Residents of Southampton (1887)** it was held that ‘user by the public must not be taken in its widest sense... for it is common knowledge that in many cases only the local residents ever use a particular road or bridge’. However, in my view, the claimed path subject to this application only serves a limited purpose for a very limited number of households and although the claimed route would have provided a convenient short cut for those living immediately opposite (i.e. nos. 16 to 19 The Freehold), the majority of the use during the material period would have been by those seeking to gain access to allotment on the land and not by the public at large. Furthermore, in terms of frequency of use, only one of the witnesses (who also had an allotment adjacent to the path) stated that they had used the claimed route on a weekly basis, with the others stating ‘occasional use’: in my view, this would certainly not have been sufficient to bring to the attention to the landowner the fact that the path was in regular usage by members of the public.
44. The issue of the use of the land by the local residents was considered in the Inspector’s report concerning the application for Village Green registration. For land to be registered as a Village Green, it must be shown that use of the land was by the residents of a locality, or by the residents of a neighbourhood within a locality. The Inspector concluded that the vast majority of the land at the centre of the Freehold was from those residents of the Freehold itself and the only evidence of use from people living outside of The Freehold was from those visiting the Freehold by specific invitation and not spontaneously frequenting the land as a place to indulge in lawful sports and pastimes. She concluded that one street (i.e. The Freehold) was not sufficient to constitute the necessary ‘locality’ required to satisfy

the definition of a new Village Green. If the use of the land by the local residents is not considered sufficient enough to constitute use by residents of a 'locality', it is very difficult to reach a conclusion that use of the claimed path by the same residents can constitute use by members of the public.

Conclusion

45. As stated above, section 53 of the Wildlife and Countryside Act 1981, provides that the Highway Authority may make an Order to modify the Definitive Map and Statement if it is shown that the right of the public to use a route (which is not already recorded) is 'reasonably alleged to subsist'.
46. Although the claimed path does link two highways (The Freehold and Carpenters Lane), in practice, the claimed route is a cul-de-sac leading only to The Freehold. Such use of the path as exists is therefore considered to be private in connection with access to the allotments or nos. 16 to 19 the Freehold, rather than by the public at large exercising a *public* right of way. Therefore, I have not been satisfied from the evidence presented by the applicant and that adduced from my own subsequent research, that the legal tests set out in section 31 of the Highways Act 1980 have been met or that a Public Right of Way is reasonably alleged to subsist along the claimed route. Nor have I been able to find any evidence during my investigations of dedication at Common Law.

RECOMMENDATION

47. I therefore recommend that the County Council informs the applicant that it is not prepared to make an Order to modify the Definitive Map and Statement by showing at footpath status a route running between Carpenters Lane and The Freehold at Hadlow.

Accountable Officer: Linda Davies - 01622 221500 - linda.davies@kent.gov.uk

Background documents: The main file is available for inspection at the Environment and Waste Division, Environment and Regeneration Directorate, Invicta House, County Hall, Maidstone. Please contact Miss Melanie McNeir on 01622 221628.

Background documents

- APPENDIX A – Plan showing the claimed route
- APPENDIX B – Photographs showing the claimed route (dated November 2007)
- APPENDIX C – Extract from Inspector's report regarding Village Green application
- APPENDIX D – Old photographs taken between 1990 and 2003
- APPENDIX E – Summary of user evidence in support of the application

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Application to register land as a new Village Green at Hartley Woods, Hartley (nr. Longfield)

A report by the Divisional Director of Environment and Waste to the Kent County Council Regulation Committee on 29 November 2007.

Recommendation: I recommend that the applicant be notified that the application to register the land at Hartley Woods, Hartley has been accepted and that the land subject to the application be formally registered as a Village Green.

Local Members: Mr. D. Brazier

Unrestricted item

Introduction

1. The County Council has received an application to register land at Hartley Woods, Hartley (nr. Longfield) as a new Village Green from the Hartley Parish Council ("the applicant"). The application, received on 18th April 2005, was allocated the application number 585. A plan of the application site is shown on Appendix A to this report and a copy of the application form is attached at Appendix B.

Procedure

2. This application to register land as a new Village Green is made under section 13 of the Commons Registration Act 1965 and regulation 3 of the Common Registration (New Land) Regulations 1969. These regulations came into force on the 3rd January 1970, and regulation 3 enables the making of an application where, in accordance with section 22 of the 1965 Act, after the 2nd January 1970 any land becomes a Town or Village Green.
3. For the purpose of registration, section 22 of the 1965 Act (as amended by section 98 of the Countryside and Rights of Way Act 2000) defines a Village Green as:

'land on which for not less than twenty years a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged in lawful sports and pastimes as of right, and either:

 - (a) *continue to do so, or*
 - (b) *have ceased to do so for not more than such period as may be prescribed, or determined in accordance with prescribed provisions'.*
4. As a standard procedure set out in the regulations, the County Council must notify the owners of the land, every local authority and any other known interested persons. It must also publicise the application in the press and put up a site notice. The publicity must state a period of at least six weeks during which objections and representations can be made.

The Case

5. The area of land subject to this application (“the application site”) consists of a large area of woodland situated to the east of the village of Hartley. The application site is bounded on its northern edge by the railway line, on its eastern edge by the now disused former Longfield refuse depot (which lies adjacent to Hartley Bottom Road) and on the remaining sides by fields and woodland. There is a Public Footpath (SD215) which running along the eastern edge of the application site.
6. Access to the site is via Public Footpath SD295 from Gorse Wood Road or via Public Footpath SD296 from Manor Lane. There is also a well-trodden track leading to the site from Beechlands Close, although this is not a recorded Public Right of Way. This network of footpaths (shown at Appendix C) allows local residents easy and direct access into the site.
7. The application is made on the grounds that local residents have used the land for lawful sports and pastimes, and have done so without permission and without challenge for a continuous period of at least 20 years. In support of the application, the Parish Council submitted six sworn affidavits from local residents as well as a further 13 user evidence questionnaires.

Objections

8. Consultations have been carried out and notices advertising the application have been placed on site and in the local newspaper, as required by the Act. Following this consultation, several letters of support have been received from local Councillors and residents. However, one objection has been received from Hephher Dixon Ltd who act on behalf of the landowners, Southwark Council (“the objector”).
9. The objection has been made on the grounds that the site has not been generally accessible over the entire twenty year period and that local residents have been prevented from entering the land by the erection of fencing around the site, thereby making any entry ‘by force’ and therefore not ‘as of right’: the objector asserts that *“clearly fences have been erected in the last 20 years and attempts have been made to break through those fences”*. In addition, the objector states that the application site lies adjacent to other land owned by Southwark Council which has been used for the same activities identified in the application yet which is not included and challenges the fact that the application only includes 19 local residents, which only represents a tiny proportion of the population of the village.
10. Members should be aware that following the receipt of the objection from the objector and the subsequent exchange of comment from both parties, the applicant requested (in June 2006) that the investigation of the case was put on hold to provide the opportunity for the applicant and the objector to enter into negotiations with regard to the future use of the land. It has not been possible for the parties to reach agreement and therefore (in April 2007) the applicant asked the County Council to resume its investigation into the matter, but requested that

the application site be modified to exclude the eastern spur of land running adjacent to Public Footpath SD217 and out towards Hartley Bottom Road. In light of the recent *Oxfordshire* judgement, in which Lord Hoffman held the view that 'it would be pointless to insist upon a fresh application (with a new application date) if no prejudice would be caused by an amendment', the County Council has acceded to this request and therefore the area to be considered is that as shown hatched on the map at Appendix A.

Legal tests

11. In dealing with an application to register a new Village Green the County Council must consider the following criteria:
- (a) *Whether use of the land has been 'as of right'?*
 - (b) *Whether use of the land has been for the purposes of lawful sports and pastimes?*
 - (c) *Whether use has been by a significant number of inhabitants of a particular locality, neighbourhood or a neighbourhood within a locality?*
 - (d) *Whether use has taken place over period of twenty years or more?*
 - (e) *Whether use of the land by the inhabitants is continuing up until the date of application?*

I shall now take each of these points and elaborate on them individually:

(a) *Whether use of the land has been 'as of right'?*

12. The definition of the phrase 'as of right' has been considered in recent High Court case law. Following the judgement in *Sunningwell*¹, it is now considered that if a person uses the land for a required period of time without force, secrecy or permission (*nec vi, nec clam, nec precario*), and the landowner does not stop him or advertise the fact that he has no right to be there, then rights are acquired and further use becomes 'as of right'.
13. In this case, there is nothing to suggest that use has taken place subversively, or that any formal permission has been granted to the local residents for such usage during the 20 year period preceding the application (1985 to 2005); indeed, from the user evidence submitted with the application, there is no mention of any challenge to use during this time and none of the witnesses recall any barriers, prohibitive notices or fencing to deter use.
14. Although vague mention is made by the objectors of fencing having been in place during the material 20 year period and subsequently broken down, there is nothing to suggest that use has been with force and none of the witnesses attest to this being the case. Although one witness recalls fencing on the land in the 1970s and another makes mention of being challenged during the 1960s, neither of these incidents fall within the 20 year material period.
15. Even if the perimeter of the site had been securely fenced (and this does not appear to have been the case), then the Public Footpaths which cross and abut

¹ *R v. Oxfordshire County Council, ex p. Sunningwell Parish Council (2001)*

the site would have enabled unfettered access to the site itself at all times. The only way in which access to this site could have been prevented, is for the Public Footpaths (particularly SD215) to have been securely fenced on both sides of the route (thereby preventing people from wandering off the main path); this appears never to have been the case and as such it is not possible to place a great deal of weight upon the objector's statement with regard to fencing.

16. Furthermore, it is important to note that use of this land has actually been encouraged as a result of the publication of a leaflet by the landowner. This leaflet (copy included at Appendix D) includes general information about Hartley Woods as well as a nature trail for visitors to follow. Although the leaflet is undated, mention is made of campsite bookings 'from summer 1984 onwards' and therefore it can be taken that this document was probably published immediately prior to the material period and was almost certainly available during the early part of the material period.

17. I therefore consider that, in the absence of any evidence to the contrary, use of the land must have been 'as of right'.

(b) Whether use of the land has been for the purposes of lawful sports and pastimes?

18. Lawful sports and pastimes can be commonplace activities including dog walking, children playing, picnicking and kite-flying. Legal principle does not require that rights of this nature be limited to certain ancient pastimes (such as maypole dancing) or for organised sports or communal activities to have taken place; solitary and informal kinds of recreation are equally as valid.

19. In this case, the evidence suggests that the majority of use of the land has been for recreational walking or dog walking, but witnesses also claim to have used the land for other recreational activities such as picnicking and bird-watching. Included at Appendix E is a table summarising evidence of use by local residents.

20. The fact that the main use of the application site has been for dog walking is not inconsistent with village green rights being acquired. Indeed, in the *Sunningwell* case, Lord Hoffman agreed with a previous judgement in another case in which it had been held that '*dog walking and playing with children were, in modern life, the kind of informal recreation which may be the main function of a village green*'.

21. The application site consists of woodland with a network of informal pathways worn through the undergrowth. The fact that recorded Public Footpaths cross the land means that there may be some use attributable to Public Right of Way but the network of lesser tracks leading off the main footpath and meandering through the site gives substance to the local residents evidence of wandering around the site.

22. Clearly, the fact that the majority of the site consists of woodland would have limited certain types of usage or activity which are commonly associated with Village Greens (e.g. kite-flying, playing informal cricket etc). However, the character of the land is irrelevant: although the application site may not appear to

fit the traditional image of a village green, this is not something which can be taken into account in determining this case. Apart from the criteria set out in the Commons Registration Act 1965, there is no legal authority on the character of land capable of qualifying for registration as a Village Green. Indeed, this was one of the points confirmed by the House of Lords in the recent *Oxfordshire* case.

23. Another relevant issue discussed in the *Oxfordshire* case (which concerned an area of land in Oxford known as the Trap Grounds that consisted of a three-acre reed-bed and three acres of scrubland, grassland, and woodland, lying between a canal and a railway line) was whether *all* of the land had to have been capable of use by the local residents in exercising lawful sports and pastimes.
24. In that case, by reason of impenetrable growth, only 25% of the land was accessible for walkers. Lightman J said that *'there is no mathematical test to be applied to decide whether the inaccessibility of part of the land precludes the whole being a Green. The existence of inaccessible areas e.g. ponds does not preclude an area being held to be a Green... overgrown and inaccessible areas may be essential habitat for birds and wildlife, which are attractions for bird watchers and others.'* Lord Hoffman, in the same case, also added *'If the area is in fact intersected with paths and clearings, the fact that these occupy only 25% of the land would not in my view be inconsistent with a finding that there was recreational use of the scrubland as a whole. For example, the whole of a public garden may be used for recreational activities even though 75% of the surface consists of flowerbeds, borders and shrubberies on which the public may not walk'*.
25. It is a well-established principle of this area of law that the Registration Authority need not be satisfied that every square foot of the land has been used for the purposes of lawful sports and pastimes and, if necessary, the Registration Authority may register a lesser area than that applied for. However, in this case I am satisfied that the land, as a whole, has been used for the activities described in this report and, given the lack of distinct or discernable boundaries between the Public Footpaths and the myriad of informal paths which crisscross the land (which are further evidence of use), it would not be appropriate in this particular case to attempt to make assumptions regarding which sections of the land over which the users had engaged in their lawful sports and pastimes; indeed, the nature of site means that the land should be treated as a whole.

(c) Whether use has been by a significant number of inhabitants of a particular locality, neighbourhood or a neighbourhood within a locality?

26. The Countryside and Rights of Way Act 2000 ("the CROW Act") inserted a new section dealing with locality into section 22 of the 1965 Act. It should now be shown that the use made of the land has been and continues to be by inhabitants of any locality, or of a neighbourhood within a locality. The use need not be exclusively by local inhabitants, but they should be the significant number.
27. Included in Appendix F is a plan showing the locality from which the users of the land originate. The application form identifies the locality as being the parish of

Hartley. This has not been challenged by the objector and I am satisfied that the locality consists of a defined geographical area and recognisable community.

28. In terms of the number of users, the objector has queried the fact that there are only 19 user evidence forms submitted with the application and considers that this does not constitute the 'significant number' of local inhabitants required for the legal tests to be met.
29. This issue was considered in more depth in the *McAlpine Homes*² case, in which it was held that significant did not necessarily mean considerable or substantial: Sullivan J stated that what matters is that the number of users has to be sufficient to indicate that "*their use of the land signifies that it is in general use by the local community for informal recreation, rather than occasional use by individuals as trespassers*".
30. In this case, there is evidence of use by at least 22 witnesses and responses to the initial consultation (from Sevenoaks District Council and local Councillors) confirms that the land is in far wider use by local residents. I consider that the fact that many witnesses appear to have been using the land on a regular basis – in some cases several times per day – amounts to far more than simply occasional use by trespassers. The user evidence submitted by the applicant shows consistent use of the land over a very long period and this is substantiated by the physical evidence of the informal paths on the ground.

(d) Whether use has taken place over period of twenty years or more?

31. The application site appears to have been used by local residents over a considerable length of time; evidence of use appears to date back as far as 1954, with the majority of people having used the application site since at least the early 1970s. As the date of the application is July 2005 (and there is no suggestion that use had been challenged at any time prior to the application being submitted in 2005) I have taken the relevant twenty-year period as being 1985 to 2005.
32. All of the 22 witnesses have used the land for the *full* twenty-year period; nine have used the application site for over 40 years. The frequency of use is also high, with the majority of users stating that they use the application site on at least one occasion per week. I am therefore satisfied that use has taken place over a period of more than twenty years.

(e) Whether use of the land by the inhabitants is continuing up until the date of application?

33. The recent amendment made by the CROW Act 2000 required that use of the claimed green continues up until the date of registration 'as of right'. However, this was recently overturned in the House of Lords case known as the *Trap Grounds*³ case, in which it was held that use need only continue up until the date of application and not registration.

² *R (Alfred McAlpine Homes Ltd.) v Staffordshire County Council (2002)*

³ *Oxfordshire County Council v Oxford City Council and Catherine Mary Robinson (2006)*

34. As stated above, use of the application site has continued without challenge until the date of application and indeed beyond.

Conclusions

35. Careful consideration has been given to all of the available evidence. There appears to be significant evidence of use over a long period, which includes not only the 20 year period prior to the application but also stretches as far back as the 1950s. There is nothing to suggest that use has not been 'as of right' and no evidence to this effect has been produced by the landowner despite several opportunities being provided to facilitate this. Under the circumstances, I conclude that the land has been used for lawful sports and pastimes for an appropriate period by residents of the locality and as such has become a Village Green by virtue of such use.

Recommendations

36. I therefore recommend that the applicant be notified that the application to register the land at Hartley Woods, Hartley has been accepted and that the land subject to the application be formally registered as a Village Green.

Accountable Officer: Linda Davies - 01622 221500 - linda.davies@kent.gov.uk

Background documents: The main file is available for inspection at the Environment and Waste Division, Environment and Regeneration Directorate, Invicta House, County Hall, Maidstone. Please contact Mr. Chris Wade on 01622 221511.
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Background documents

- APPENDIX A – Plan showing application site
- APPENDIX B – Copy of application form
- APPENDIX C – Copy extract of the Definitive Map of Public Rights of Way
- APPENDIX D – Leaflet entitled 'Hartley Wood'
- APPENDIX E – Table summarising user evidence
- APPENDIX F – Plan showing the locality

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CLAIMED FOOTPATH FROM THE A227 TO BYWAY NS285, MEOPHAM

A report by the Divisional Director of Environment and Waste to the Kent County Council Regulation Committee on 29 November 2007.

Recommendation: From the evidence gathered I recommend the County Council makes an Order under The Wildlife and Countryside Act 1981, Section 53(2), to record a Public Footpath on the Definitive Map and Statement of Public Rights of Way between the A227 (Wrotham Road) and Public Byway NS285 in Meopham.

Local Members: Mr. M. Snelling

Unrestricted item

Summary: To seek Regulation Committee authority to make an Order to modify the Definitive Map and Statement by showing at Public Footpath status a route running between the A227 (Wrotham Road) and Public Byway NS285 in Meopham.

FOR DECISION

Introduction

1. The County Council is the Surveying Authority for Kent and is responsible for producing Definitive Maps and Statements of Public Rights of Way and for keeping them up to date. The Definitive Map and Statement for the County of Kent were most recently published on 1 April 1987. Under The Wildlife and Countryside Act 1981, the County Council is under an obligation to keep the Maps and Statements under continuous review.

Procedure

2. The Countryside Access Policy dated 2005 sets out the County Council's priorities for keeping the Definitive Map and Statement up to date. The main priorities are:-

- 1) Investigation and determination of outstanding applications to modify the Definitive Map.

Resolution of anomalies and mapping errors where essential for the effective management of the PROW network.

Modification Order cases will normally be investigated in order in which applications are received, except in any of the following circumstances where a case may be investigated sooner:

- Where it will satisfy one or more of the relevant key principles set out in paragraph 11.1 of the Countryside Access Policy.
- Where the physical existence of the claimed route is threatened by development.

- Where investigation of a case would involve substantially the same evidence as a route currently under investigation or about to be investigated.
- 2) Publication of Definitive Maps and Statements previously excluded from the original Definitive Map.
 3. The investigation of this particular issue has been carried out in accordance with the report to the Sub-Committee in February 1990, which outlined the procedures to be used for sources of evidence and the legal tests to be applied.

4. Legal Tests

- a) Section 53 of The Wildlife and Countryside Act 1981 states that where the County Council discovers evidence which, when considered with all other relevant evidence available to it, shows that a right of way which is not shown on the Definitive Map and Statement subsists or is reasonably alleged to subsist over the land in the area to which the map relates, it shall, by Order, make such modifications to the Map and Statement as appear requisite.
- b) Section 31 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 been actually enjoyed by the public as of right and without interruption for a full period of twenty years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it”. The period of twenty years referred to is to be calculated retrospectively from the date when the right to use the way is brought into question.
- c) In *R v. Secretary of State for the Environment ex parte Norton and Bagshaw (1994)*, it was held that there is a distinct difference between the wording of section 53(3)(c)(i) and that in deciding whether a Public Right of Way exists, two tests must be applied. Firstly, where it is considered that a right of way which is not shown on the Definitive Map and Statement subsists (known as ‘test A’) and secondly a lesser test to establish whether or not a right is reasonably alleged to subsist (known as ‘test B’). For the requirements of ‘test A’ to be met, it is necessary to show that, on a balance of probabilities, a right of way actually subsists. However, for test B to be proven all that is necessary is to show that a reasonable person, having considered all the relevant evidence, could reasonably allege a right of way to subsist.

The Case

5. The County Council has received an application from Meopham Parish Council to modify the Definitive Map and Statement of Public Rights of Way for the area by showing at Public Footpath status a route running from the A227 to Byway NS285 in Meopham, also known as Steele’s Lane (part). In support of the application, Meopham Parish Council submitted 45 User Evidence Forms, a Statutory Declaration, 2 letters from the Meopham & District Footpaths Group and Istead Rise Footpaths Group, and a letter from one of the residents of Steele’s Lane. In addition they submitted a variety of documentary evidence.

Description of Route

6. The claimed route runs in a generally east-south-easterly direction for approximately 294 metres from the junction of the A227 and Steele's Lane, NGR TQ 6387 6486 (Point A on the plan attached at Appendix A), to Byway NS285, NGR TQ 6414 6476 (Point B on the plan attached at Appendix A). It has a usable width of 3.8 metres, narrowing to 3 metres where it joins Byway NS285. It has a rough tarmac and impacted earth and stone surface. It is bordered by mostly hedges and trees on its northern side and hedges interrupted by driveway entrances on its southern side.

Evidence

Documentary Evidence

7. The Wildlife and Countryside Act 1981 says the County Council must, in reaching its conclusion, take account of all available evidence. The following historic documents have therefore been interrogated: -

Mudges Map

8. The route is not shown on Captain Mudges Map of 1801. This was a military survey to find out all roads suitable for passage if required by the army and its equipment in defending the country against possible invasion by Napoleon. It does not confer status but is a record of all routes maintained and non-maintained that existed at the time throughout the Country. The map does not differentiate between public and private ways.

Tithe Map

9. Tithe Maps were produced by the Tithe Commissioners, under the 1836 Tithe Commutation Act, to record all parcels of land, which generated titheable produce. These maps can sometimes prove useful in identifying public or private rights of way. In this case the Tithe Map did not show the claimed route.

First Edition Ordnance Survey 1:2500 Map and Book of Reference

10. The First Edition Ordnance Survey Map (surveyed 1870) 1:2500 shows the route as a double pecked track and shaded light brown, as the remainder of Steele's Lane (running from north to south) and other highways. The Book of Reference refers to the land over which the route runs as arable.

The Finance Act 1910 and Valuer's Field Book

11. The Finance Act 1910 Map and Valuers Field Book were documents which recorded the value of land holdings and gave tax relief to landowners for rights of way, which were deemed to be an encumbrance. The Finance Act 1910 Map (Ordnance Survey base map edition of 1908) shows the route as a double pecked track and notated as F.P. The Field Book records 'Public Footpath crosses from E to W over certain fields' and £50 set against Public Rights of Way or User.

Meopham Parish Map (Circa 1950)

12. The National Parks and Access to the Countryside Act 1949 required County Councils to prepare a Definitive Map of Public Rights of Way. Parish Councils submitted maps and statements showing the rights of way in their particular Parish.

The route is visible on the Meopham Parish Map though not marked as a proposed Public Right of Way.

Meopham Draft Map and Statement

13. The County Council then prepared a Draft Map from the information contained in the Parish Map and this was advertised with opportunity for objection. This Map and Statement were missing from our archives and therefore could not be viewed.

Provisional Map

14. The Provisional Map for the Parish of Meopham with a relevant date of 1 December 1952 was also missing from the archives.

Definitive Map 1952

15. The County Council's original Definitive Map, with a relevant date of 1 December 1952, was drawn up as a result of the Draft and provisional and shows the route on the ground in the same way as the rest of the highway network.

Draft Revised Map

16. Following publication of the original Definitive Map, the County Council had a duty to produce a Draft Revised Map with a relevant date of 1 October 1970. This Map shows the route on the ground as a road/track. The section of Steele's Lane running north to south is shown as Byway 285.

Other documentary evidence

17. James Carley (interviewed) had a book produced in 1986 titled 'Meopham in old picture postcards'. This included a photograph, probably taken between the wars, of Leading Street (as this part of Wrotham Road was then called) and Steele's Lane. It shows two gates and a stile. 'On the right the stile gives access to a public footpath leading to Steeles Lane. The path has now become an unsurfaced track serving a number of new houses'. Mr Carley also produced a leaflet entitled 'Six walks from Meopham Green' which features the claimed route as Walk 1. 3660 copies of this were sold between 1970 and 1981.

18. 1896 Altered Tithe Apportionment shows the claimed route as a double pecked track and labelled FP.

19. 2nd and 3rd Edition Ordnance Survey maps both show the claimed route as a double pecked track and notated F.P.

20. 'Private Road. Access only' signs erected in 2004. Reportedly 'Private Road' signs erected some years before, possibly in the 1970's.

Gravesham Borough Council

21. Gravesham Borough Council was consulted and in turn, they consulted with their appropriate council members who raised no objection to the claim. It is likely to have been Gravesham Borough Council who erected the 'Steeles Lane. No Through Road' sign, but no one currently employed at Gravesham has any recollection of the provision of the sign.

Meopham Parish Council

22. Meopham Parish Council submitted the claim and although Parish Council members have changed since the application was received, Gravesham Borough Council consulted with them and they fully support the claim.

County Councillor

23. County Member Mike Snelling was consulted and requested that the case be dealt with via the Regulation Committee instead of by Delegated Authority.

Highways

24. The West Kent Highways Division considers the claimed route to be a Private Road as it is not maintainable at public expense.

User Groups

26. The Ramblers' Association, represented by Mr Ripper, supports the claim. He has always assumed that the claimed route had public rights over it as O/S Pathfinder Map 1193, Sheet TQ66/67 printed in 1980 indicates it to be a 'road generally less than 14 feet wide, untarred'. Group walks from Meopham Green and using Ifield Road as an outward or returning route would use the claimed route to cross onto Ifield Road rather than using the A227.

27. Graham Wanstall of the Open Spaces Society does not personally know the claimed route but has spoken to people who say the route has been used for years and so supports the claim.

28. Meopham Footpaths Group (formed in 1962) has used the route for a number of years and it features in number 3 of their published walks guides.

29. Istead Rise Footpaths Group have used the route about once a year over the past 30 years, mostly from Ifield Road to join Byway NS285 and then back to Meopham Green, thus avoiding the main road. They have always understood it to be a public right of way and have used it as such and have never been challenged.

Oral Evidence

30. 45 User Evidence Forms from people who claimed they walked the route were provided with the application for the claim and 14 of those were interviewed. A Statutory Declaration, 2 letters from the Meopham & District Footpaths Group and Istead Rise Footpaths Group, and a letter from one of the residents of Steele's Lane were also submitted. A 'usergram' and 'user analysis' are attached in Appendix B showing the period of use and reasons for use. The interview notes are contained in the file.

From the interviews it was clear that there had been much use of this route by the public on foot for some time, the earliest of those interviewed being 1954.

All had used it on foot, two on a bicycle, one on horseback and two in a car, although all considered it to have public rights on foot.

Landowners

31. According to Land Registry, the claimed route is unregistered. 4 Title deeds viewed refer to Steele's Lane as being 'a right of way for all purposes', though this is likely to refer to private rights of the landowners, and 4 of those mention that the owners have an obligation to pay a proportion of the costs of keeping it in repair. One title deed viewed made no reference to the lane in terms of rights or repair.

32. Of the 13 properties along the claimed route, 6 have objected, 1 supports the claim and 6 did not respond.

Objections were:

- Other public rights of way in the area provide adequate access;
- The route is not presently a right of way nor indicated as such on any authoritative maps;
- The route has 'Private Road' signs and this signage has been uninterrupted to show no intention to dedicate the way;
- The route is privately owned and maintained by residents;
- The route is not required for access to any public property;
- The route should remain private so as to prevent nuisance users;
- Access along the route has been constantly interrupted;
- Public wear and tear on the route would be unfair on the residents who contribute to the upkeep of the lane;
- Old photographs of two gates show restricted access to the lane;
- People are still walking along the route even after signs have been erected so they must accept it is private;
- Residents have a right to privacy and security;
- A public right of way along the lane might devalue the houses.

33. The resident who supports the claim has lived in his property since 1956 and has frequently seen individuals and groups walk along the lane freely and without being stopped or challenged. He has seen a photograph, probably taken before 1939, showing two gates and a stile – one gate led to the property Elmcroft, one gave entry to a small holding just beyond the boundary of Elmcroft, and the stile gave access to the footpath along Steele's Lane. He did not know of any closures during his residency and was not aware of any previous signs or barriers.

34. Statute and Legal Tests

- a) Section 53 of The Wildlife and Countryside Act 1981 states that where the County Council discovers evidence which, when considered with all other relevant evidence available to it, shows that a right of way which is not shown on the Definitive Map and Statement subsists or is reasonably alleged to subsist over the land in the area to which the map relates, it shall, by Order, make such modifications to the Map and Statement as appear requisite.
- b) Section 31 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 been actually enjoyed by the public as of right and without interruption for a full period of twenty years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it” The period of twenty years referred to is to be calculated retrospectively from the date when the right of the public to use the way is brought into question.
- c) In *R v. Secretary of State for the Environment ex parte Norton and Bagshaw (1994)*, it was held that there is a distinct difference between the wording of section 53(3)(c)(i) and that in deciding whether a Public Right of Way exists, two tests must be applied. Firstly, where it is considered that a right of way which is not shown on the Definitive Map and Statement subsists (known as ‘test A’) and secondly a lesser test to establish whether or not a right is reasonably alleged to subsist (known as ‘test B’). For the requirements of ‘test A’ to be met, it is necessary to show that, on a balance of probabilities, a right of way actually subsists. However, for ‘test B’ to be proven all that is necessary is to show that a reasonable person, having considered all the relevant evidence, could reasonably allege a right of way to subsist.

Conclusion

35. As stated above, The Wildlife and Countryside Act 1981, section 53, provides that the Highway Authority may make an Order to modify the Definitive Map and Statement if it is shown that the right of the public to use it is reasonably alleged to subsist.

36. In 2004 The Sidcup & District Motorcycle Club informed residents of Steele’s Lane that a number of motorcycles would be passing the properties on Sunday 25th July 2004 as part of a long-distance reliability trial. An objection was put forward on behalf of the residents on the grounds that this part of the lane was considered private and as a result, the motorcyclists did not use the lane. The Motorcycle Club pointed out that there was nothing to indicate the lane was private. This led to the suggestion that residents should put up signs and possibly a barrier and gate which would “deter casual walkers and riders from using the lane and enable us to challenge people.” Signs were subsequently erected in October 2004, which is when the route was brought into question and considered to be the date of challenge. The period 1984-2004 has therefore been very carefully considered in this investigation.

37. From interviews, including a resident of 50 years in Steele’s Lane, and other evidence forms submitted, it is clear the claimed route has been used for many

years by the public individually and in groups on foot, the earliest being 1925. None of the users had asked for or been given permission to use the route, had never been challenged or experienced any obstructions on the route and were not aware of any signs being erected before those in 2004. Only one person interviewed had stopped using the claimed route because of the signs. One user mentioned that although they could not be sure if there were 'Private Road' signs years ago, it would not have made a difference to them walking there as innumerable private roads have public rights running over them.

38. The recent decision taken in the House of Lords in a case known as *Godmanchester* has clarified the action which landowners have to take in order to show the public at large that they have no intention to dedicate rights for the public. It was held that such action(s) must be clearly overt in the sense that the landowner must demonstrate his lack of intention to dedicate in such a manner as to bring it to the attention of those people using the route, for example, by way of a notice. In this case it would appear from the evidence and interviews carried out by the County Council that none of the users were, during the material period, aware of any such overt actions being taken by the landowner to inform them that he had no intention to dedicate. Although mention is made by the landowners/residents that they believe notices had been erected, there is no evidence to support this during the material period and, even if it did happen, it was not sufficient enough to convey a message of non-intention to dedicate to users.

39. Documentary evidence shows the claimed route as a footpath (F.P.) as far back as the 1870's on the 1st Edition Ordnance Survey Map. It was shown on subsequent maps, notably the 1896 Altered Tithe Apportionment and 2nd & 3rd Edition Ordnance Survey Maps. In addition, the Valuers Field Book relating to the Finance Act Map 1910 of the area records a 'Public Footpath crosses from E to W over certain fields' and £50 is set against Public Rights of Way User. The double pecked lines later enlarged the route was shown as a wider track / road on the Meopham Parish Map in the 1950's. This was likely to be as a result of increased vehicular access to the growing number of private properties being built along the lane. However, this would not have affected any public rights already established. The photograph in the book 'Meopham in old picture postcards' shows two gates and a stile at the western end of the claimed route, the stile indicating a right of way for people on foot.

40. Objections to the claimed route have been expressed by some residents of Steele's Lane.

- *The route has 'Private Road' signs and this signage has been uninterrupted to show no intention to dedicate the way.*

Signs stating 'Private Road. Access Only' were erected at either end of the claimed route in 2004 after the Motorcycle Club pointed out there was nothing to indicate the lane was private. This could be seen as an intention not to dedicate the way. However, this was clearly not uninterrupted. Some residents believe there used to be 'Private Road' signs some years before they took up residence. Two residents who have lived there for over 20 years spoke only of the recent signage. Although the current signs are a deterrent to vehicle users, those interviewed, with one exception, did not feel it referred to walkers.

- *The route is not required for access to any public property.*

Many public rights of way do not provide access to public property and it is not a requirement that they do.

- *Access along the route has been constantly interrupted.*
Interruption of use along the route was stated as closure for utilities within the last 3 years and last year for two days when cutting down trees, which one resident said happens every year. 'Interruption' means 'actual and physical stopping of the enjoyment' of the public's use of the way by the landowner or someone acting on their behalf. The interruption must be with intent to prevent public use of the way and is not sufficient if the interruption is shown to have been for some other purpose. Therefore those interruptions mentioned cannot be considered.
- *Public wear and tear on the route would be unfair on the residents who contribute to the upkeep of the lane.*
It appears that residents along Steele's Lane are obliged to contribute towards the cost of upkeep of the lane. If the route becomes a public footpath as claimed, the County Council would maintain the surface at public expense to a standard suitable for walkers. Wear and tear from private vehicles would not be considered part of this. This matter does not have any bearing on the investigation.
- *Old photographs of two gates show restricted access to the lane.*
This photograph has been referred to already and as well as two gates, it shows a stile indicating a right of way on foot.
- *People are still walking along the route even after signs have been erected so they must accept it is private.*
Public rights of way often cross private land. A road can remain private but have specific public rights, as can a public road have additional private rights.

The other objections listed cannot be taken into consideration.

41. When investigating a claim for a public right of way, the way must have been used by the public for a period of more than 20 years uninterrupted, and it must be without force, without secrecy and without permission. The evidence submitted and discovered shows that on the balance of probabilities a public right of way is reasonably alleged to subsist.

Recommendation

42. I therefore recommend the County Council informs the applicant it is prepared to modify the Definitive Map and Statement by showing at Public Footpath status a route running between the A227 (Wrotham Road) and Byway NS285 in Meopham.

Accountable Officer: Linda Davies - 01622 221500 - linda.davies@kent.gov.uk

APPENDIX A – Plans of the claimed route

- Extract from the Definitive Map of Public Rights of Way, Map Sheet number 042. TQ 66 SW
- Plan at a scale of 1:2,500 showing the claimed route
- Plan at a scale of 1:10,000 showing the claimed route

APPENDIX B – Usergram & User Analysis

APPENDIX C – Case file and Application file

Background documents – Correspondence on Case File

NAME	DATES WAY USED	REGULARITY OF USE	REASON FOR USE	BY WHAT MEANS	OBSTRUCTIONS
Mr Ken Dare (Interview)	1972-2007	6-12 times a year	Going to and from the Byway to the A227 and then down Ifield Road	On foot	None
Mr R Wilkinson (Interview)	1977-2007	Once every 2 years	Leisure walk	On foot	None
Mr Roy Freeman (Interview)	1971-2004	Once a fortnight	Leisure	On foot	None
Mrs A Waugh (Interview)	1975-2007	Initially very frequently, now probably 4-6 times a year	Circular walk	On foot	None
Mr David Burch (Interview)	1967-2007	4-5 times a year, more frequently initially	Recreation	On foot	None
Mr J Carley (Interview)	1971-1997	Very rarely	While writing books	On foot	None
Mr Peter Adams (Interview)	1982-2007	Pretty frequently	Walking	On foot	None
Mr G Bayliss (Interview)	1956-2007	Once a month	Recreation	On foot	None
Mrs J Burgess (Interview)	1981-2007	A couple of times a year	To continue a walk	On foot	None
Mr Bill Reed (Interview)	1987-2007	2 or 3 times a year	Circular walks; walking the dog; walks with the grandchildren	On foot	None
Mr M Waddell (Interview)	1980-2007	15-20 times a year	Physical training	On foot; on a bicycle	None
Mrs G Willsher (Interview)	1985-2007	Twice a year on average	Walking	On foot	None
Mrs Pat Wilson (Interview)	1954-1998	Once every two years on average	Exercise and pleasure; to deal with rights of way matters; to get from A-B avoiding hard-surfaced roads	On foot	None
Mr Peter Marsh (Interview)	1979-2007	At least 20 times a year	Pleasure	On foot	None
Mrs D Birchmore (Evidence Form)	1942-1977	Frequently	Family walks; walking the dogs	On foot; sometimes on a bicycle	None
Rev. B Birchmore (Evidence Form)	1966-1975	Fairly regularly	Visiting parishioners; walking with the family	On foot; in a car	None
Mrs M Booker (Evidence Form)	1984-2004	3 or 4 times a year	Group walks	On foot	None

NAME	DATES WAY USED	REGULARITY OF USE	REASON FOR USE	BY WHAT MEANS	OBSTRUCTIONS
Mrs Helen Carley (Evidence Form)	1963-1983	No precise record	Country walk	On foot	None
Mr K Costin (Evidence Form)	1985-2005	Approx. twice a year	Recreation	On foot	None
Mr T Duffield (Evidence Form)	1996-2005	Unknown	Unknown	On foot	None
Hi Greenup (Evidence Form)	1980-1995	2-3 times a year	Recreation	On foot	None
Mr Peter Hasler (Evidence Form)	1950-1965 + 2001-2005	Approx. 25 times a year	Leisure	On foot	None
Mrs M Hatrick (Evidence Form)	1982-2005	Approx. 6 times a year	Walking; footpath clearance	On foot	None
Meg Henderson (Evidence Form)	1991-2005	5 times a week although less often during the summer	Walking the dog; horse riding	On foot; on horseback	None
Mrs F Hopkins (Evidence Form)	1925-1935	Many times	Visiting friends; walking	On foot	None
Doreen Jones (Evidence Form)	1988-2005	3-4 times a year	Walking	On foot	None
Pat Kagan (Evidence Form)	1947-2005	Daily	Lived there until 1963 then parents lived there until 1973. Since then walking for pleasure	On foot	None
John Macknish (Evidence Form)	1995-2005	2-3 times a year	Walking for pleasure	On foot	None
Margaret Mallett (Evidence Form)	1956-1988	Several times a year	Leisure walking	On foot	None
Patricia Mallett (Evidence Form)	1956-1988	Several times a year	Leisure walking	On foot	None
Linda Moody (Evidence Form)	1960-1985	Most days	Recreation	On foot	None
Mrs M Daffard (Evidence Form)	1957+	Regularly	Walking	On foot	None
Mr R Starbuck (Evidence Form)	1946-1983	Once a year	Recreational walking	On foot	None
Clare Taylor (Evidence Form)	1956-1975	Six times a year	Access to Guide camp; visiting friends; country walking	On foot; in a car	None
S Taylor (Evidence Form)	1945-2005	Almost every day	Walking the dogs	On foot	None

NAME	DATES WAY USED	REGULARITY OF USE	REASON FOR USE	BY WHAT MEANS	OBSTRUCTIONS
D Taylor (Evidence Form)	1946-2005	50-60 times a year	Walking	On foot	None
Mr J Thompson (Evidence Form)	1957-2005	Countless	Recreation	On foot	None
G Viner (Evidence Form)	1973-2004	2-5 times a year	Exercise	On foot	None
B Wade (Evidence Form)	1952-2005	Approx. 10 times a year	Visiting friends; walking	On foot	None
E Webber (Evidence Form)	1994-1999	At least 200 times a year	Walking the dog	On foot	None
Mrs C White (Evidence Form)	1942-1954	Approx. 45 times a year	To catch the bus / train; to go to the shops	On foot	None
Melda White (Evidence Form)	1955-1972	About 18 times a year	Recreation	On foot	None

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NAME	DATES WAY USED	REGULARITY OF USE	REASON FOR USE	BY WHAT MEANS	OBSTRUCTIONS
Mr Ken Dare (Interview)	1972-2007	6-12 times a year	Going to and from the Byway to the A227 and then down Ifield Road	On foot	None
Mr R Wilkinson (Interview)	1977-2007	Once every 2 years	Leisure walk	On foot	None
Mr Roy Freeman (Interview)	1971-2004	Once a fortnight	Leisure	On foot	None
Mrs A Waugh (Interview)	1975-2007	Initially very frequently, now probably 4-6 times a year	Circular walk	On foot	None
Mr David Burch (Interview)	1967-2007	4-5 times a year, more frequently initially	Recreation	On foot	None
Mr J Carley (Interview)	1971-1997	Very rarely	While writing books	On foot	None
Mr Peter Adams (Interview)	1982-2007	Pretty frequently	Walking	On foot	None
Mr G Bayliss (Interview)	1956-2007	Once a month	Recreation	On foot	None
Mrs J Burgess (Interview)	1981-2007	A couple of times a year	To continue a walk	On foot	None
Mr Bill Reed (Interview)	1987-2007	2 or 3 times a year	Circular walks; walking the dog; walks with the grandchildren	On foot	None
Mr M Waddell (Interview)	1980-2007	15-20 times a year	Physical training	On foot; on a bicycle	None
Mrs G Willsher (Interview)	1985-2007	Twice a year on average	Walking	On foot	None
Mrs Pat Wilson (Interview)	1954-1998	Once every two years on average	Exercise and pleasure; to deal with rights of way matters; to get from A-B avoiding hard-surfaced roads	On foot	None
Mr Peter Marsh (Interview)	1979-2007	At least 20 times a year	Pleasure	On foot	None
Mrs D Birchmore (Evidence Form)	1942-1977	Frequently	Family walks; walking the dogs	On foot; sometimes on a bicycle	None
Rev. B Birchmore (Evidence Form)	1966-1975	Fairly regularly	Visiting parishioners; walking with the family	On foot; in a car	None
Mrs M Booker (Evidence Form)	1984-2004	3 or 4 times a year	Group walks	On foot	None

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Mr K Costin (Evidence Form)	1985-2005	Approx. twice a year	Recreation	On foot	None
Mr T Duffield (Evidence Form)	1996-2005	Unknown	Unknown	On foot	None
Hi Greenup (Evidence Form)	1980-1995	2-3 times a year	Recreation	On foot	None
Mr Peter Hasler (Evidence Form)	1950-1965 + 2001-2005	Approx. 25 times a year	Leisure	On foot	None
Mrs M Hatrick (Evidence Form)	1982-2005	Approx. 6 times a year	Walking; footpath clearance	On foot	None
Meg Henderson (Evidence Form)	1991-2005	5 times a week although less often during the summer	Walking the dog; horse riding	On foot; on horseback	None
Mrs F Hopkins (Evidence Form)	1925-1935	Many times	Visiting friends; walking	On foot	None
Doreen Jones (Evidence Form)	1988-2005	3-4 times a year	Walking	On foot	None
Pat Kagan (Evidence Form)	1947-2005	Daily	Lived there until 1963 then parents lived there until 1973. Since then walking for pleasure	On foot	None
John Macknish (Evidence Form)	1995-2005	2-3 times a year	Walking for pleasure	On foot	None
Margaret Mallett (Evidence Form)	1956-1988	Several times a year	Leisure walking	On foot	None
Patricia Mallett (Evidence Form)	1956-1988	Several times a year	Leisure walking	On foot	None
Linda Moody (Evidence Form)	1960-1985	Most days	Recreation	On foot	None
Mrs M Daffard (Evidence Form)	1957+	Regularly	Walking	On foot	None
Mr R Starbuck (Evidence Form)	1946-1983	Once a year	Recreational walking	On foot	None
Clare Taylor (Evidence Form)	1956-1975	Six times a year	Access to Guide camp; visiting friends; country walking	On foot; in a car	None
S Taylor (Evidence Form)	1945-2005	Almost every day	Walking the dogs	On foot	None

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D Taylor (Evidence Form)	1946-2005	50-60 times a year	Walking	On foot	None
Mr J Thompson (Evidence Form)	1957-2005	Countless	Recreation	On foot	None
G Viner (Evidence Form)	1973-2004	2-5 times a year	Exercise	On foot	None
B Wade (Evidence Form)	1952-2005	Approx. 10 times a year	Visiting friends; walking	On foot	None
E Webber (Evidence Form)	1994-1999	At least 200 times a year	Walking the dog	On foot	None
Mrs C White (Evidence Form)	1942-1954	Approx. 45 times a year	To catch the bus / train; to go to the shops	On foot	None
Melda White (Evidence Form)	1955-1972	About 18 times a year	Recreation	On foot	None

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