

Order Decision

Inquiry held on 1 June 2017

by Sue Arnott FIPROW

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

Decision date: 20 June 2017

Order Ref: FPS/B3600/7/112

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981. It is known as the Surrey County Council Bridleway No. 587 (Frensham) Definitive Map Modification Order 2016.
- The Order is dated 13 January 2016. It proposes to modify the definitive map and statement for the area by adding a bridleway between Tilford Road and Hankley Common at Rushmoor, near Frensham, as shown on the Order map and described in the Order schedule.
- There was one objection outstanding when Surrey County Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.

Summary of Decision: The Order is confirmed.

Procedural Matters

1. I held a public local inquiry into the Order at the Marindin Hall in Millbridge, Frensham on 1 June 2017. During the previous afternoon I inspected the ends of the route in question, unaccompanied, but was unable to walk between points A and B (the route shown on the Order map); gates at both ends were permanently secured and alternative access was not available at that time.
 2. The objector, Mr Turner, is the owner of the land over which the Order route runs. Despite indicating that he intended to attend the inquiry, he was not present at the event. Consequently it was not possible for me to seek his agreement to a further site visit. However I do not consider this to be essential to my determination of the Order.
 3. Neither Mr Foster nor Mr Milton had formally objected to the Order and therefore did not appear at the inquiry as statutory objectors. Mr Foster submitted a statement of case prior to the inquiry making representations in relation to the extent of the Order; Mr Milton did not. Both attended the inquiry to support the Order insofar as it goes but submitted that the evidence supports a much longer route extending eastwards over Hankley Common to definitive Bridleway No 108 in Thursley Parish at Kettlebury Hill, this being the route originally applied for.
 4. At the start of the inquiry I explained that, even if wholly convinced by these submissions, I would be unable to act on such a conclusion since the constraints of the Order map would not allow me to modify it to include the full extent of the route they sought to have recorded. Consequently I made clear that I would not spend inquiry time examining in detail the evidence to support this claimed extension. Nevertheless, I accepted that some of the issues raised by their submissions would be relevant in relation to the question of whether the Order route (A-B) can validly stand as a cul-de-sac bridleway. These matters are examined below.
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5. Two applications for an award of costs were made at the inquiry and are the subject of separate decisions.

The Main Issues

6. The Order was made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) on the basis of an event specified in Section 53(3)(c)(i), namely the discovery of evidence which shows a right of way which is not recorded in the definitive map and statement subsists over land in the area to which the map relates.
7. Whilst the evidence need only be sufficient to *reasonable allege* the existence of a public right of way to justify an order being made, the standard of proof required to warrant confirmation of an order is higher. In this case and at this stage, evidence is required which shows, *on the balance of probability*, that a right of way subsists along the Order route.
8. The case in support of the Order is based primarily on the presumed dedication of a public right of way under statute, the requirements for which are set out in Section 31 of the Highways Act 1980 (the 1980 Act). For this to have occurred, there must have been use of the claimed route by the public on foot, as of right and without interruption, over the period of 20 years immediately prior to its status being brought into question so as to raise a presumption that the route had been dedicated as a public footpath. This may be rebutted if there is sufficient evidence that there was no intention on the part of the relevant landowner(s) during this period to dedicate the way for use by the public; if not, a public footpath will be deemed to subsist.
9. In the alternative, if not satisfied the requirements for dedication under statute have been met, I may consider the common law approach. In addressing this possibility the issues I would need to examine are whether, during any relevant period, there was express or implied dedication by the owner(s) of the land in question (having the capacity to dedicate a public right of way) and whether there is evidence of acceptance of the claimed right by the public. In this instance, the burden of proof lies with those that assert the existence of a public path.

Reasons

The case for statutory dedication

10. Following the approach set out in Section 31 of the 1980 Act, the first matter to be established is when the public's rights were brought into question.

Bringing into question

11. It is not disputed that the status of the Order route was challenged in early 2013 following a change in ownership of the land.
12. Mr Turner acquired the property over which the Order route passes in May 2012. He replaced the post and barbed wire fence which ran along the southern side of the entire route from A to B, separating the path from the field. This new fence used plain wire but although Mr Turner stated that he placed this more or less on the same line as the old fence, witnesses described (and photographs infer) that this new fence narrowed considerably the width available to the public. This proved to be particularly awkward for users of the path where the new fencing was placed parallel to the northern boundary at a

- 'dog-leg' so that path users were forced onto a line with two sharp turns whereas before they had simply taken a direct route. This was especially difficult for cyclists because of the limited width.
13. Around that same time Mr Turner also erected deer fencing along the roadside boundary and tall gates at both ends of the claimed route with signs attached asking people to 'shut the gate'.
 14. A short time after installation of the new gates and fencing, a notice was positioned at point A to the effect that the landowner reserved the right to close the path for maintenance¹.
 15. It was soon after a series of acts of vandalism² between 19 November 2012 and 3 December 2012 that Mr Turner decided to permanently close the path by screwing the gates shut³. Although people had been able to use the path up to this point in time, once these obstructions were in place, all use ceased.
 16. These events prompted an application to be made on 16 March 2013 to record a public footpath along the Order route A-B and continuing eastwards over Hankley Common to Bridleway 108 (Thursley) to a point on Kettlebury Hill marked as E on the application plan (but not shown on the Order Map). However the necessary certificates were not complete until 30 April 2013.
 17. Whilst Surrey County Council (SCC) has taken the point at which the status of the Order route was brought into question to be the date on which the route was blocked completely, it is also possible that the initial narrowing of the way challenged the extent of the public's rights although there is no evidence that this action prompted any complaint to be registered.
 18. However when the notice concerning the landowner's right to close the path was put up, Mr Morgan confirmed that Frensham Parish Council had received complaints and more when the gate was finally blocked, all of which were passed on to SCC. It seems that these three actions – the narrowing, the notice and the final obstruction – all occurred within a few months although it is difficult to confidently attach dates to each. All could have brought into question the extent of the public's rights but, since little turns on each individual action, I shall take these collectively as leading to the application which sought to record a public right of way.
 19. I am satisfied that the status of the Order route was brought into question early in 2013 so will examine the claimed use by the public during the preceding twenty year period, 1993-2013.
 20. There is no evidence of anyone questioning the status of the Order route at any earlier date. However in his written submissions Mr Turner provided a photograph of the remnants of a wooden gate which once stood at point A. On this photograph, taken in 2015, a broken notice is attached; this clearly states: "THIS IS NOT A PUBLIC RIGHT OF WAY. BUT THE OWNERS ALLOW THE PUBLIC TO USE IT UNTIL FURTHER NOTICE. NO HORSES. NO CYCLING."

¹ The interview statements of Mr Young and Mr & Mrs Raynes refer to this notice.

² A photograph showing the Police Notice attached to the fence near point A was provided.

³ I note that, through his solicitor, Mr Turner first made enquiries of the highway authority to check whether or not a public right of way existed along the present Order route. Since no public rights are currently recorded on the definitive map and statement, it is unsurprising to find the reply identified no such rights although it did (in somewhat ambiguous language) acknowledge that "the nature and extent of highway rights, if any, is uncertain". Whilst the definitive map is conclusive of the rights recorded thereon, this is without prejudice to any others that may exist.

21. Yet at the inquiry all the witnesses who gave evidence confirmed that no such notice had ever been present at any time prior to 2013. Indeed it was not visible on a photograph of the same piece of gate taken by a Council Officer on 17 January 2013. It is my conclusion that this notice was not in place during the relevant period and therefore did not bring into question the status of the path.

Evidence of use by the public 1993-2013

22. If a presumption of dedication is to be raised, qualifying use by the public during the relevant period must be shown to have been enjoyed as of right, without interruption, and to have continued throughout the full twenty years. Use 'as of right' is interpreted as being use by the public that is not by force, does not take place in secret and is not on the basis of permission.
23. In support of the claimed route is evidence of use from a total of 43 people who completed standard forms that were submitted with the application. Twenty of these claimants also recorded use by bicycle and one on horseback. Overall, the claimants confirmed use dating as far back as the 1930s⁴, continuing until early 2013 when the way was blocked; some (Mrs Orbell, Mr Johns, Miss Orbell and Miss Wills) have used it for over 50 years.
24. In addition to the user evidence forms, 20 claimants were interviewed by SCC so as to establish in greater detail the nature of their use of the Order route. Seven of these people appeared as witnesses at the inquiry and gave evidence verbally, all answering questions in relation to their personal use of the path.
25. None of these witnesses had ever been given permission to use the route A-B. No-one had seen any relevant notices prior to the one referring to the owner's right to close the path for maintenance. None of the claimed use took place in secret, nor was it said to be by force.
26. Eighteen of the claimants used the Order route for the full 20 years; others for lesser periods, some use being more frequent than others. It is perhaps not surprising to find most of the claimants are local people using the path to gain access to Hankley Common which lies to the east but I have no difficulty in accepting these people as sufficient to represent 'the public' in this context.
27. Closer examination of this evidence reveals that at the start of the 20 year period, 23 claimants were using the route on foot and that this number increased to at least 35 by 2010. I agree with SCC this is a substantial amount of use each year throughout the relevant period, sufficient to raise a presumption that the way had been dedicated to the public for pedestrian use.
28. Although the application had been made to register the route as a footpath, on examining the evidence provided, the County Council concluded that the evidence indicated significant use by cyclists as well as pedestrians and it had therefore determined to record the route as a bridleway.
29. Only one person had indicated use on horseback between 1998 and 2001 and at the inquiry Mr Milton said he had ridden the route twice in the 1970s. Although consistent with the status of bridleway, this falls a long way short of the level of use necessary to establish a right to ride along the Order route.

⁴ Mrs Orbell

30. Turning to use on bicycle, only 8 of the 20 users who rode the route during the relevant 20 years did so for the whole period. Of these 8 people who were riding their bicycles between A and B in 1993, one was using it 2-4 times a month, two using it 1-2 times a month and four claimed to be using it less than once a month (with one not stating frequency). Although in later years the route was more intensively cycled, in the first 2 or 3 years of this period it seems to me that use by cyclists was rather sparse and I am not satisfied that this reaches the necessary threshold to demonstrate use by the public on a bicycle continuously throughout the full twenty years.
31. I therefore reject the conclusion reached by SCC that the use by claimants on bicycle is sufficient to raise a presumption of dedication to the public over and above on foot, as has been established through the long use by walkers.

Intentions of the landowner(s) 1993-2013

32. I turn next to consider whether there is evidence to show that during the relevant period, the owner(s) of the land demonstrated a lack of intention to dedicate a public right of way over the claimed route.
33. Mr Turner acquired the land in 2012 at auction. There is no documentary evidence provided to show that he purchased the land from a Mrs Gilbert although that has been presumed to be the case. Miss Pointer leased the land for her horses from 1998 to 2008 and it seems Mrs Gilbert owned the property both before and after this.
34. There is no evidence to suggest that any steps were taken by or on behalf of Mrs Gilbert to prevent the public walking or cycling along the claimed path between 1993 and 2012 (or earlier). Neither is there any evidence to link the notice photographed by Mr Turner in 2015 with Mrs Gilbert or to suggest this was her approach to use of the route. Indeed the interview statement of Mr and Mrs Farley indicates that as far back as 1982 Mrs Gilbert openly acknowledged use of the route by the public.
35. Mrs Gilbert cannot now be traced and there is no information directly from her. However, in her evidence to the inquiry, Miss Pointer confirmed that during her 10 year tenancy she received no instructions from the owner as regards the path or path users and it did not form part of the land leased by her. She never thought it was not a public path and believed Mrs Gilbert thought likewise.
36. Once Mr Turner took ownership of the land he initially allowed the public to continue to use the way, albeit narrowed and diverted along the boundary at the 'dog-leg' before eventually closing it to the public. His actions led to the status of the path being brought into question and are not, in themselves, sufficient to demonstrate a clear lack of intention to dedicate the way as a public right of way.
37. No maps, statements or statutory declarations have been deposited by any of the landowners concerned under the statutory procedures set out in Section 31 of the 1980 Act to formally rebut any presumption of dedication.
38. Consequently I find insufficient evidence that during the period 1993 – 2013 the relevant landowners made clear to the public a lack of intention to dedicate a public path along the route shown on the Order map. It follows from this that under the statutory approach a public right of way on foot can be presumed to subsist.

Implied dedication at common law

39. SCC also considered the evidence under the common law and I shall do likewise. The relevant issues are set out in my paragraph 9 above. In this case there is no evidence of express dedication.
40. In her submissions on this point, Ms El Shatoury relied on the significant amount of undisputed public use as far back as the 1930s as a demonstration of the owners' acceptance of a public right of way. Over the years use had become frequent and sizeable and must have been evident to the landowner.
41. Evidence from Miss Pointer, Miss Orbell and Miss Mills was that Mrs Gilbert had purchased the land whilst it was still scrub and, sometime in the early 1980s, had proceeded to clear the trees in order to form a paddock for horses. The field remained separated from the path, latterly by a post and wire fence which had been maintained by Miss Pointer during her 10 year tenancy (1998-2008).
42. Ordnance Survey maps offer further support for this. The 1:10,000 scale map of 1978 shows the Order route clearly delineated as "Path" and segregated from wooded enclosures to the north and south. The 1993 revision also marks the route as "Path" but trees are no longer shown in the field to the south. In neither case does the description "Path" imply that it is a public one but merely that a path of some description physically existed at the date of survey. However the evidence from witnesses shows very clearly that the public was making use of this path at the time of both map editions.
43. Ms El Shatoury submitted that Mrs Gilbert knew that people were using the path. She maintained the fence so as to keep her horses away from the public rather than taking steps to stop use of the way as she might easily have chosen to do. The fact that Miss Pointer's lease excluded the path clearly suggests that it had been set apart for public use.
44. It appears that at some time in the mid-twentieth century what had originated as a simple path was enlarged to form a wide track which is said by witnesses to have been to provide access for military vehicles to reach Hankley Common. Some claimants recall a concrete bridge being installed by the Canadian Army. It is not certain exactly when military use ceased but there is no evidence of motor vehicles being driven along the Order route by the public at any time. However the width of the track enabled cyclists and (a few) horse riders to make use of it as well as walkers.
45. The evidence provided by witnesses has been analysed by SCC and summarised in two charts, one showing use on foot and the other by cyclists. I have already concluded that the pedestrian use is sufficient to make the case for a public footpath under the statutory scheme and would similarly reach the same conclusion at common law. Whilst I was not satisfied that the use demonstrated by cyclists was sufficient to cover the whole 20 year period to a satisfactory degree, I have no hesitation in concluding that the increased frequency of the user from the mid-1990s until the 2013 blockage would have demonstrated regular use by cyclists such as to alert the landowner to the fact that a public right of way was being asserted.
46. The evidence indicates that Mrs Gilbert probably was aware that use by cyclists was taking place as well as people on foot and she took no action whatsoever to stop it. The clear inference to be drawn from this is that during the period of her ownership she was content that the public should enjoy a right of way, so

that dedication can be implied from her lack of action with the subsequent use by the public providing evidence of acceptance.

Status of the public right of way

47. At this point it is necessary to consider the implications of Section 68 of the Natural Environment and Rural Communities Act 2006 (the 2006 Act) and the decision in the Court of Appeal in the case of *Whitworth v SSEFRA* [2010] WWCA Civ 1486 (*Whitworth*).
48. Section 31 of the Highways Act 1980 as amended by Section 68 of the 2006 Act, and as read with Section 66 of the same Act, provides that use of a way by non-mechanically propelled vehicles (such as a pedal cycle) is capable of giving rise to a restricted byway. Thus in certain circumstances, claimed cycling use can contribute to the case for a restricted byway rather than a bridleway.
49. In *Whitworth* Carnwath LJ took the view that subsequent use by cyclists of an accepted, but unrecorded bridleway, where use of the bridleway would have been permitted by virtue of Section 30 of the Countryside Act 1968, could not give rise to anything other than a bridleway.
50. However, in the present case there is no evidence to support a pre-existing public bridleway having been established to which the later cycling use might be attributed.
51. Carnwath LJ further stated his conclusion that, even where there is no finding of pre-existing bridleway rights, since regular use by horse riders and cyclists could be consistent with dedication either as a restricted byway or as a bridleway, it was reasonable to infer the latter, it being the least burdensome to the landowner.
52. In my view, this analysis is only likely to be applicable in cases which rest on implied dedication at common law where the question of 'how the user would appear to the landowner' may be a relevant consideration. Consequently I am content to accept SCC's position that the cycling use that took place along the Order route would have established a public bridleway, rather than a restricted byway as might have been the case had the matter rested on the provisions of Section 31 of the Highways Act 1980 (as amended).

The nature of the Order route as a cul-de-sac

53. SCC noted that a public right of way is generally considered to run between two places to which the public has access, usually from highway to highway. However there are instances where a public right of way may legitimately exist as a cul de sac, in particular where a path leads to 'a place of popular resort'⁵.
54. Here, point A is clearly located on a public highway (Tilford Road); point B is not. The question therefore arises as to whether B lies at a place of popular resort or whether a cul-de-sac bridleway might be justified on other grounds.
55. To the east of the Order route lies Hankley Common. Here the land is owned by the Ministry of Defence (MOD). Despite its name, it is not registered as common land, nor is it recorded as Open Access Land under the Countryside and Rights of Way Act 2000 on account of being a military training area covered by MOD byelaws. Nevertheless it is an area to which the public have

⁵ The description used by Lord Justice Atkins in the case of *Moser v Ambleside U.D.C.* [1925] 89 JP 118

enjoyed access for many years. There are numerous paths which cross the common and it is reported to be a popular place to visit for recreation with car parking recently provided for public use by the MOD.

56. At the inquiry, Mr Morgan explained that around 7 years ago MOD land agents had met with local parish councillors with an interest in the common to discuss opening up public access beyond that permitted by the present byelaws. Whilst it is essential that the MOD is able to close certain areas if dangerous military manoeuvres are planned, it was then considering allowing horses to be ridden on certain tracks through a permit scheme. (This is now in operation with the north-south track some 10m to the east of point B waymarked as a 'permitted bridleway'.)
57. SCC submits that in these circumstances, Hankley Common fits the description of a place of popular resort and therefore there is no difficulty with the Order route terminating at point B where it reaches the common.
58. Before moving onto representations submitted by Mr Foster (for Cycling UK) and supported by Mr Milton (for the British Horse Society), I will first say that I am entirely at ease with the concept of a cul-de-sac route for pedestrians since it is clear from the terms of the Surrey Commons Military Lands Byelaws 1978 (the byelaws) that "*the public are permitted to use all parts of the Military Lands not specially enclosed or the entry to which is not shown by notice as being prohibited or restricted, for the purposes of open air recreation at all times providing such access does not inhibit the military use of such lands for which they are appropriated*" (Byelaw 2). People therefore have a long-established permission to walk on the relevant land at all times. However this arrangement does not appear to extend to cyclists or horse riders since Byelaw 3 states: "*No person shall cause, permit or suffer a horse or a vehicle of any kind to enter into or upon any part of the Military Lands.*" Thus it would appear that horses and bicycles⁶ are expressly excluded from the common.
59. SCC reported that all the claimants that were interviewed confirmed they used the Order route A-B as their main access to Hankley Common, including those who rode bicycles. From point B they used several routes across the common, the original application route B-C-D-E being one of them.
60. There is no historical evidence which would suggest that the Order route and any of the onward connections from point B are ancient ways from which a presumption might arise in favour of A-B being part of a much longer highway. However there is little doubt that when the Order route was in use from the mid-1990s up to 2013, cyclists continued beyond point B as did all walkers, byelaws or not.
61. It was Mr Foster's submission that point B cannot qualify as a place of public resort since cycle use beyond here would have been in breach of the byelaws and therefore "technically unlawful". That is not to say he accepted that no public right could be established by bicycles over the common; indeed he took issue with SCC's statement in its Report to Committee⁷ that the continuation of the application route B-E could not be considered as a possible right of way on account of the permission for recreational use bestowed by the byelaws. He highlighted the Report's failure to consider the implications for cycling use given that this was not expressly permitted by the byelaws.

⁶ Pedal bicycles are generally considered to be vehicles in law albeit not motorised or mechanically propelled ones.

⁷ SCC Local Committee (Waverley) dated 11 December 2015 at paragraphs 5.31 and 5.55

62. He argued that on two counts, the position of cyclists was different from people on foot and that the evidence provided by the claimants could have - and should have - led to the Order being made to record the whole length A-E as a bridleway, not solely A-B.
63. The first proposition was that the MOD was both aware of cycling use and, pre-2013⁸, openly tolerated it despite being in technical contravention of the byelaws, and that this signified a change in its position as regards cycling on the common. There was no overt action to enforce Byelaw 3 by the landowner and therefore the inference to be drawn was that the MOD no longer intended that cycling be prohibited from the common.
64. Mr Foster relied on the words of Lord Hoffman in the case of *R v Oxfordshire County Council ex parte Sunningwell Parish Council* [2000] 1 AC 335 at 349: *"any legal system must have rules of prescription which prevent the disturbance of long-established de facto enjoyment."* He contended that this overarching principle must apply: that regardless of the technicalities the evidence of long and uninterrupted use of the route is overwhelming and as such must, as a matter of public policy, be protected.
65. His second proposition relied on the case of *Bakewell Management Limited v Brandwood* [2004] UKHL 14 (*Bakewell*) in which (at paragraph 46) Lord Scott drew a distinction between the unlawful use of land and criminal use. He concluded with his opinion that *"if an easement over land can be lawfully granted by the landowner the easement can be acquired either by prescription ... or by the fiction of lost modern grant whether the use relied on is illegal in the criminal sense or merely in the tortious sense. I can see no valid reason of public policy to bar that acquisition."*
66. Mr Foster drew a parallel with the situation at Hankley Common, submitting that Byelaws 6 and 8(2) specifically allow for the possibility that authority could be given for activities such as cycling and therefore, following the principle established in *Bakewell*, there should be no bar to the establishment of a public right of way at common law or a prescriptive claim on the basis of uninterrupted long use.

Conclusions on the cul-de-sac issue

67. Firstly, the evidence does not show that in practice the Order route was actually used as a cul-de-sac; all the claimants in this case continued eastwards beyond point B.
68. The Order clearly does not propose to record a public right of way over the route originally claimed between B and E even though the evidence provided by the claimants demonstrates (some) use of it, on foot and on bicycles. Nevertheless, I am mindful of the principle established in the case of *Trevelyan v Secretary of State for the Environment, Transport & the Regions* [2001] EWCA Civ 266 (*Trevelyan*) where⁹ Lord Phillips made clear *"the scheme of the procedure under Schedule 15 (to the 1981 Act) is that if, in the course of the inquiry, facts come to light which persuade the inspector that the definitive map should depart from the proposed order, he should modify it accordingly,*

⁸ During an incident in April 2013 a group of cyclists refused to move onto another track whilst tree cutting works were undertaken, resulting in a statement by the MOD that *"the default position now applies and () all cyclists must abide by the Byelaws"* and stay on public rights of way. Mr Foster highlighted the use of the word 'now', suggesting that it did not apply previously.

⁹ At paragraph 23

subject to any consequent representations and objections leading to a further inquiry." It follows that I am not prevented from considering evidence relating to the route between B and E but, for reasons I explained in paragraph 4 above, there would be no scope for me to act by modifying the Order if I were to conclude, on a balance of probability, that a right of way has been established through long use by cyclists¹⁰. The Order map simply does not extend that far to the east.

69. It could *perhaps* be feasible for me to examine the use claimed by cyclists between point B and the permissive bridleway that is now waymarked along the track 10 metres to the east (noted in paragraph 56 above), this being a point that is visible on the Order map (and referred at the inquiry as B1). Whilst that may have the attraction of resolving some concerns over the cul-de-sac issue, it seems to me more pragmatic to address the status of B-B1 along with B1-C-D-E where all the evidence and submissions in relation to the basis for cycling on Hankley Common can be considered together¹¹.
70. Having formed that view, I do not propose to reach a conclusion on the merits of the submissions put forward by Mr Foster and endorsed by Mr Milton as regards the scope for use by cyclists to establish a right of way over the MOD land. Insofar as it affects my decision on the ability of A-B to be recorded as an apparent cul-de-sac, having heard the arguments put forward by Mr Foster I find no incontrovertible evidence *before me* that might preclude the possibility that a public right of way *might* have been established. However, I am acutely aware that the MOD made no submissions to this inquiry since the route B-E is not the subject of this Order.
71. I return to the question that is the focus for me: can A-B be recorded on the definitive map and statement now as a cul-de-sac bridleway (whether or not access for cyclists (and horse-riders) is extended eastwards beyond the Order route at some stage in the future, either as a public right of way or a permitted bridleway)? Having reviewed the authorities on the subject, I am satisfied there is no reason why it cannot stand alone.
72. The judgement in Attorney General v Antrobus [1905]¹² established that "*the want of a terminus ad quem¹³ is not essential for the existence of a public road*". On the matter of cul de sac highways, in the case of Attorney General & Newton Abbot RDC v Dyer [1945]¹⁴ it was "*clearly settled not to be a requisite of a public right of way that it must lead from one public highway to another. Thus there may be a public right of way to a view point or beauty spot, ...even to the sea's margin and thence returning.*" In that case the foreshore was privately owned and "*...evidence of the user...on their way to a walk over or picnic upon the foreshore cannot be regarded as evidence of user as of right, since in regard to their activities on the shore, such persons can at best have been licensees of the owner or exercising some customary privilege confined to the inhabitants*"; but "*where...there is a body of evidence of user of the way strictly as a public way, it is legitimate to add and to rely upon evidence of user in connection with the privilege mentioned...on the ground that the privileged*

¹⁰ It was not disputed that any claimed use of B-E by pedestrians was not 'as of right' since permission was granted by Byelaw 2.

¹¹ At the inquiry SCC gave an undertaking to look again at the evidence in relation to B-E in the light of the further submissions made as regards the effect of the byelaws on the treatment of use by cyclists.

¹² Attorney-General v Antrobus [1905] 2 Ch 188

¹³ Finishing point

¹⁴ Attorney General & Newton Abbot RDC v Dyer [1945] 1 Ch 67

class of licensees or local inhabitants are also members of the public and pass along the way in their latter character.” In *Roberts v Webster* [1967]¹⁵ the Court concluded that there was no rule of law that a cul-de-sac could never be a highway. A similar conclusion was reached in *R v SSE ex parte Bagshaw and Norton* [1994]¹⁶. Further, in *Robinson Webster (Holdings) Ltd v Agombar and another* [2001]¹⁷ Etherton J said “*It is clear...that public rights may be established over a cul-de-sac by actual use as of right by members of the public*”.

73. In none of these cases are the facts directly comparable to the circumstances here but I am satisfied that it would not be wholly inappropriate to confirm this Order and thereby record A-B as a public bridleway.

Width

74. Amongst his reasons for objecting to the Order, Mr Turner questioned the width of the route as stated in the Order Schedule (2 metres), pointing out that the path had been only 1 metre wide for several years.
75. To the contrary, at the inquiry Mr Milton submitted that 2 metres was not wide enough. He referred to the route once forming an access point for military vehicles with the entrance at that time being around 17 feet (5.18m) wide with a 5 feet (1.5m) wide gap to one side. In his view the Order should reflect the original 5.18m width.
76. For SCC Ms El-Shatoury acknowledged that the widths stated by the many claimants varied considerably but the Council’s evaluation had led to the conclusion that 2 metres represented the best approximation from the combined recollections of all those who had completed evidence forms.
77. In general I agree with that analysis but note that the 2 metre width does not hug the boundary with Winding Wood; rather it sits within the strip of land which is shown on the 1978 Ordnance Survey map (referred to in paragraph 42 above)¹⁸. Although the southern side of this strip of land is not visible on the Order map, Mrs Gilbert’s fence being long gone, I am nonetheless satisfied that the line of the bridleway shown on the Order map and the width noted in the Order Schedule reflect the user evidence with a sufficient degree of accuracy.

Conclusion

78. Having regard to the above and all other matters raised at the inquiry and in the written representations, I conclude that the Order should be confirmed.

Formal Decision

79. I confirm the Order.

Sue Arnott

Inspector

¹⁵ *Roberts v Webster* [1967] 66 LGR 298, 205 EG 103

¹⁶ *R v SSE ex parte Bagshaw and Norton* (QBD)[1994] 68 P & CR 402, [1995] JPL 1019

¹⁷ *Robinson Webster (Holdings) Ltd v Agombar and another* [2001] [2001] unreported (QBD)[2001] EWHC 510 (Ch), [2002] 1 P & CR 20

¹⁸ This is visible in greater detail on the larger scale plan submitted by Mr Turner that accompanied the response from Mr Hampson of SCC Highways Information Team dated 2 October 2012, labelled on the OS base map as “Path (um)” (unmarked path).

APPEARANCES

In support of the Order

Ms N El-Shatoury Principal Housing and Planning Solicitor, Surrey County Council

Who called

Ms D Prismall Senior Countryside Access Officer, Surrey County Council

Mrs J Orbell

Miss J Orbell

Miss M Wills

Miss C Pointer

Mr B Morgan Representing Frensham Parish Council;

Mr S Richards Applicant

Mr P Young

Opposing aspects of the Order

Mr K Foster National Off-Road Advisor, representing Cycling UK

Mr R Milton Common land Adviser – South & South East Regions,
representing the British Horse Society;

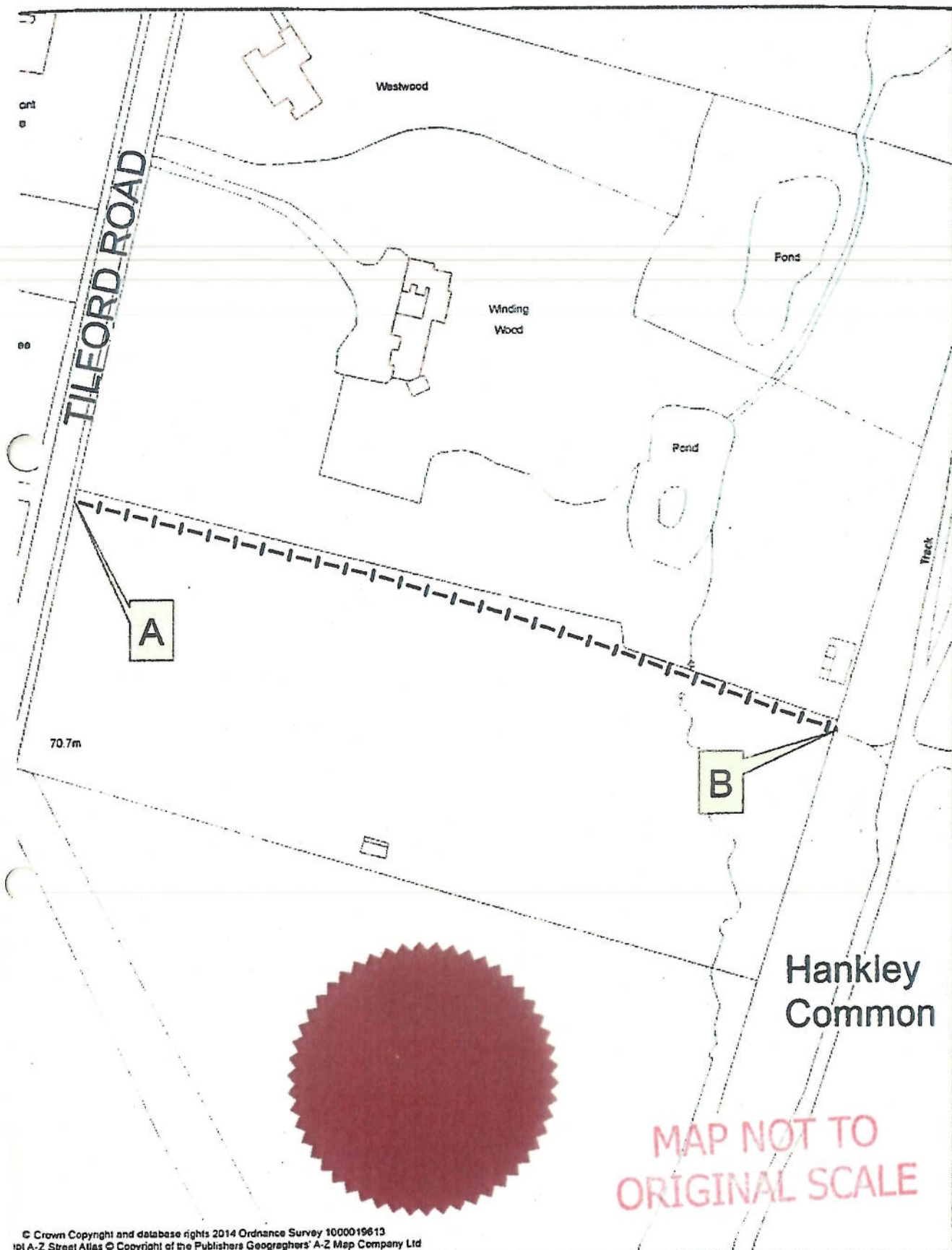
DOCUMENTS

1. Copy of the statutory objection
2. Statement of grounds/statement of case on which it is considered the Order should be confirmed and comments on the objection submitted by Surrey County Council together with bundle of relevant case documents
3. Proof of Evidence of Ms D Prismall on behalf of Surrey County Council
4. Statements of Mrs J Orbell, Mr S Richards, Miss C Pointer, Miss M Wills, Mr P Young and a with letter (un-dated) sent by Miss J Orbell to Ms Prismall at SCC
5. Representation sent to the Planning Inspectorate on 18 March 2017 by email from Mr K Foster on behalf of Cycling UK
6. Letter to Planning Inspectorate from Mr R Turner dated 23 May 2017 attaching letter from Bells Solicitors

Submitted at inquiry

7. Clearer copy of photograph taken 17 January 2013 by SCC showing remnants of small gate
8. Photograph showing Police notice attached to fence at point A
9. Extract from Ordnance Survey Explorer map showing managed access on Hankley Common
10. Copy of consultation letter sent by SCC to local representative of Cycling UK dated 3 June 2013

Public Bridleway No.587 Frensham



MAP NOT TO
ORIGINAL SCALE

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:1,250

Borough of Waverley
 Public Bridleway A-B Distance 187m

Drawing Number 3/1/10/H30

RIGHTS OF WAY

STATUS	
	Footpath
	Bridleway
	Rest. Byway
	BOAT

