



## Order Decision

Site visit made on 20 February 2018

**by Helen Slade MA FIPROW**

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

**Decision date: 19 February 2019**

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### **Order Ref: ROW/3179946/M1**

- 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 AW378 and AW379, Kingsnorth) Definitive Map Modification order 2016.
- The Order is dated 21 October 2016 and proposes to modify the Definitive Map and Statement for the area by adding two bridleways as shown in the Order plan and described in the Order Schedule.
- In accordance with Paragraph 8 (2) of Schedule 15 to the Wildlife and Countryside Act 1981 I have given notice of my proposal to confirm the Order so as to amend the status and the description of the width of the Order route.
- Three objections and two representations were made with respect to my proposed modifications.

**Summary of Decision: Confirmation of the Order is proposed subject to further modifications, as set out below under 'Formal Decision'.**

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### **Procedural Matters**

1. In my interim decision, issued on 27 February 2018, I proposed modifications to the Order which required advertisement. I proposed that the recorded width of the route be altered such that it would be wider along the majority of its length than originally set out in the Order, and I also proposed that the route be recorded as a Restricted Byway rather than as a Bridleway.
2. Three objections were made to my decision within the statutory notice period, together with two representations in support. It has been agreed that the matter can be dealt with by the written representations procedure and I have subsequently received statements from three parties: Strutt and Parker on behalf of the Church Commissioners; Mrs Anne Rillie on behalf of the British Driving Society; and from Kent County Council ('the County Council'). I have taken all the comments made into consideration, including those made in the objections and representations.
3. I have not made a further visit to the site as I do not consider it necessary for me to do so. I have no reason to presume that there has been any alteration in the situation since I made my visit in 2018 and I set out in my interim decision the conditions on the ground as I found it at that time.
4. A query was raised about the manner in which my proposed modifications were advertised on site, and in particular the fact that there was no copy of the Notice on the Parish Council noticeboard. I am satisfied that the statutory advertisement procedure was followed; any additional publicity is optional.
5. This final decision should be read in conjunction with my interim decision.

## **The Main Issues**

6. The main issue for me to consider in my final decision is whether or not my conclusion to alter the status and the width of the Order route is justified by the evidence. Although evidence of use was submitted with the application, the Order was made by the Council on the basis of the historical evidence and my interim decision was similarly based on the historical evidence.
7. A further issue regarding the length of the Order route has been raised by the parties which I must deal with in this decision.
8. I must make my decision on the facts of the case on the balance of probabilities, and not on whether or not the outcome is desirable or otherwise.

## **Reasons**

### ***Status of the Order Route***

9. In my interim decision I concluded that the Order route carries highway rights, and no evidence has been submitted to me since then to suggest otherwise. The County Council maintains its view that the route is a full highway and, as such, should not be recorded on the Definitive Map and Statement. In their statements submitted since the issue of my interim decision the County Council has offered no comment on my conclusion, but merely responded to points raised by the other parties in their objections or statements.
10. The British Driving Society does not object to my modifications but appears to agree with the County Council view that the route is a full highway. They argue that I should not give much weight to the fact that the route does not appear on the List of Streets (the list of maintainable highways kept by the Highway Authority) since they believe that there is evidence to show that highways which the Authority stops maintaining are deleted from the relevant list.
11. I must make my decision in line with the provisions of the legislation, and I set out in detail in my interim decision (paragraphs 22 to 31) what the effect of the relevant legislation is. No legal arguments to counter my reasoning on that issue have been submitted. The facts of this matter are that the Order route is not shown on the list required to be kept under Section 36(6) of the Highways Act 1980. It is not a question of giving that more or less weight depending on the reason it is not shown. The requirement is clearly spelt out in the relevant paragraph of the Natural Environment and Rural Communities Act 2006 ('the NERC Act') and the absence of a route from such a list at the relevant date results in any rights for mechanically propelled vehicles being extinguished. As I stated in my interim decision, private rights of access may be preserved by Clause 67(5) of the NERC Act.
12. I have accepted that the principal use of the route in modern or recent times has been consistent with the use of a Bridleway (i.e. by users on foot, horseback and cycles). Those rights are encompassed by the rights on a vehicular highway, whether that is a Restricted Byway (with rights for non-mechanically propelled vehicles) or a 'full' highway for all types of vehicle.
13. The fact that it may be undesirable for the way to be made useable for non-mechanically propelled vehicles because it might invite misuse by quad-bikes and the like is not evidence that vehicular rights do not exist, and does not

undermine the conclusion in my interim decision. How the County Council chooses to manage the route in the future is a matter for them as the Highway Authority in consultation with relevant parties. I must not allow the possibility of misuse to affect my judgement on the facts of the case.

14. At a late stage, the County Council has requested that I consider modifying any confirmed order to show the route commencing at a point 69 metres to the south-east of the current point A, near to Meadow Farm. This is in line with comments made by the British Driving Society that the current commencement at Slab Castle is incorrect. The reason for requesting the alteration is that a review of the information supplied by the Highway Definition Officer suggests that the maintainable highway extends further than originally thought.
15. Having reviewed the reasoning in my interim decision in the light of the further comments I have received, I remain satisfied that the public rights for mechanically propelled vehicles previously existing over the parts of Steeds Lane not shown on the List of Maintainable Highways at the relevant date were extinguished by the coming into effect of the NERC Act, and that the correct status to be recorded on the Definitive Map and Statement is that of a Restricted Byway.
16. Given that the provisions of the NERC Act that I have referred to above only apply to a highway that is NOT shown in the relevant list of maintainable highways, a failure to modify the Order as requested would result in incorrect information being recorded in the Definitive Map and Statement.
17. The County Council implies that such a modification would not require re-advertisement. I must disagree. Paragraph 8(1) of Schedule 15 to the 1981 Act clearly states that:

*"The Secretary of State shall not confirm an order with modifications so as-*

*a) ...;*

*b) Not to show any way shown in the order...;*

*c) To show as a highway of one description a way which is shown in the order as a highway of another description'*

*except after complying with the requirements of sub-paragraph (2)."<sup>1</sup>*

18. In the light of the information regarding the extent of the maintainable highway, to ensure accuracy of the Definitive Map and Statement I am obliged to make the requested modification and to advertise accordingly, since the confirmed order would not show a highway shown in the Order as originally made as set out in sub-paragraph (b) above, and might also be considered to fulfil sub-paragraph (c).

### **The width of the route**

19. Submissions have been made in relation to my decision to record a generally wider width along the Order route, principally on the basis that it is currently overgrown and not available to that width and that clearance would be undesirable for a variety of reasons.

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<sup>1</sup> The provisions regarding advertisement

20. As I stated in my interim decision, my conclusions on the width were arrived at on the basis of the historical evidence, and I fully accept that, over the years, the available width is likely to have reduced due to lack of use or maintenance. However, I must make my decision on the facts, and the best evidence of the width is that contained in the old Ordnance Survey maps combined with the evidence on the ground relating to the established boundary hedges. During my site visit in February 2018 I spent some considerable time looking at the potential width of the route, which was relevant to a decision made on the basis of historical evidence and not one made on the basis of recent usage.
21. As I have indicated in relation to the status of the Order route, the future management of the all parts of the way is a matter for the County Council as Highway Authority. It is not my role to suggest how that might be done but, clearly, account will need to be taken by the Authority of current environmental policy which may influence such management. Neither is it of any relevance to my considerations which department or body carries out that management on behalf of the Highway Authority.
22. I am satisfied that no evidence has been submitted to cause me to depart from the conclusions I reached in my interim decision with regard to the width of the route. The modified Schedule to the Order, and the notation on the Order map, clearly identifies the length of the route to which the different widths apply and I see no reason to make any further adjustments.

### ***Conclusion on the main issues***

23. My role is to determine, on the facts, whether the Order should be confirmed and, if so, what status and what width should be recorded on the Definitive Map and Statement. No evidence has been submitted to undermine the conclusion I reached in my interim decision, and any concerns about the consequences of that decision in terms of management and maintenance are the responsibility of the County Council. Powers are available to them under a variety of legislation to achieve an outcome which meets the concerns expressed in the objections.
24. The route should be recorded as a Restricted Byway over the revised length, and I am satisfied that the width of the section of the Order route to be known as AW378 should be recorded as being 8 metres in width, whilst the majority of the Order route to be known as AW379 should be described as being 10 metres wide, using in both cases the centre line of the boundary hedges as the defining features. For the last part of the route near to Brockmans Lane for a distance of approximately 120 metres (which currently runs through a corridor of scrub between two fields) I consider that a width of 3.00 metres should be recorded. I have identified this stretch on the Order Plan by the addition of the letter X; the relevant stretch running between this point and point D.

### **Other matters**

25. I reiterate that arguments raised by the parties relating to the suitability or otherwise of the route for vehicles, and opinions on the desirability of having a vehicle-free, recreational route are not relevant to the determination of this type of Order.

## **Conclusions**

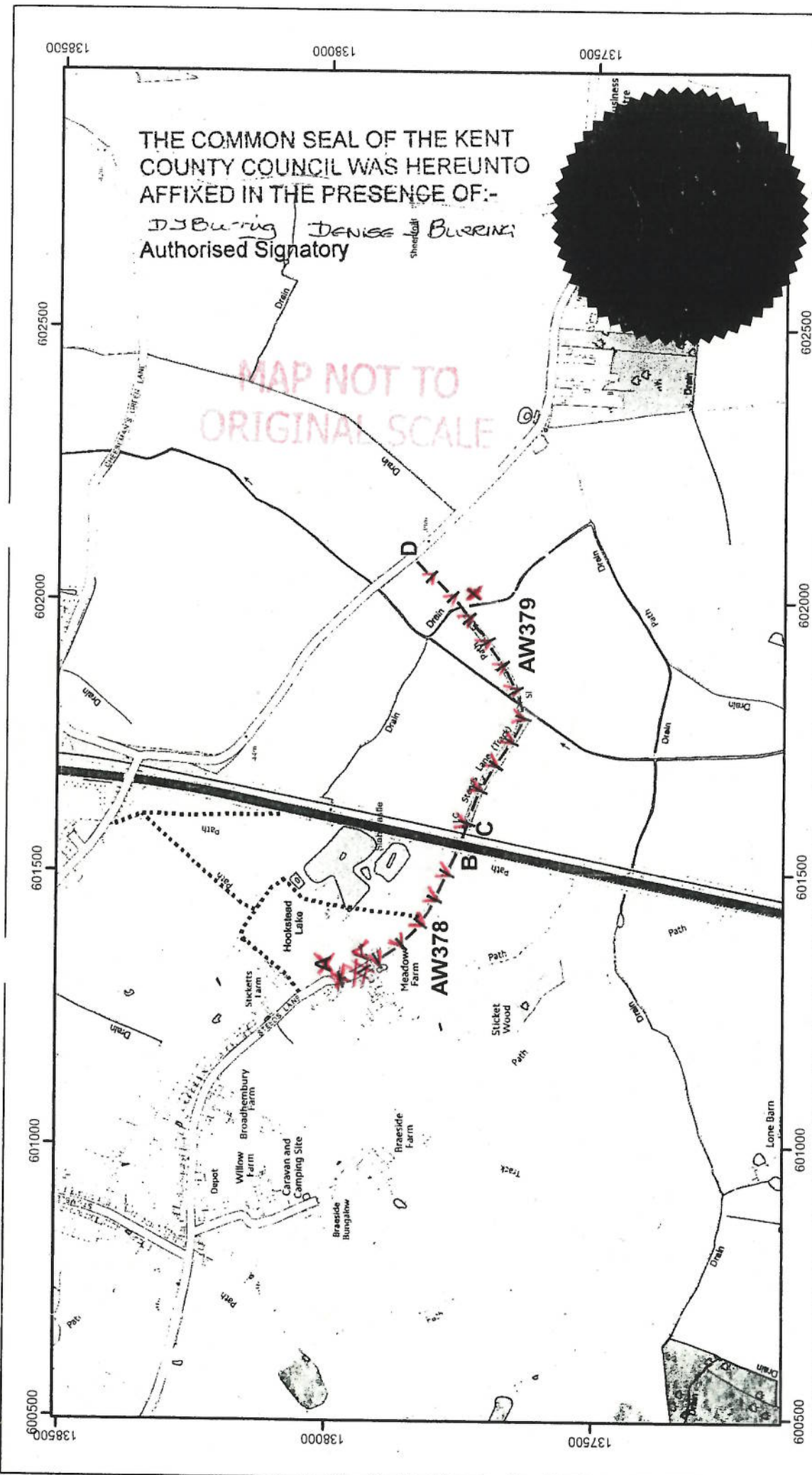
26. Having regard to all matters raised in the written representations, including those submitted following advertisement of my proposed modifications, I conclude the Order should be confirmed subject to the modifications that have already been advertised, but also subject to the further modification referred to in paragraphs 14 to 18 above.

## **Formal Decision**

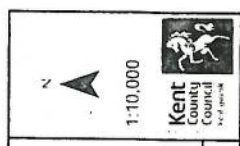
1. I propose to confirm the Order subject to modifications regarding the status and width of the Order route as previously advertised and subject to a further modification that requires advertising, namely:
  - In Part 1 of the Schedule, in the second line of the first paragraph delete the words '*Slab Castle*' and substitute '*Meadow Farm*';
  - In the same paragraph amend the grid reference to read 'NGR TR 0133 3791'
  - In the same paragraph delete the reference to '332.0' metres and substitute '263.0';
  - On the Order Map delete the letter 'A' and move it to the new starting point of the Order route opposite Meadow Farm;
  - Delete the first section of the Order route between the original letter 'A' and the replacement letter 'A'.
27. Since the confirmed Order would not show a way shown in the Order as made, Paragraph 8 (2) of Schedule 15 to the Wildlife and Countryside Act 1981 requires that notice shall be given of the proposal to modify the Order 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.

*Helen Slade*

**Inspector**



THE COMMON SEAL OF THE KENT COUNTY COUNCIL WAS HEREUNTO AFFIXED IN THE PRESENCE OF:-  
 DJ Burring / DENISE Burring  
 Authorised Signatory



1310-2016

0 Kilometres 0.5

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**Wildlife & Countryside Act 1981 *Restricted***  
**The Kent County Council (*Bridleways Byways*)**  
**AW378 & AW379, Kingsnorth)**  
**Definitive Map Modification Order 2016**

**Key**

**-V-V-** Route to be added

..... Unaffected routes

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