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| **Order Decision** |
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| **by Claire Tregembo BA(Hons) MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 09 September 2022** |

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| **Order Ref: ROW/3270493** |
| * This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as The Kent County Council (Bridleway EE451 at Ripple) Definitive Map Modification Order 2020.
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| * The Order is dated 15 September 2020 and proposes to modify the Definitive Map and Statement for the area by upgrading a footpath to bridleway as shown in the Order plan and described in the Order Schedule.
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| * There were two objections and six representations when Kent County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.
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| **Summary of Decision: The Order is confirmed.** |
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Preliminary Matters

1. The Order was made by Kent County Council (KCC) and is supported by the British Horse Society (BHS), who made the definitive map modification order application that led to the making of the Order.
2. The objections and the representations were largely withdrawn with three remaining, none of which related to issues I could take into consideration. Therefore, the Order is determined by papers on file. I have not undertaken a site visit, but I am satisfied that I can determine the Order without one.

The Main Issues

1. The Order has been made under Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981 which requires me to consider if on the balance of probabilities, the evidence shows that a public right of way shown on the definitive map and statement as a highway of a particular description ought to be shown as a highway of a different description.
2. The Order relies on historical documents and maps. I need to consider if the evidence provided is sufficient to infer the dedication of higher public rights over the claimed route at some point in the past. Section 32 of the Highways Act 1980 requires a court or tribunal to take into consideration any map, plan or history of the locality, or other relevant document which is tendered in evidence, giving it such weight as appropriate, before determining whether or not a way has been dedicated as a highway.

Reasons

*Ringwould Estate Map*

1. The Ringwould Estate map 1709 was prepared to show lands in the ownership of Herbert Jacob Esquire. The eastern end of the Order route is shown with solid edges, coloured brown and labelled ‘Road to West Langden’ (also referred to as Langdon). Ringwould Road is shown in the same manner and labelled ‘Road to Dover’.
2. The map was intended to show land in Herbert Jacob Esquire’s ownership, not rights of way. However, the depiction of the Order route in this manner could indicate that it was considered to be a public road at this time.

*Commercial Maps*

1. Mudge’s map of Kent 1801 shows the Order route from A to X with a solid and a dashed line, and from X to C with double solid lines. Winklands Oaks Lane did not continue north at this time, and the Order route appears to provide a connecting link for those heading north.
2. Greenwood’s map of Kent 1819-1820 shows the Order route with double dashed lines then double solid lines. The key describes these routes as ‘Cross Roads’.
3. The inclusion of the Order route in commercial maps could indicate public rights, as those purchasing the maps would have the expectation that the routes shown on them were available to use. The term cross road could also indicate a public road. Although these maps show its physical existence at this time, they do not provide a reliable indication of status.

*Ordnance Survey Maps and Records*

1. The 1831 Ordnance Survey (OS) one inch to the mile map shows the Order route with double dashed then solid and dashed lines between A and X. Between X and C it is shown with double solid lines.
2. The 1869 OS boundary map shows the Order route between X and C with double solid edges labelled ‘Hangman’s Lane’ and ‘C. Lane’. This indicates that the parish boundary was in the centre of an enclosed lane called Hangman’s Lane. These maps were produced by OS to record features indicating the location of the parish boundaries. An OS surveyor walked the boundary accompanied by the parish meresman; a senior parish resident tasked with knowledge of the parish boundaries.
3. The 1872 OS first edition1:2,500 map shows the Order route between A and X with double dashed lines across a field, and then alongside a field boundary. From X it continues to C through a strip of trees or scrub and is labelled ‘Hangman’s Lane’. The parish boundary is shown running along the centre of it labelled ‘C. Lane’. It is parcel number 9, which in the accompanying Book of Reference, is described as ‘Wood’ with an area of 0.428 acres.
4. The 1898 OS second edition 1:2,500 map shows the Order route from A to X running across a field with double dashed lines labelled ‘*B.R.*’ (bridle road).It continues to C through a strip of woodland and is labelled ‘Hangman’s Lane’, which is crossed at B by a railway line.
5. The 1907 OS third edition 1:2,500 map shows the Order route in a similar manner to the 1898 OS map. However, the section across the field between A and X is now labelled ‘*F.P.*’ (footpath), and the parish boundary running along the centre of Hangman’s Lane between X and the railway line at B is labelled ‘*C.F.P.*’ (centre of footpath). From the railway to C the parish boundary is labelled ‘*C.O.R*.’ (centre of road) In the field on the southwest side of the woods is a dashed line labelled ‘*F.P.*’
6. On the OS maps, double solid lines would indicate a route that is enclosed on both sides, double dashed lines a route that is unenclosed across fields and a solid and dashed line as enclosed on one side only.
7. OS maps were produced to record physical features at the time of the survey but did not intend to identify public or private routes or their status. Since the late 19th Century, OS maps have carried a disclaimer that tracks and paths shown provide no evidence of the existence of a public right of way. However, OS surveyors often made enquiries locally to clarify spellings and the status of roads. Therefore, the labelling of the Order route ‘*B.R.*’ could indicate that bridleway rights were considered to exist at this time.

*Tithe Maps*

1. The Detached Land belonging to Sutton Tithe Map 1841 shows the Order route between X and C with double solid edges and uncoloured. It is excluded from the parcels of land to the northeast, the parcels to the southwest are within the parish of Waldershare. It appears to continue into Ringwould Road, which is shown in the same manner, but has tithe parcels on either side. The Order route is much wider than Ringwould Road. It is not numbered, and the BHS have said that the Sutton Tithe Map does not allocate parcel numbers to roads and wastes.
2. The Waldershare Tithe Map 1841 shows the Order route from X to C with double solid edges and coloured brown. It is labelled ‘to Deal’ at the junction with Ringwould Road which is shown in the same way. It is not shown between A and X, although this section is within the parish of Ripple.
3. The Order route between A and X is within the parish of Ripple, but it is not shown in the Ripple Tithe Map 1841. It would be within parcel number 164, but details of this parcel have not been provided.
4. The purpose of the tithe records was to identify titheable land that was capable of producing crops. Normally a detailed survey was undertaken, and they are statutory documents which were in the public domain. They were not produced to record public rights of way, although they can sometimes be helpful in determining the existence and status of such routes. The depiction of part of the Order route in two of the tithe maps, in the same manner as other roads suggests a public highway.

*Deposited Railway Plans*

1. The London Chatham and Dover Railway (Extensions to Walmer and Deal) 1861 and the Deal and Dover Railway 1864 deposited plans show the Order route between X and C with double solid lines with the parish boundary running along its centre. It is numbered 1 in the parish of Sutton and 6 in the parish of Waldershare. The book of reference describes both as ‘Bridle Road and Footpath’ owned by ‘Charles Haden, St. [Stephen] Barbe Haden, Douglas Brook Haden and the Surveyor of Highways’. The Deal and Dover Railway was authorised by the Deal and Dover Railway Act 1865, but was abandoned due to lack of investment.
2. The Order route between X and C is shown in the same way on the Dover to Deal Railway 1873-74 and the South Eastern Railway (Dover and Deal) 1873-74 deposited plans. It is still described in the book of reference as ‘Bridle Road and Footpath’ but the ownership in the parish of Sutton is now solely ‘Surveyor of Highways’ and in the parish of Waldershare it is owned by ‘John Broadly and Thomas Broadly, Captain Joseph Sladen and Surveyor of Highways’. The South Eastern railway was jointly sponsored and put into effect by the South Eastern Railway and the London to Chatham and Dover Railway under the authority of the Dover and Deal Railway Act 1874, and was opened in 1881.
3. The deposited railway plans were prepared as part of a public process and were subject to public scrutiny by landowners, highway authorities and parish councils. Usually, a survey of the proposed railway route was undertaken. Public rights of way which crossed the proposed route had to be retained and accommodated according to their status. Although it was not their primary purpose to record public rights, they can provide good evidence of them. The recording of the Order route in four deposited railway plans, including a completed railway, provides good evidence of public bridleway rights along the Order route.

*Highway Authority Records*

1. The Wingham Highway Board was the Highway Authority for Sutton and Ripple between 1863 and 1880. Several references are made to the Order route and the construction of the railway within its minutes. The minutes dated 17 October 1878 state ‘read a letter from Mr S Walsh, Waywarden of Sutton, calling attention to the Bridle Path at Little Sutton which is now entirely enclosed by the Embankment of the Dover & Deal Railway. Referred to the Surveyor.’ The minutes dated 21 November 1878 state ‘As to Bridle Path at Little Sutton. The District Surveyor Reports that he had seen the Contractor of the Dover & Deal Railway and examined the Plans with reference to the Bridle Path known as Hangman’s Lane now in course of being closed by the Railway Embankment and he found that the act gave them powers to close up the same... The Clerk is directed to write to Mr. Marsh and explain that the work is in accordance with the plan.’ The minutes dated 10 April 1879 state ‘Read letter from Mr May of Sutton Court calling the attention of the Board to a Bridle Road in the Parish of Sutton in course of being closed by the Dover and Deal Railway Company and requesting the Board use their influence that the same might be left open.’ No further minutes mentioned the Order route and the Board was abolished the following year.
2. The BHS state that the Dover and Deal Railway Act 1874 (the 1874 Act), which incorporated the Railway Clauses Consolidation Act 1845 (the 1845 Act), did not grant the railway company powers to close the bridleway. They also argue that as the crossing still exists today, although only as a footpath, it is likely that enforcement action was taken by the Board, or its successors. I have not seen the 1874 Act, but KCC have said the same.
3. The report of the surveyor to the Eastry Rural District Council Highways Committee on 13 February 1906 states ‘Ripple Bridle Rd. I have seen Colonel Sladen who has one style on his land which obstructs the road, he has never seen anyone want to go that way for over 20 years, he is quite willing to have a gate fixed but would like to call the Council’s attention to the dangerous crossing if the railway gates are left unlocked. I wrote to the railway company about the gates being locked, their letter I submit. I also wrote to Messrs Worsford and Haywood of Dover, Agents for Appleton Farm where there is two styles which obstruct the road, their letters I also submit.’
4. The BHS considers that Ripple Bridle Road refers to the Order route because of the reference to the railway, Colonel Joseph Sladen lived at Ripple Court until his death in 1930, and a Captain Joseph Sladen was recorded as owning part of the Order route in the 1873-74 deposited railway plans. To me, this would indicate that the surveyors report is referring to the Order route. The BHS also believe that the reference to the gates being locked meant closed and latched shut rather than being locked, as otherwise this would be an obstruction.
5. The Eastry Rural District Council wages books make references to wages paid to several individuals for breaking flints on Hangman’s Lane in Ripple in August 1908 and 1909, and in January and November of 1911. The BHS considers that work being undertaken in or to Hangman’s Lane indicates a public road of at least bridleway status. I would agree this indicates public rights, but I do not consider it evidence as to their status.
6. Although there is no indication that enforcement action was taken regarding the obstruction of the Order route by the railway company, later records indicate that the crossing was provided with gates on either side, as required by the 1845 Act. Furthermore, the crossing continues to exist today, albeit as a footpath. The Highway Board minutes clearly indicate that the Highway Authority’s, Surveyors of the Highway, landowners, and local residents considered the Order route to be a public bridleway between 1878 and at least 1906. As Highway Authorities were required to maintain routes, they would not have acknowledged public bridleway rights if they did not exist. It would not have been in the landowner’s interest to accept the provision of a gate instead of a stile if they did not believe that bridleway rights existed. I consider that the highway records provide strong evidence of the existence of bridleway rights over the Order route.

*Finance Act Map 1910*

1. The BHS and KCC claim the Order route between X and C (Hangman’s Lane) is excluded from the surrounding hereditaments on the Finance Act map. Although Hangman’s Lane is clearly excluded from the parcels to the southwest, to the northeast this is not clear. KCC indicate that the land to the northeast forming part of parcel 406 is colour-washed green, but on the extract I have, the green is only just visible. Although it appears that Hangman’s Lane to the east of the railway line is uncoloured, it is not at all clear for the section west of the railway. It may well be clearer on the original map, but based on the extract before me, I cannot be certain if it is included or excluded from the parcel of land to the northeast.
2. According to the BHS and KCC, the section of the Order route from A to X is also within parcel number 406. However, the extract I have before me does not show approximately 300 metres of the Order route from point A heading east. The BHS and KCC advise that Parcel 406 is described as Ripple Court Farm and covers an area of 248 acres with a deduction of £50 made in respect of ‘Public Rights of Way or User’ in the land values book, but I have not seen an extract of them. The field books for the parish are recorded as ‘missing in transfer’ at the National Archives. Due to the size of the parcel and the existence of other public rights of way over it, it is not possible to tell if the deduction was for the Order route.
3. The Finance Act 1910 imposed a tax on the increase in land value, which was payable when the land changed hands. Maps were produced to show taxable land following a survey by the Board of Inland Revenue between 1910 and 1920. It was a criminal offense to make false statements to reduce tax payments. The existence of public rights of way over land reduced its value and the liability for tax, so were recorded in the survey. The exclusion of part of the Order route from the adjoining hereditaments could indicate public rights which were more likely to be bridleway rights or higher. It could also be argued that private rights had the same effect on the land. I consider that the Finance Act map provides limited evidence to the existence of bridleway rights over the Order route.

*Sale Particulars 1936*

1. The sales particulars for the auction of Appleton Farm and Winkland Oaks Farm on 26 September 1936, show the Order route between C and approximately 250 metres west of X partly within or abutting lots 1 and 2. They indicate that the ownership boundary is along the centre of Hangman’s Lane between X and C, which is shown with double solid edges. It is shown continuing west from X for approximately 250 metres to the end of the lot, with double dashed lines alongside the field boundary to the south. These dashed lines continue for a short distance to the west across a field and a similar distance is shown across the same field from point A. The start of the track to Winkland Oaks Farm is shown for a similar distance, with the full length of this track being shown on the Lot Plan for Winkland Oaks Farm, indicating that features outside of the relevant lots were not shown. This suggests that the Order route was a through route at this time.
2. The BHS suggests lanes which are half owned by the landowners on either side is a characteristic of ancient public ways with higher rights than on foot. Although this may be the case, I am not aware of any case law or authority to support this assertion. I consider that the sales particulars do not provide evidence regarding the status of public rights over the Order route.

*1950 Definitive Map Preparation*

1. The National Parks and Access to the Countryside Act 1949 required County Councils to produce a survey of land in their area and produce a definitive map and statement showing all footpaths, bridleways and roads used as public paths.
2. KCC advise that an initial survey was undertaken by the parish council which records the Order route as running on the east side of the railway ‘from Martin Road to Ripple Court farm land & thence to Winkland Oaks Cottages’. It was ‘discernible for some dozen yards’. The survey then states that ‘the old FP used to pass through Hangman’s Lane to Railway line for 400 yards. This FP is now impenetrable. Path originally 3-4 feet in width from hedge to hedge. Hedges now dense and overgrown.’ It was obstructed by coils of barbed wire left by the railway authority with a good stepping stile at the railway crossing, but said to have been little used when open. To the west of the railway line, it is described as running ‘from Railway Crossing near termination of Hangman’s Lane to Winkland Oaks Cottages’. It was overgrown and unusable, but not as densely as to the east of the railway, with a good stile with platform at the railway crossing and another fragile stile over a wire fence.
3. The Order route was subsequently drawn on the draft and definitive map as Public Footpath EE451 and described in the statement as ‘from road, just E of Windlandoaks Cottages, leads generally E and ESE past railway and along Hangman’s Lane to Ringwould Road, just short of Parish boundary and W of Nursery and Westfields’.
4. Although the Order route was recorded on the definitive map and statement as a public footpath, there is no indication that any consideration was given to historic documents at this time. Its appearance on site and use at the time are likely to have led to it being recorded as a footpath. The recording as a footpath would not have extinguished any historic bridleway rights and there is no evidence before me that they have been legally extinguished.

*Highway Inspectors Maps*

1. KCC advises that the Order route was not shown on the Highway Inspectors maps dated 1953. These were coloured to show routes within their jurisdiction and were classified as trunk, first, second, third or unclassified county roads. This map provides no evidence regarding the Order route.

*Conclusions on the documentary evidence*

1. Several deposited railway plans and historic highway records show that the Order route was a public bridleway between 1861 and 1911. They provide strong evidence of public bridleway rights along the Order route. Supporting evidence is provided by Tithe, Finance Act, commercial and OS maps. I consider that, on the balance of probabilities, bridleway rights exist along the Order route.

**Other Matters**

1. Concerns have been raised about the 5 metre width of Hangman’s Lane between X and C. The width has been determined by KCC measuring physical boundaries that exist on site and are shown in a similar position on historic OS maps. I consider this was a reasonable approach to determine the width of the Order route.
2. A Section 31(6) deposit under the Highways Act 1980 was made on 31 May 2017 which showed the Order route as a public footpath. Although this would protect the landowner against future user claims after 2017, it would not protect against claims based on historic documentary evidence or claims based on twenty years use prior to 2017. As this claim is based on historic documentary evidence, the deposit does not prevent the Order from being confirmed.
3. Network Rail raise concerns about the crossing currently being unsuitable for horses to safely cross including stiles and a step onto the crossing deck. They would require appropriate safety measures to be put in place. These matters are outside of my remit and appropriate safety measures would need to be agreed between Network Rail and KCC.
4. The matters raised by those objecting or making and representations to the Order largely concerned issues relating to suitability, desirability, and cost of making the Order route available for equestrians. They included loss of trees and habitat, impact on wildlife, railway safety, potential motorbike use and the loss of the crossing if Network Rail request a closure. Although I understand these concerns, they relate to issues which I am unable to take into consideration when determining the Order.

Conclusions

1. Having regard to these and all other matters raised in the written representations, I conclude that the Order should be confirmed with modifications that do not require advertising.

Formal Decision

1. I confirm the Order.

Claire Tregembo

INSPECTOR

COPY – MAP NOT TO SCALE

