



Order Decisions

Inquiry opened on 23 February 2016

by Peter Millman BA

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 31 March 2016

Order Ref: FPS/W2275/7/78 ("Order A")

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the 1981 Act") and is known as The Kent County Council (Bridleways MR608, MR609 & MR610 at Aylesford) Definitive Map Modification Order 2014.
- The Order is dated 14 July 2014 and proposes to modify the Definitive Map and Statement for the area as shown on the Order map and described in the Order schedule.
- There were nine objections outstanding when Kent County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for determination.

Summary of Decision: I have confirmed the Order.

Order Ref: FPS/W2275/7/79 ("Order B")

- This Order is made under Section 53(2)(b) of the 1981 Act and is known as The Kent County Council (Bridleways MR29, MR606, MR607 & MR611 at Aylesford & Burham) Definitive Map Modification Order 2014.
- The Order is dated 14 July 2014 and proposes to modify the Definitive Map and Statement for the area as shown on the Order map and described in the Order schedule.
- There were six objections outstanding when Kent County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for determination.

Summary of Decision: I propose to confirm the Order with modifications.

Order Ref: FPS/W2275/7/80 ("Order C")

- This Order is made under Section 53(2)(b) of the 1981 Act and is known as The Kent County Council (Bridleway MR30 at Aylesford & Burham) Definitive Map Modification Order 2014.
- The Order is dated 14 July 2014 and proposes to modify the Definitive Map and Statement for the area as shown on the Order map and described in the Order schedule.
- There were five objections outstanding when Kent County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for determination.

Summary of Decision: I propose to confirm the Order with modifications.

Preliminary and Procedural Matters

1. At the request of the represented objector, Trenport Investments Ltd ("Trenport"), represented by Mr T Morshead Q.C., and with the agreement of Kent County Council ("KCC") and the applicant for the Orders, I carried out an accompanied visit to the sites of all the Order routes on the first day of the inquiry.
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2. Orders A, B and C concern a total of nine routes. I heard the evidence concerning these routes together, since they form a linked network. Although I have included copies of each Order map at the end of this decision I have not referred to them in the text below unless absolutely necessary. This is because of the potential for confusion since, for example, point A on the map attached to Order C is labelled as point F on the map attached to Order B. At the inquiry, all parties referred to a single map, on which the junctions between the various routes were marked by letters. In addition, witness statements referred to these letters rather than those in the individual Orders. I have therefore additionally included at the end of this decision a coloured map showing all the Order routes, on which junctions are indicated by the letters which were used at the inquiry. This is the map to which I generally refer in the text below.

Main issues

3. The Orders propose either to add bridleways to KCC's definitive map and statement, or to show existing footpaths as bridleways. The principal issue is whether the evidence shows, on the balance of probabilities, that public bridleway rights exist over any or all of the routes shown on the Order maps. The relevant part of the statutory test for confirmation of modification orders is set out in s31 of the Highways Act 1980 ("the 1980 Act"). It reads as follows: *(1) Where a way over any land... has been actually enjoyed by the public as of right and without interruption for a full period of 20 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. (2) The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question...*

Reasons

Background

4. The disputed paths lie to the east of the River Medway, between the river and the villages of Burham (shown, but not named, at the top right hand corner of the coloured map) and Eccles. Close to the river, this was, in the past, principally an industrial area, with brick and cement works exploiting local mineral deposits. Nowadays there is a sewage works, a solar farm, a reservoir and a water treatment plant in this area. Away from the river, the more northerly Order routes, nearer to Burham, cross arable land. Much of the land in the whole area was once owned by Associated Portland Cement Manufacturers Ltd, then by Blue Circle Industries. This land is now mostly owned by Trenport, which intends to develop a substantial part of it.
5. The Order routes to which the three Orders refer are as follows (see coloured map below):
- A-B: Most of this follows a public footpath, but the south-eastern end approaching 'The Friars' has no recorded public rights
 - B-C-F: Currently recorded with public footpath rights
 - F-G: Currently recorded with public footpath rights; it actually starts a few metres south-east of F, where a restricted byway ends
 - H-I: Currently recorded with public footpath rights

- I along Eccles Row to the main road through Eccles: Currently unrecorded on the Definitive Map
 - G-H: Currently unrecorded on the Definitive Map
 - H-L-K: Currently recorded with public footpath rights
 - J-M-N: Currently recorded with public footpath rights
 - L-M: Currently unrecorded on the Definitive Map
6. It should be noted that the track between J and G, which links, but does not form part of, any of the Order routes, carries full public highway rights.
 7. The former industrial areas were plagued, in the 1980s and 1990s, with fly tipping, the riding of off-road motor cycles, and other anti-social behaviour. The erection of barriers in the 21st century which prevented access to motor vehicles also, in general, prevented access to horse riders, and the applications for modification orders in respect of some of these routes followed, albeit somewhat belatedly, in March 2010, and in respect of others in May 2012.
 8. KCC considered the relevant evidence and made five orders, including the three to be considered here. There were no objections to two of them, and they have already been confirmed.
 9. Although the applicant (Mrs A Rillie, on behalf of the British Horse Society) at one time asserted the existence of restricted byway (non-motorised vehicular) rights over some or all of the Order routes, it was conceded at the inquiry that they could not be shown to exist.
 10. The evidence in support of the Orders consists largely of completed user evidence forms and witness statements, as well as oral evidence given by horse riders at the inquiry. This evidence broadly supported the view that, before the erection of barriers which prevented vehicular access to the area, equestrians were able to ride the various routes with no impediment.
 11. In contrast, a number of local residents, as well as employees and ex-employees of Trenport, and tenant farmers, gave evidence that well before the erection of barriers in the 21st century, there were various man-made structures across the routes which would have been impossible for horses to pass without deviating from them, notices forbidding use placed next to some routes, as well as natural obstacles such as brambles and other vegetation, and that, in any event, equestrian use of the routes was limited and sporadic.
 12. There is, in addition to the evidence which results from people's memories and recollections of what they experienced up to forty years ago, a small amount of contemporaneous documentary evidence, principally in the form of letters, records of parish council meetings and photographs from the 1980s and 1990s. This may assume considerable importance where recollections of what went on many years ago contradict each other.
 13. People's memories are fallible, and there are bound to be inconsistencies in the memories of detail when trying to recall events and physical features at a distance of 20 or 30 years or even longer ago. It would be surprising and possibly suspicious if there were not. Any single memory of one person may be highly inaccurate, or even false, and may need corroboration from other sources before it can be given significant weight. For example, the evidence of a single person that there was a 'bridleway' sign at one point on a route would

probably merit less weight than the consistent evidence of twenty people that they passed along a particular route without being hindered in any way. I heard no allegations at or before the inquiry that any witnesses were deliberately providing false evidence. Trenport made a number of insinuations in its analysis of user evidence, for example that: *there is a strong sense that... many of the witnesses did not report inconvenient details, such as interruptions of user*, and: *KCC should be under no illusion that the applications are part of a local campaign orchestrated by Mrs Rillie* [the applicant], but in my view none was substantiated, any more than the insinuation which might have been made that objectors were jointly concerned and motivated by a fear that the Order routes would become available again for off-road motorcycling and other anti-social behaviour if the Orders were confirmed.

14. At first sight, it appeared that the evidence of riders was, in many respects, incompatible with that of Trenport's witnesses concerning barriers, and, to a lesser extent, notices. I have marked the positions of these barriers or obstructions on the coloured map appended to this decision with red bars, and it seems sensible to consider this evidence first, and draw conclusions about when they were erected, and whether they, and the notices, brought into question the right of horse riders to use the various routes.

Barriers and obstructions

15. KCC's case is that barriers which prevented equestrian use of routes and therefore brought the right of horse riders to use them into question were erected at various times, mostly between about 2000 and 2009. For some of the routes these dates are not disputed by Trenport.

The barrier between A and B

16. Perhaps the clearest evidence concerns the motorcycle barrier by the sewage works between A and B. It was erected in August 2009, and there is no significant evidence of any other barrier which would have prevented equestrian use of Order routes south of F. Trenport accepts that any other man-made obstructions in this area are not themselves inconsistent with regular equestrian activity over any of routes A-B-C-D, A-B-C-F-E and D-C-F-E before 2009. The section C-F is currently in use by horses, as shown by hoof marks on the ground. That section can be used as part of a through route (D-C-F-E) without encountering any barriers which could prevent or hinder equestrian use.
17. I conclude that the right of horse riders to use A to C was brought into question in August 2009.
18. I conclude that the right of horse riders to use C to F was not brought into question until the first application for a modification order was made in March 2010.

Barriers between F and G

19. Continuing north-west from F, there is a barrier across a concrete roadway (shown near the site of the Roman Villa on the coloured map below). At the inquiry, KCC provided mapping evidence which, it contended, showed that the footpath which the Order would upgrade to bridleway, as originally shown on the first Definitive Map and as used by horse riders, ran parallel to and about 10 metres to the north-east of where the concrete road was subsequently constructed, for about 200 metres, meeting its line about 100 metres north-

west of the barrier across the road. The footpath's position had been mistakenly changed on the 1987 Definitive Map, KCC argued, and had remained in the 'wrong' position on subsequent Definitive Maps. I have put 'wrong' in quotation marks because the current Definitive Map is legally conclusive of what it shows, i.e. that the footpath runs along the line of the concrete road.

20. Shortly before the inquiry, KCC provided copies of an extract from the first Definitive Map of 1952 which showed the lines of public rights of way in the area between F and G. Old Ordnance Survey maps show that at that time the concrete track had not been constructed. KCC also provided copies of the draft and definitive maps of 1987, which show the concrete track. It seems clear that on those maps the line of the footpath was moved about 10 metres to the south-west so that it was coincident with the track. There appears to be no reason for this anomaly other than a drafting error which has been perpetuated on subsequent versions of the Definitive Map.
21. Trenport's evidence was that the barrier on the concrete track between F and G (at one time a gate, but replaced by concrete blocks when the gates were stolen a few years ago) had been there from 1989 and possibly since the mid-1970s and would not have been passable by horse riders without deviating from it. This was not disputed by KCC.
22. KCC asked that, should I be minded to confirm the Order with respect to this path, I propose a modification to it, to show the 'correct' line of the path. I consider that request further below at paragraphs 104, 107 and 108.
23. Trenport did not argue that KCC was wrong in its interpretation of the mapping evidence. It did, however, rely on the evidence of its tenant farmer, Mr West, who stated that he had placed a barbed wire barrier across the field entrance where the 'correct' line of the path joined the concrete track north-west of the barrier, in about 2003. This barbed wire was pulled out, he stated, but was then replaced.
24. The question is whether equestrians, when riding between F and G, utilised the footpath as shown on the first Definitive Map, or whether they rode down the concrete roadway, attempting to deviate from it only in the vicinity of the barrier. It seems likely that they did the former, since the evidence of Trenport's witnesses was that such a minor deviation would only have been physically possible for pedestrians.
25. Some riders gave evidence that they had not noticed a gate between F and G. There is no real doubt that there was one, so the inference is that it was open or that they went along in the field to the east, probably following the line of the footpath as shown on the 1952 Definitive Map. The evidence that the barrier was rarely, if ever, passable is very strong, so it is likely that riders went through the field. One rider, in oral evidence, said that there had been a step-over (a horizontal pole fixed about 25 or 30 cm above the ground), or gap in the hedge downhill from F (i.e. about 100 metres north-west of the gate, where Mr West later placed barbed wire). Another said that between F and G there was a gate on the concrete road but that there was a step-over just before Rose Cottage (which old maps show as having existed just above where '72' is printed on the coloured map appended below, i.e. near where the footpath joined the concrete track). This statement was corroborated by another, who rode between Wouldham and Aylesford in the late 1970s and 1980s. Her evidence was that there was a: *Ruined fence to step-over near*

Rose Cottage. It was never repaired 1977 – 1989. Yet another rider, who had used various routes between 1969 and 1998, wrote: Just after Rose Cottage [travelling south] you got off the concrete road onto a path that went on the left hand side that went up a slope.

26. I conclude from this evidence that the route used by horse riders between F and G was that shown on the 1952 Definitive Map and that their right to use it was brought into question in 2003 by the placing of barbed wire across the field entrance.

The barrier between G and J

27. That there was a gate at one time across the public vehicular highway, known as Old Church Road, between points J and G, is not disputed. Nor is it disputed that a gate in this position, if locked, would have prevented horse riders from continuing (or made it difficult for them to continue) southwards from M-J or northwards from G. It does not seem to me that the locking of this gate across an undoubted public road could either bring the public's right to use a route past it into question, nor be evidence of a landowner's lack of intention to dedicate public rights of way. It is, however, necessary to draw conclusions about it in order to assess the evidence of the use of adjoining routes by horse riders.
28. In his written statement, Mr A Ford, a resident of Burham and one of Trenport's witnesses, asserted that there was a metal barrier across the road between J and G in the late 1960s. Mr M Cable, in his second witness statement for Trenport, recalled that there was a barrier between J and G in the 1970s and 1980s. Mr Hamblyn, until 2010 Trenport's Project Director, gave written evidence that when he visited the area after he started working for Trenport in 2000 there was a metal barrier across the road between J and G. His oral evidence to the inquiry appeared somewhat confused, however, stating at first that there were no barriers between J and G, and that there was a barrier across the road south of G. In cross-examination he stated that there was a gate between J and G but that it was erected after he had joined Trenport in 2001 and that it was subsequently, at some time between 2002 and 2004, moved to its current position. This version of events was closer to the applicant's recollections, when interviewed by KCC, that it was in 2001 that a barrier was erected across the road next to the water treatment plant, just north of G.
29. In oral evidence Mr Heeley, who worked for Blue Circle between 1989 and 2000, stated that there was a locked gate between J and G during that time, although he had not mentioned this in his written statement, prepared in 2014. Mr Venn, who has been personally involved in the erection of various barriers for Trenport since 2001, stated that the gate between G and J was removed and positioned near J at the end of 2002 or early 2003. I consider he is likely to be correct.
30. A number of horse riders provided evidence of their use of routes including that between G and J before the current impassable barrier across Old Church Road near J was erected in about 2003. All but one gave no indication of there ever having been a hindrance to free passage between G and J. One rider, who used the routes after 1980, wrote: *G-J is a concrete path through the water treatment works and goes onto the road. There used to be a wooden gate that was never closed.* I accept Mr Morshead's caveat that some user evidence forms provided scant details, and give the appearance of having been

- completed without much of an effort to provide relevant details. A significant number, however, contain very detailed attempts at the recollection of the routes which were used. One rider, who stated that she had used this route from 1982 onwards, recollected that she would ride from Wouldham [a village, not shown on the map below, which is north of M] to Aylesford Priory [near point A] to have refreshments [at the café] there. There is no other largely off-road route between Wouldham and Aylesford that would not pass between G and J, and it seems unlikely to me that such a recollection (and the recollections of those several other riders who had noted no obstruction between G and J) would have occurred if riders had, in fact, never been able to pass along Old Church Road.
31. Evidence was given to the inquiry that members of the fishing club which leased the reservoir (shown on the map south of a line between G and H) had keys to the gate across the track between G and H, near G (see below at paragraphs 36 to 40). To get to that gate in a vehicle, anglers would have had to come from either the north along Old Church Road via J-G, or from the south along the private concrete track from the direction of C. Since it would have been impossible from this southern direction probably from the 1970s (see above at paragraph 19), anglers would, it seems to me, have had to approach the gate between G and H along Old Church Road via J-G. That anglers came by car is confirmed by Mr Dean, who in his written statement for Trenport referred to the 'car park for anglers' east of G. Mr Emptage, who provided a written statement for Trenport but did not give oral evidence, stated: *I used to drive, as well as walking to the reservoir in the 1990s and 2000s. The route in the car was via Burham Old Church and down via J and G.* It seems unlikely, therefore, that any gate across that road would have been routinely locked before the lease of the reservoir to anglers ended. Although there was no clear evidence about when this occurred, it is unlikely to have been after the start of 2003 when, generally, vehicular access to the area was made impossible, and in particular the gate across Old Church Road was moved.
32. Considering all this evidence, it seems to me likely that there was an earlier barrier, in the 1960s and perhaps 1970s, across Old Church Road between G and J, but unlikely that it would have been locked shut, given that it would thereby have become an illegal obstruction. If that gate was replaced by a later one, then it is unlikely that it was routinely locked. This gate was moved to a point on old Church Road close to J at the end of 2002. If there is any irreconcilable conflict between the evidence of riders and Trenport's witnesses, I prefer that of the former, who managed to get between J and G with no problem, over that of those who stated that the route would have been impassable for many years before the start of the 21st century.
33. I conclude that the public vehicular road between G and J was probably passable by horses until the end of 2002.

The barrier across the footpath at J

34. There is currently a motor cycle barrier across the footpath which runs from M to J, close to its junction with Old Church Road. It is not disputed that it was put there in 2007 to replace a metal stile, impassable to horses, which itself replaced, probably in early 2003, a fairly insubstantial structure, described by Trenport's employee Mr T Venn as a bar about 10 inches off the ground.

35. I conclude that the right of equestrians to use the path between M and J was brought into question in early 2003.

The barrier between G and H near G

36. The route between G and H is not currently depicted on KCC's Definitive Map.
37. There are at present the remains of a metal gate across the route between G and H, a few metres east of its junction with the track running north from G towards J. It was referred to at the inquiry as 'the fish gate' because it is surmounted with a cut-out metal fish. When the reservoir to its east was leased to a local angling club, the track between G and H was used as the fishermen's entrance. The area surrounding this gate has changed in the last few years. It has now been cleared, but there seems little doubt that 15 or so years ago there was dense vegetation on both sides of the track between G and H at this point. After the clearance of vegetation, whenever that occurred, an earth bund or bank was created, running south from G on the east side of the concrete track leading towards F. This bank would have had to be surmounted to get from G towards H if the fish gate was locked.
38. Some of Trenport's witnesses recalled that the current gate was installed to replace an earlier gate or pair of gates, a short way further east of G on the track leading towards H. Mr Heeley noted in his written statement that: *we were constantly telling them [the anglers or the angling club] to keep the gates locked shut.* Mr Davis, a local resident providing evidence for Trenport, stated that the fish gate was in position and normally closed in the mid-1990s when he first started walking and running in the area. Mr Dean, whose written statement said that it referred to the period from 1976, noted that there was a gate across the track from G to H, implying its presence in that year. Mr Emptage, however, stated that he did not recall a gate prior to the fish gate, which he believed was put in place when the angling club started to lease the reservoir. No-one with any connection to the angling club gave evidence, and guesses or estimates about the years when its lease began and ended were particularly vague.
39. Trenport argued that gates, which it submitted had been in place since the early 1980s and were always kept locked except when anglers forgot to lock them, together with the bund after the surrounding impenetrable vegetation was cleared, meant that any equestrian use of the track between G and H by, for example, circumventing the gate by riding over the bund, would not have been 'as of right' (see below at paragraph 99) since then.
40. The evidence of horse riders about gates and the bund was generally inconsistent with that given by Trenport's witnesses, but did not provide a clear alternative picture either. The applicant, for example, wrote in her statement of case that: *[horse riders] had no trouble crossing the bund at G on route 7 – this was probably not built until after 2002 so not relevant...* It does seem clear from their evidence that horse riders usually had no trouble getting between G and H until early in the 21st century, but how often this was through unlocked gates and how often by surmounting the bund, crossing which would have entailed diverging from the Order route, is not at all clear. Most did not mention any sort of barrier. The evidence of a gate earlier than the fish gate is very limited. Overall, from this very mixed evidence, it seems to me that that of Mr Davis (paragraph 38) was perhaps the clearest in pinpointing a year after which the gate was generally locked, so I do not think it would be safe to conclude on the balance of probabilities that there was not a barrier,

sometimes locked, after about 1996. The presence of a locked barrier, even if not locked consistently, or even if avoidable by surmounting the bund, it seems to me, would have brought the right of horse riders to use the Order route into question. I conclude that this probably happened in 1996 and that before 1996 it is more likely than not that horse riders were able to ride freely east of G.

The barrier at H

41. As one approaches H on the footpath that runs south-west from K, there is a motor cycle barrier just before the path reaches a stream. It is not disputed that this barrier was erected in 2008 to replace a large metal stile positioned on the southern side of the stream in 2003, which would have prevented equestrian access. Mr T Venn, who works for Trenport, stated that he was present when this stile was lifted over the stream into position. The stream is crossed by a concrete bridge a metre or so wide which is provided with handrails. This bridge has been in position for many years. On the southern side of the bridge, the path slopes up for a short distance – maybe 5 metres – to meet the Order route between G and I at right angles. The slope would not be so long or steep as to incommode a horse at present, although, as suggested by one of Trenport’s witnesses, it is possible that it was steeper in the past.
42. Evidence about the situation prior to 2003 is rather confused. Witnesses for Trenport gave their recollections of what was at H many years ago, in some cases as far back as the 1950s. One local resident, for example, stated that there was a wooden stile at the top of the slope in that decade. Another, recalling his memories as a resident of Eccles from 1960, mentioned a gate at H on the Burham (northern) side of the bridge. A tenant farmer, recalling what was at or near H in the 1970s, mentioned a small wooden bridge, but no stile or obstruction. Another witness for Trenport said in oral evidence that he thought there was a metal stile at the top of the slope south of the stream in about 1996, and that after that there had been what he called a ‘chicane’ of two metal poles. Mr Venn recollected that in 2001, before he worked for Trenport, he had seen the remains of a wooden stile at the top of the slope on the southern side of the stream which, he said, might not have stopped a horse.
43. A photograph was produced by KCC, taken in 1994, of the bridge at H viewed from the direction of L. It shows a single post placed in front of the bridge. No witness recalled this post. It seems doubtful, from the photograph, that it would have prevented or impeded equestrian use of the bridge.
44. Of the horse riders who described in greater or lesser detail riding between I and L via H, none recalled having had any problem before 2003. A typical description of the route coming from the direction of I, by a rider who used the Order routes between 1969 and 1998, was: *There was a steep chalk incline to the concrete bridge with a rail either side.* Another rider wrote: *before the motorcycle barrier there was just a bridge. I never ever had a horse or pony that couldn’t just go straight across.*
45. On the whole, it seems to me, the evidence given to the inquiry is consistent with there having been a stile of some sort at H until some time in the 1970s which then fell into disrepair and perhaps even disappeared, so that during the 1980s and until 2003 it was easily passable by horse riders. I conclude that the public’s right to use any route passing through H was brought into question by a barrier in 2003. The 1994 photograph noted at paragraph 43, however,

had a small notice affixed to it, and I consider this and other notices below at paragraphs 54 to 61.

The barrier at I

46. The track along Eccles Row and then past I and on to H must have been used many years ago to take materials out from the reservoir when it was a pit; there are the remains of some narrow-gauge metal tracks, probably from a tramway, running along it. Subsequently it was used by workers from Eccles to get to the cement works, which no longer exist. That there was a gate at I for many years is not in doubt, but there is no significant evidence that use by horse riders would have been impeded before some time between 2002 (when some riders recollected that use had been prevented) and 2004, the year that Mr Venn gave for his installation of a chicane barrier. Mr West, some of whose tenanted land was nearby, recalled the 'early 2000s' as the time when equestrian use of this route would have been prevented by the chicane.
47. I prefer Mr Venn's evidence, since he was personally involved, and conclude that the right of the public to use the route from Eccles, through point I and on to H, was brought into question in 2004.

Barriers at K and N

48. There is currently no barrier at N which would prevent equestrian use of M to N. A photograph dating from 1998 shows no barrier in place, and one rider dated the erection of a chicane there as 2004 to 2005. In closing submissions KCC suggested that it would probably have been put in at the same time as the chicane at K (see immediately following paragraphs), i.e. 2003. I accept this likelihood, but in any event this conclusion is subject to my findings about notices at M and their effect (below at paragraphs 56 to 61).
49. There is a chicane at K, the erection of which a contemporaneous e-mail puts at 2003. Horses could bypass it but not get through it. Trenport's case is that there was a wooden stile at K in the 1960s and 1970s which, it might be inferred, then fell out of repair before being replaced, after the 1990s, by a narrow chicane which preceded the current one.
50. Mr Emptage, who provided a written statement for Trenport in January 2016, stated: *For many years there has been a chicane at K; first a metal tubular construction; more recently a wooden one.* Mr Cable wrote in 2014 that a chicane was put across the footpath at K 'about 15 years ago'. He recalled in 2016, however, that before 2000 there had been a wooden stile in place on the southern side of Court Road at K, and that continuous hedges stretched for more than 50 yards either side of the stile. This evidence, to my mind, is incompatible with the evidence, not only of horse riders, but other witnesses for Trenport, that there was at least some equestrian use of this route, and I do not, therefore, give it significant weight.
51. The evidence of there having been an earlier chicane at K rather than the stile suggested by Mr Cable is not strong. One horse rider stated that there was no barrier at K in 1994, others said that they recalled no such barrier during their periods of use, which spanned the 1970s to 1990s. Some, in reasonably detailed descriptions of the routes they claimed to have ridden, did not mention any impediment to use at K, noting only, for example, that the route led up to Court Road.

52. I conclude that the right to ride between K and H was brought into question by a chicane erected in 2003. I consider the effect of notices in paragraphs 54 to 60 below.
53. I note here that the vehicular road which the coloured map (and one of the Order maps) shows as connecting K and N has been diverted very recently in connection with a scheme to make a new crossing over the Medway. The footpath leading from M to N has been diverted on the ground and by a legal order for a short length close to N. The footpath from L to K has been diverted slightly on the ground close to K, but no legal order has been made to divert it. These recent changes do not affect my determination of the Orders.

Notices

54. There are 'private' notices on the barrier (once a gate) across the concrete track (considered above at paragraph 19) but I have concluded that this is not on the line which would have been used by equestrians, so need not be considered further. There was also evidence of a 'private' notice by the gate across Old Church Road between J and G, but I have seen no evidence about who erected it and whether it was intended to refer to the public road or the surrounding land. Since such a notice could have no effect on the public's right to use this road there is no need to consider it further.
55. There may also have been notices at N, K, and L, but the evidence of the Burham Parish minutes from around 1994 which refer to notices is not, in my view, clear as to their location, and cannot be given significant weight.
56. There are, however, relevant notices still in position at M. These notices are on an electricity pole facing anyone travelling from M towards N. There are three small notices, about 80mm square, placed one above another. All are damaged to some extent and appear to have been in place for some time, but all but the bottom one are clearly legible and would be visible to someone riding from M to N. The middle one carries a picture of a horse and rider, over which is superimposed a no-entry sign above which are the words 'no right for horses'. The top notice is similar, but shows a picture of a bicycle with the words 'no right to cycle' beneath and '[public] footpath only' above.
57. The committee report which led to the making of the Orders referred to notices at K. Five witnesses stated that they had seen notices with the same wording as given in the preceding paragraph. Three thought they had been erected in the mid-1990s. The applicant wrote to KCC to enquire about them in 1996.
58. The 1994 photograph referred to above at paragraph 43, showing a post on the northern side of the bridge at H, also shows a small notice affixed to the post. It is not possible to read the words on it, but underneath the photograph someone has written the words, presumably in 1994: *NO HORSES, CYCLING ETC NOTICE/POST.*
59. I conclude that there were notices as described above at M and K from 1996, which were in position for long enough to have come to the notice of more than just a few riders. There was a similar notice at H in 1994, but I do not consider that it can be concluded that it was in position for long enough to have come to the notice of riders as no witness, for either KCC or Trenport, appears to have recalled the post to which it was fixed. KCC's case was that the notices: *appear to have been erected by KCC in the 1990s to emphasise the status of certain of the routes as footpaths, rather than specifically to challenge horse*

riders... Further, horse riders took no notice of them. KCC did not believe that the notices would have brought the rights of horse riders into question. I do not agree. In my view, although the notices were small, their intention, and what they would have conveyed to a reasonable horse rider, was that the right of equestrians to use M to N and K to L was in question. The fact that equestrians may have ignored the signs would make no difference.

60. I conclude that the right of horse riders to use M-N and K-L was brought into question in 1996.
61. Trenport argued that these notices would not only have brought the right of horse riders (and cyclists) to use routes into question, but that they would also amount to evidence of the landowner's intention not to dedicate public rights of way. This was asserted to follow from the 'doctrine of fixtures' whereby personal property (in this case a notice) affixed to land will become part of the land and therefore belong to the landowner. I do not accept that argument. It might be conceivable that the materials of which the notices were made belonged to the landowner, but that the meaning of the words could therefore be taken to be an expression of the landowner's intentions is taking things too far. If someone, for example, placed a poster on his neighbour's land at election time, and the poster supported a party which did not find favour with the neighbour, it could surely not be argued that the neighbour supported this party simply because he did not immediately remove the poster.

Conclusion about when use of the routes by horse riders was brought into question

62. I have concluded that the right of the public to use routes on horseback was brought into question by barriers or notices in the following years:
- A-C, 2009
 - F-G, 2003
 - G-H, 1996
 - H-I-Eccles Row, 2004
 - H-L, 2003
 - L-K, 1996
 - M-N, 1996
 - M-J, 2003
63. There is no evidence of barriers or notices which would have directly affected the use by horse riders of C-F and L-M, so the date of bringing into question could be considered to be the date of application for a modification order, i.e. 2010 and 2012 respectively. However, I find that the right of the public to get to L from H was brought into question in 2003 (point M is on a public road) so I conclude that the right of the public to use L-M was brought into question in 2003, and to use C-F was brought into question in 2010.

Whether the routes were used by the public as of right and without interruption for a full period of 20 years before being brought into question

Introductory issues

64. KCC wrote, in its statement of case for the inquiry, that: *the quantity of user evidence required in order to satisfy the tests for presumed dedication... will invariably depend upon the particular circumstances of each case; for example in a rural setting away from any significant place of public resort use is likely to be less frequent than a path serving a functional link within an urban area and thus the quantity of user evidence required to show that a presumed dedication has occurred is likely to be lower.*
65. Trenport argued that KCC's view of the test was erroneous. Trenport had concluded, in a submission made in 2014, that, *in this particular case, the landholding in question is significant in size and, relative to the size of the landholding, the volume of any equestrian user was slight. Given the size of the landholding and the number of bridleways... claimed, user would have to have been of a very significant volume to bring home to the reasonable landowner in the shoes of the actual landowners that the public was asserting rights of way with horses...*
66. In support of his argument, Mr Morshead for Trenport noted the words of Lord Hope in the case of *Cumbernauld and Kilsyth DC v Dollar Land Ltd* [1992]: *the occasional or irregular use of a path by hill walkers or by others who resort to the countryside can be readily distinguished from the continuous use of it by members of the public as a route from one public place to another.*

Evidence of landowners' awareness of equestrian use

67. I do not consider that the area of land between Eccles, Burham and the River Medway could be meaningfully compared with a Scottish hillside. In this area of Kent, the principal landowners, Blue Circle and its successor Trenport, acting quite reasonably, employed someone throughout the relevant 20 year periods to manage their land. Between 1974 and 1989 Blue Circle employed Ms Westwood to manage its land. In written evidence she stated that she was often there, but that she did not recall the tenants complaining about horse riding on their farms and that she did not recall encountering people riding horses on any of the public footpaths crossing Blue Circle's land. This seems to me somewhat at odds with contemporaneous written evidence, for example the report of the Chairman of Burham Parish Council for 1987/88, that: *The use of footpaths by horses is still causing considerable concern*, particularly since many of these footpaths are likely to have impinged on Blue Circle's land.
68. Blue Circle employed Mr Heeley to manage its land in Kent between 1989 and 1999. He was, as one would have expected, in touch with the tenant farmers, drove around the land from time to time and was aware of use of paths by horse riders. He noted in his written evidence that: *the impression I got from speaking to tenants was that there was occasional use by people riding horses along existing rights of way across the land, but not a significant number of people doing it and they were not trying to open up new routes.* Mr Heeley confirmed in cross-examination that he was aware of horse riders using 'public rights of way'. He did not, perhaps significantly, assert that they rode only on bridleways, of which there were few, compared with the number of footpaths, on Blue Circle's land in this area.

69. During the time Mr Heeley was working for Blue Circle, Burham Parish Council was still concerned about the use of footpaths by horse riders, and the minutes of its meetings reveal that Blue Circle was involved in discussions on the matter in 1991 and 1994, although it is not clear whether the paths in question included any of the Order routes.
70. It seems to me that if a reasonable landowner, or its responsible employee, was aware of use by horse riders of the public footpaths or other ways crossing his land, even if that use appeared to be fairly occasional, it would have been difficult for him to draw any other conclusion than that the horse riders were asserting their right to use these ways.
71. Some of Trenport's witnesses acknowledged that they had seen use of the Order routes by horses, though this use was said to have been occasional. Others had seen very little or none. I do not doubt the sincerity of these witnesses, but it is unlikely that any was within sight of any particular path every day during daylight hours, and I note that it does not take many minutes for a horse and rider to traverse a path. In other words, it does not follow from a failure to remember seeing equestrian use, or remembering only very occasional equestrian use, that no or very little use occurred.

User evidence forms

72. User evidence forms were submitted, either at the time of the applications or subsequently, from more than 40 individuals. In some cases just one form was submitted to cover use of some or all of the Order routes, while in many cases one form was submitted for each route used, and in others the user evidence forms were supplemented by written notes of interviews carried out by officers of KCC. Thirteen horse riders gave evidence of their use of the Order routes at the inquiry and were cross-examined.
73. As for the actual use of the Order routes as evidenced by the completed user evidence forms, I accept that these forms can be, and often are, blunt instruments. For example, a user might be asked to estimate the frequency of use of a route during a 20 year period which ended 15 years ago. Unless the witness kept a record meticulously, any single figure given is likely to over-represent the average frequency, ignoring periods of illness, of bad weather, holidays away from the area or even of child care when riding was less frequent. An estimate that there was 'weekly' use of the Order routes as a whole will not be as valuable as a list of separate estimates for each of the routes used.
74. KCC argued that the levels of use recorded by completed user evidence forms would only have been a 'representative sample' of the actual number of people using each route. I do not accept that argument. It would probably represent, in my view, the minimum number of users. The actual number may well have been higher, but there is no way of telling how many people who rode horses on some or all the Order routes did not provide evidence of that use. That would depend on all sorts of factors, such as the turnover of population in the area, and the thoroughness with which KCC and the applicant went about trying to contact those who had used the Order routes.
75. Having noted such points, I was given no convincing reason to doubt that, to take one example, at least 25 people were riding with some regularity between M and N in the 1990s. Some were riding two or three times a week, others only once a month. A rough calculation leads to the conclusion that there

would probably have been a minimum of about 24 journeys on horseback between N and M in a typical week. It seems to me that such a number would easily be sufficient to represent use by 'the public' and would also have been sufficient to come to the attention of the actual landowner, or a reasonable landowner, as the assertion of a right.

76. While cross-examination of horse riders revealed that the recollections of some seemed vaguer than others, there seemed to be no suggestion that anyone gave evidence that a route had been used when it had not; in other words, if a rider stated that she had ridden between A and B over a period of years, there might be some doubt about the frequency of use or the observation of structures along the way, but no significant doubt that the route had been used.

Land not in Trenport's ownership

77. Order routes south of the barrier across the concrete track between F and G do not cross land in Trenport's ownership. Between A and F there is clear evidence that at some time in the late 20th century, horse step-overs as described above at paragraph 25 were provided, presumably by, or with the agreement of, the landowner at the time, which can have had no other purpose than to facilitate the passage of horses between A and F and to get onto B-F from D-C.
78. I consider the user evidence concerning each individual route below. For each route I have noted the number of people who stated that they had been using it only at the beginning, middle and end of the relevant 20 year period. I consider this justified, since there are no examples when, say, 22 people claimed to be using a route in one year but only 4 or 5 in subsequent or preceding years. In other words the numbers in each case changed gradually.

A to B to C, 1989-2009

79. The user evidence suggests that a minimum of 17 people were regularly riding this route in 1989, 15 people half way through the period and 7 at the end of the period. The lower figure at the end could be related to the fact that the approach from the north via Old Church Road was made impassable in 2003, as was the approach via H, because of the erection of motor-cycle barriers, so that equestrian use would only have been possible after that date on a route from A to B and then on to either C-D or F-E.
80. That A-C was in regular use by horse riders and that the landowner was aware of the use is supported by the fact that a step-over stile for horses had been provided, probably at some time after 1968 but before 1989, just to the north of the sewage works between A and B. There is a similar step-over just south of C, which would have facilitated the use of horses continuing from D-C onto the Order route between B and F.
81. In 2012, Mr and Mrs Still, who live at Corporation Cottages (north-west of A, shown on the map below) wrote to KCC objecting to the then proposed upgrading of A-B to restricted byway. They wrote: *We have lived at Corporation Cottages since July 2006, in that time we have only seen horses being used on this pathway on just a handful of times... We do not have an issue with horses using this route but we do have issue with the fact that for this to happen the restrictors will have to be removed.* Mr Still gave oral evidence to the inquiry. He stated that he was at home every day, and that

would be able to see a horse passing between A and B from his ground-floor windows. Between July 2006 and August (or possibly October) 2009 (when the motor-cycle barrier was installed) he saw only one person, sometimes accompanied by another on a pony, riding a horse between A and B. He saw her every six weeks or so. Horses were noticeable because of the distinctive sound made by their hooves on the tarmac surface of the road. Although he stated that he was often outside in and around in the garden he did not estimate for what periods during each day he would have been in a position to observe equestrian use.

82. In my view Mr and Mrs Still's observations are not incompatible with the level of use reported by horse riders between 2006 and 2009; it is not likely that someone, even if at home most of the time, would notice every, or even a majority of use by horses. This would require constant observation with no significant background noise. Although use of the route towards the end of the 20 year period was relatively low, it is still sufficient, in my view, to demonstrate public use of A to C by horse riders during the whole of the period 1989 to 2009.

C to F, 1990-2010

83. The user evidence suggests that a minimum of 19 people were regularly riding this route in 1990, 16 in 2000 and 6 just before the end of the 20 year period. There is no evidence that a barrier effective to stop horses has ever been placed across C-F, the date of 'bringing into question' being simply the date of application for a modification order. The evidence of poaching of the ground shows that C-F is well used by horse riders at the present time.

84. I conclude that C-F was used by the public on horseback from 1990 to 2010.

F to G, 1983-2003

85. The user evidence suggests that a minimum of 22 people were regularly riding this route in 1983, 18 in 1993 and 13 just before the end of the 20 year period. I considered above whether riders were using the concrete track or the route shown on the first Definitive Map, which meets the concrete track north-west of where it is obstructed by a barrier, and concluded that it was the route in the field which was followed by horse riders.

86. I conclude that this route was used by the public on horseback for a full period of 20 years between 1983 and 2003.

G to H, 1976-1996

87. KCC's summary of the user evidence suggests that a minimum of 15 people were regularly riding this route in 1976, 24 people in 1985 and 18 in 1995 just before the end of the 20 year period.

88. However, it was noted on some user evidence forms that there was more than one route that horses could follow between G and H, while other people gave evidence that the route had varied slightly depending on the state of vegetation and whether a particular route was free of natural obstructions. Some of Trenport's witnesses also claimed that there was no single route which was always available.

89. I cannot conclude, therefore, that all, or even a majority of the user evidence relates to the route shown on the Order map between G and H during the years

1976 to 1996. I conclude that it has not been shown that the public on horseback used the same route, shown on the Order map, for a full period of 20 years between 1976 and 1996.

H to I to Eccles Row, 1984-2004

90. The user evidence suggests that a minimum of 22 people were regularly riding this route in 1984, 19 in 1993 and 10 around the end of the 20 year period in 2004. No users mentioned that they had any difficulty riding this route before the barrier was installed in 2004.
91. A number of Trenport's witnesses wrote about the route from H to I (the route south-east of I is a metalled private road with houses either side). Two of these witnesses were tenant farmers. One stated that the route got very overgrown in the late 1980s and 1990s and his impression was that people stopped going down there. The other stated that even before it was made impassable for horses it was very overgrown. On the other hand, some local people who walked in the area, whose evidence for Trenport covered the same or overlapping periods and all of whom wrote about how the route or routes between H and G were overgrown, appear not to have registered the overgrowth which the tenant farmers had seen between H and I. One stated that in the early 1980s he had seen a lady on several occasions with groups of 4, 5 or 6 riders going along from I towards H. Another walked from H to Eccles about once a month between 1972 and 2010. A third, who had run along various routes from 1995 onwards, noted only that this route was: *quite wide and was clearly metalled in the past*.
92. Neither tenant farmer, it appeared, had actually been along this route, but had just seen it from their fields. I conclude that it was probably passable by horse riders at all times between 1984 and 2004 and that it was used by a sufficient number to represent the public.

L to M, 1983-2003

93. The user evidence suggests that a minimum of 22 people were regularly riding this route in 1983, 23 in 1992 and 15 in the year preceding the end of the 20 year period. I have seen no evidence that use was interrupted. The tenant farmer between 1983 and 2000 of the land through which it runs stated in evidence: *I do not remember seeing people walking, riding horses or driving vehicles along the track between M and L*. His successor from 2000, however, noted: *Since 2000 I have seen people using it daily on foot – and I have challenged them when I have been able to do so. In the early days of my tenancy, I did not often see people riding horses along there, just the odd one that comes down from Church Street, Burham [i.e. N to M], goes along it, and then up MR 454 between L and K. It is a bit more frequent now than in 2000. I continue to challenge them*. In cross-examination this tenant farmer stated that he was not concerned about horse riders if they kept to tracks. It seems to me unlikely that horse riders were challenged to any significant extent before 2003, and I conclude that L-M was used by the public on horseback between 1983 and 2003.

L to K and N to M, 1976-1996

94. The user evidence suggests that a minimum of 17 people were regularly riding these routes in 1976, 26 in 1985 and 24 in 1995, the year before the 20 year period ended.

95. It seems likely that these were among the routes that were causing concern to Burham Parish Council in the 1980s and 1990s because they were being used by horse riders. It does not appear to be disputed that the level of use reported occurred during the 20 year period. I conclude that both routes were used by the public throughout the 20 year period.

M to J, 1983-2003

96. The user evidence suggests that a minimum of 24 people were regularly riding this route in 1983, 25 in 1992 and 15 in 2002, the year before the 20 year period ended.

97. This is the one route where there is contemporaneous photographic evidence of horses and riders using the route during the 20 year period.

98. I conclude that this route was used by the public on horseback between 1983 and 2003.

Whether use was as of right

99. Use which is 'as of right' is use which is *nec vi, nec clam* and *nec precario*, in other words neither by force or contentiously, not in secret and not by the revocable licence of the landowner. I have seen no evidence that any equestrian use of the Order routes was in secret, or by permission. Use which is *vi* need not involve the use of physical force; use in contravention of a notice forbidding use may also be *vi*, hence the inclusion of contentiousness. Since, however, in this case, the presence of notices brought the right of horse riders to use some of the Order routes into question, and the relevant 20 year periods therefore preceded their erection, I do not find that use during those periods was contentious.

Evidence of landowners' intentions

100. I have seen no evidence that during the relevant 20 year periods, any intention by any owner of land crossed by any of the Order routes not to dedicate rights of way was communicated, as it must be to be effective, to the equestrian users of those routes. Trenport argued that a brochure produced by KCC about horse riding in the Blue Bell Hill area (immediately north-east of Burham) in the early 1990s was *powerful outward evidence, likely to come to the attention of persons interested in the matter, of the absence of any intention on the part of the landowner [Blue Circle at the time] to dedicate ways to equestrian use*. The brochure notes: *We are particularly grateful to Blue Circle Industries plc, and their tenants, for the establishment of permissive and dedicated routes across their land*. I do not consider that a reasonable horse rider, contemplating using one of the Order routes, even if he or she had read the whole of this brochure, and even if he or she was aware of the identity of the owner of the land he or she was about to cross, would take anything in the brochure as an indication that Blue Circle was evincing an intention not to dedicate that particular route.

Other matters

Timeliness

101. When Trenport first made submissions in arguing that the applications for orders should not be granted by KCC, Mr Morshead suggested that the 'strongest contenders' for the dates of bringing into question of the public's

right to use the various routes were the dates of applications for orders, i.e. 2010 and 2012. Later, when apparently accepting that rights were not brought into question until earlier in the 21st century, Mr Morshead argued that the 1981 Act did not contemplate that the public should have an indefinite period of time from the date when a way was brought into question in which to assert that public rights had arisen in relation to the way. He submitted further that the requirement of a timely assertion of rights was to be implied in order to secure that section 31 of the 1980 Act was compliant with Article 1 of the First Protocol to the European Convention on Human Rights, and that it followed from this that it was no longer open to the public (including KCC on its behalf) to assert the existence of bridleway rights over a number of the Order routes.

102. At the inquiry itself Mr Morshead did not pursue this argument, it seemed to me, with any great enthusiasm. If it is correct, then it seems to me to raise a number of insuperable problems. For example, it might be asked, at what stage is it decided when a 'bringing into question' has occurred? In this case Mr Morshead originally argued for 2010 and 2012, so presumably KCC would not at that point be debarred from asserting the existence of bridleway rights. Later, Mr Morshead seemed to accept that the use of some routes was brought into question in 2002, and the use of others in 2009. What would be the practicalities of being allowed to assert the existence of some routes, but not of others linked to them, assuming that 2002 was too long ago? In fact the dates of bringing into question will only be determined (in many cases) following a public inquiry. How would KCC determine whether it was open to it at any stage up to and during an inquiry to assert the existence of public rights? It seems to me that Mr Morshead's argument may be dealt with by noting that provision for a time limit on making applications could have been included in section 31 of the 1980 Act, or in the 1981 Act, but was not, and that I can see no reason why it should be inferred to have been included.

The presumption of regularity

103. Mr Morshead submitted that, based on the legal maxim *omnia praesumuntur rite essa acta*, there was a 'strong' presumption that KCC's Definitive Map recorded all the public rights which subsisted or were reasonably alleged to subsist at the date of compilation and of any subsequent review. It followed that KCC would have to overcome that strong presumption in order to prove the subsistence of public bridleway rights on the Order routes. I do not accept that argument. I accept that there is a presumption that the correct processes were carried out when the Definitive Map was compiled and reviewed, but it does not follow that those processes will have identified all or even a majority of ways which carried unrecorded public rights or which could pass the tests for deemed dedication.

Conclusion

104. Having regard to these and all other matters raised both at the inquiry and in written representations I conclude that Order A should be confirmed. I conclude that Order B should be confirmed with a modification to remove reference to the route between G and H (i.e. the route between D and F on the Order map for Order B). I conclude that Order C should be confirmed with a modification to amend the route north-west of point F (i.e. between A and B on the Order map for Order C). Mr Westaway, for KCC, argued in submissions that this Order would still be for the upgrade of a footpath to a bridleway, since the Definitive Map was 'wrong'. I do not accept that argument. The Definitive

Map is legally conclusive of what it shows (Section 56 of the 1981 Act and see paragraph 19 above); currently it shows part of the route used by horse riders between F and G as carrying no public rights. Any proposed modification would have to reflect that.

Formal Decision

105. I confirm Order A.

106. I propose to confirm Order B with the following modifications:

- In the Order and on the Order map, wherever it occurs, delete 'MR605,'
- In part I of the Schedule to the Order, delete paragraph 3
- Also in Part I, renumber paragraphs 4 and 5 as paragraphs 3 and 4
- In part II of the Order delete the section 'MR605 Bridleway... Add MR605 to the connections item for MR30'
- Delete the route D-F from the Order plan and reference to it in the key to the Order plan

107. I propose to confirm Order C with the following modifications:

- In the preamble to the Order, after the words 'of a different description', add ', and the discovery of evidence by the Authority which shows that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path'
- In part I of the Schedule to the Order, delete '780 metres' and insert '420 metres', and insert after that 'to TQ 7192 6071, and that length of public footpath MR30 which commences at TQ 7201 6059 and runs generally south-east for approximately 260 metres'
- Add a new section headed 'Description of path to be added' which reads as follows: 'the effect of the Order is to add a bridleway, numbered MR30, with a width of 2.5 metres, which commences from the existing MR30 at TQ 7192 6071 and runs generally south-south-east for approximately 200 metres to rejoin the existing MR30 at TQ 7201 6059'
- In part II of the Schedule to the Order, before the word 'Upgraded', add 'Part'
- On the Order plan add a line showing the route to be added as a bridleway to the north east of the line showing the current path between TQ 7192 6071 and TQ 7201 6059 and show the current path between those points by the symbol for an unaffected path.
- In the key to the Order plan, add after 'Route to be Upgraded' 'or added'

108. It will be noted that if the Order were to be confirmed with these modifications, the Definitive Map would show two paths, both called MR30, one a bridleway and one a footpath, running parallel to one another for about 200 metres. In that situation, it would be for KCC to decide what further action was needed to rectify this anomaly. It should also be noted that KCC did not provide me with any suggested wording for the modification of Order C.

109. Since the confirmed Order B would not show a way shown in the Order as submitted (i.e. the route shown as G-H on the coloured map below), and since the confirmed Order C would affect land not affected by the Order as submitted (i.e. land to the east of the concrete track north-west of F) I am required by virtue of Paragraph 8(2) of Schedule 15 to the 1981 Act to give notice of the proposals to modify the Orders and to give an opportunity for objections and representations to be made to the proposed modifications. A letter will be sent to interested persons about the advertisement procedure.

Peter Millman

Inspector

APPEARANCES

For Kent County Council

Mr N Westaway of
Counsel
He called:

Mrs K Scammell	Horse rider
Ms J Weller	Horse rider
Mrs M McLauchlan	Public Rights of Way and Access Offer, KCC
Ms J Skinner	Horse rider
Mrs B Slaughter	Horse rider
Mrs J Tanton Brown	Horse rider
Mrs A Rillie	Horse rider and the applicant for the Orders
Mrs C Dorey	Horse rider
Miss W Neath	Horse rider and livery owner
Ms S Saunders	Horse rider
Mrs J Tyson	Horse rider

The applicant for the Orders:

Mrs A Rillie	Representing the British Horse Society
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She called:

Mrs D Adams	Horse rider
Mrs L Kellaway	Horse rider
Mrs T Wheeler	Horse rider

Additional Supporters:

Mrs L Storey	Horse rider
Mr T Fulwell	Deputy Chair, Wouldham Parish Council
Miss G Goode	Cyclist

Objectors:

Mr T Morshead Q.C. of Counsel	Representing Trenport Investments Ltd.
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He called:

Mr D Davis	Resident of Burham
Mr R Dalton	Parish and Borough Councillor and resident of Burham
Mr L Fulford	Ex-tenant farmer
Mr R Hamblyn	Ex-employee of Trenport
Mr M Heeley	Ex-employee of Blue Circle
Mr R Gledhill	Chairman of Aylesford PC and resident of Eccles
Mr T Still	Resident of Aylesford
Mr A Ford	Resident of Burham
Mr T Venn	Employee of Trenport
Mrs S Boards	Community Liaison Manager for Trenport
Mr G West	Farmer and tenant of Trenport

Mr M Cable

Resident of Burham

Additional Objectors:

Mr W Stead

Vice-chair, Burham Parish Council

Mr N Harris

Clerk to Aylesford Parish Council

DOCUMENTS HANDED IN AT INQUIRY

1. Mrs Rillie's stile glossary
2. Additional witness statements from Lyn Prosser and Alex Taskin
3. Trenport's evidence bundle
4. Wouldham Parish Councillors who have used Order routes
5. Mrs Kellaway's evidence
6. Mrs McLauchlan's qualifications
7. Petition asking for a cycleway from Wouldham to the Friars
8. Letter from Jan Taylor
9. Tracey Wheeler's photographs
10. Trenport's opening note
11. Mr Davis's sketch of the gate at point G
12. Mrs Tyson's photographs
13. Mr Cable's second witness statement
14. Mr West's second witness statement
15. Letter, Mrs Boards to Lucy Breeze, 18 April 2007
16. Archive photographs of posts, notices etc from Kent County Council
17. Submissions of Trenport Investments Ltd.
18. Submissions of Kent County Council



—●— = barrier





