



Order Decision

Site visit on 13 November 2019

by Mark Yates BA(Hons) MIPROW

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

Decision date: 23 December 2019

Order Ref: ROW/3214739

- This Order is made under Section 53(2)(a) of the Wildlife and Countryside Act 1981 ("the 1981 Act") and is known as The Kent County Council (Footpath EE487 at Goodnestone) Definitive Map Modification Order 2018.
 - The Order was made by Kent County Council ("the Council") on 23 May 2018 and proposes to add a footpath, in the parish of Goodnestone, to the definitive map and statement, as detailed in the Order Map and Schedule.
 - There were two objections outstanding when the Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.
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Decision

1. The Order is proposed for confirmation subject to the modifications set out in paragraph 12 below.

Main Issues

2. The Order relies on the occurrence of an event specified in Section 53(3)(c)(i) of the 1981 Act. Therefore, I need to determine on the balance of probabilities whether the discovered evidence shows that a right of way which is not shown in the map and statement subsists. In considering this test, I shall assess whether the documentary evidence is sufficient to infer the dedication of a public right of way over the route claimed ("the claimed route") at some point in the past.

Reasons

3. The case in support relies on the discovery of an 1825 Diversion Order in the Quarter Sessions records. This diverted a public footway which is described as leading from Nonington and proceeding through Knowlton Park towards Eastry. The diversion plan shows the former route of the footpath by way of a red line and the new footpath by means of a yellow line. Both routes are shown proceeding between points A and B on the diversion plan.
 4. I take point A in the diversion to correspond to where the red and yellow lines meet. The references to stiles are likely to relate to points where the path met the public road. The matter before me is whether a public footpath subsists over the claimed route. Therefore, I do not consider it material to my decision that the diversion plan shows the former and new paths continuing over sections of public road. The new path also corresponds with a section of Footpath EE260.
 5. I find that the relevant part of the new path shown on the diversion plan generally corresponds to the claimed route. The only differences appear to be the slight curves midway along the claimed route and towards the northern end
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of this route. In contrast, the diverted path is shown by way of a straight line on the diversion plan. The route shown on the present Order Map corresponds more closely with the mapping outlined below.

6. Having regard to the above, I do not agree with the submission made in support of the objection from the landowner that little reliance should be placed on the Diversion Order. Whilst some issues are not entirely clear from the Order, these matters do not in my view impact upon the evidential value of the diversion documentation. The diversion was a legal event that created a public footpath and should be afforded a significant amount of evidential weight. A search of the Quarter Sessions records has revealed no evidence to show the claimed route has subsequently been stopped up.
7. Support for the existence of the claimed route is also found on the Knowlton tithe map of 1843, where it is generally depicted by means of a single pecked line. This route is also shown on the 1871-1890 First Edition Ordnance Survey ("OS") map by way of a single pecked line. It is shown on subsequent editions of OS mapping as a double pecked line and annotated "FP". The evidential value of these maps is that they show the physical existence of a path that broadly corresponds with the new path created by the diversion.
8. I have concluded above that the Diversion Order should be afforded a significant amount of weight. Further support for the existence of a path over the diverted line is contained in later mapping during the nineteenth and twentieth centuries. There is some evidence that does not provide support for the claimed route being a public footpath, namely documents in relation to the 1910 Finance Act and the production of the original definitive map. However, these matters do not diminish the value of the earlier evidence. It is also noteworthy that a proportion of the new path in the Diversion Order is already recorded as a public footpath.
9. I find on balance that the evidence is supportive of the existence of an unrecorded public footpath that broadly corresponds to the claimed route. It follows that I conclude that a public footpath subsists. Nonetheless, there are two slight differences between the route shown on the diversion plan and the later mapping. I consider that greater reliance should be placed on the Diversion Order given that this route was certified by the two justices of the peace who approved the diversion.
10. For these reasons I propose to confirm the Order subject to two modifications to the route shown on the Order Map.

Other Matters

11. Concerns have been raised regarding the impact of the claimed route being recorded as a public footpath on the landowner's business. However, such matters are not relevant to the test that I need to apply, as set out in paragraph 2 above.

Modifications

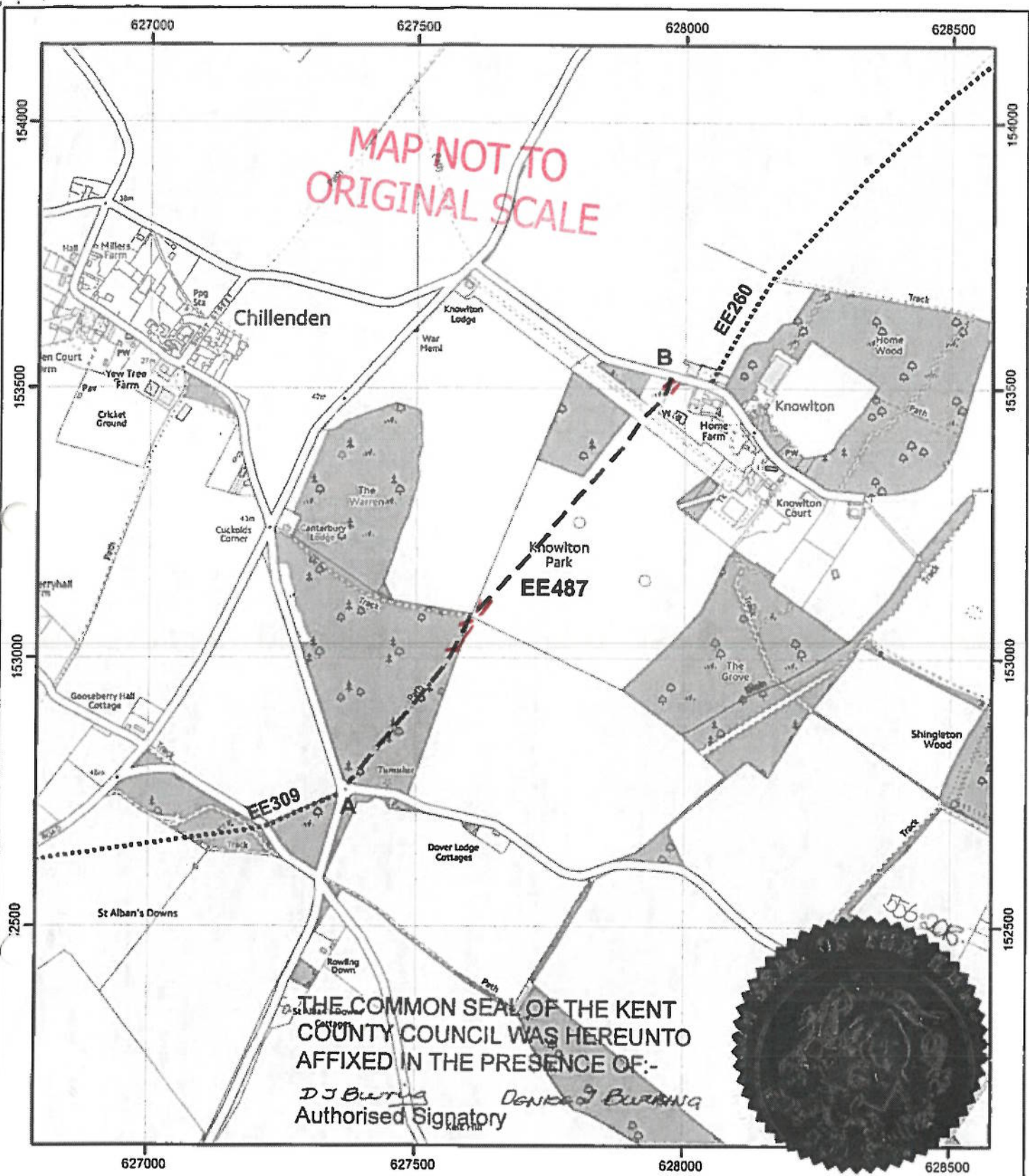
12. The Order is proposed for confirmation subject to the following modifications:
 - Delete the sections of the route shown by red hatching on the Order Map and replace them with the sections represented by red dashed lines.
 - Amend the key to the Order Map in light of the above modifications.

13. Since the confirmed Order would affect land not affected by the Order as submitted I am required by virtue of Paragraph 8(2) of Schedule 15 to the 1981 Act to give notice 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.

Mark Yates

Inspector

MAP NOT TO ORIGINAL SCALE



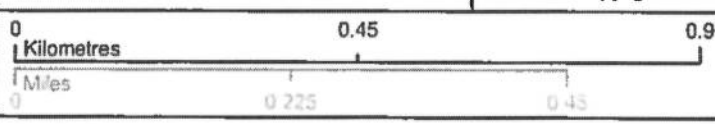
THE COMMON SEAL OF THE KENT COUNTY COUNCIL WAS HEREUNTO AFFIXED IN THE PRESENCE OF:-
D J BURTON *DENISE BURTON*
 Authorised Signatory

Key
 - - - - - Route to be Added
 Unaffected Routes

Wildlife & Countryside Act 1981
The Kent County Council
(Footpath EE487 at Goodnestone)
Definitive Map Modification Order 2018



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