

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.
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- 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.

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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