

KENT COUNTY COUNCIL

STATEMENT

**WILDLIFE AND COUNTRYSIDE ACT 1981
APPEAL UNDER PARAGRAPH 4(1) OF SCHEDULE 14
KENT COUNTY COUNCIL'S REFUSAL TO MODIFY THE DEFINITIVE MAP
AND STATEMENT TO UPGRADE FOOTPATHS SR331 (PART) AND
SR332 IN THE COUNTY OF KENT AND ROUTE 280 IN THE LONDON
BOROUGH OF BROMLEY TO BRIDLEWAY STATUS**

For ease of reference I have numbered the paragraphs within Mrs Hayes's Grounds of Appeal 1 – 6 and the County Council has the following comments to make on those paragraphs:-

- 1 Mrs Hayes states that 'the earliest use of the routes by claimants is 1949 but the route was used before this time by individuals and Riding Schools'. However, the County Council found during its investigation, that the earliest date of use was 1950. The applicant produced a number of user evidence forms with the application, of which one user did state that their earliest use of the routes was 1949. However, when this witness was formerly interviewed by the County Council using a more detailed evidence form, the witness stated that they had used the routes since 1950 and it is therefore this date that has been taken as the earliest date of use.
- 2 The further two witnesses, Mrs Sally Lyle and Mrs Eileen Andrews referred to by the applicant, are additions to the case and whose details were not provided to the County Council either initially with the application or at any time during the investigation. The County Council is not therefore able to comment on their use of the routes in question. This evidence from two new users did not form part of the original investigation and this is not the forum for producing new evidence which the County Council has not previously had the opportunity to consider. Indeed the County Council is of the opinion that this new evidence cannot form part of the appeal but instead should if necessary be evidence which is only considered as part of a new application.
- 2.1 Mrs Hayes states that the routes were definitely used regularly in the 1950's, 1960's and 1970's by the Westerham Riding School and the Retreat Riding School. In relation to this point many of the witnesses did recall using the route when out riding with these schools; however a group of people passing through on one occasion maybe seen as one visit and as such maybe missed by

the owner or occupier. It would also appear from the evidence, that Mrs Hayes was not organising these rides, but being lead by another(s). It cannot therefore be said with any certainty that such rides were not with the permission of the owner of the land. As Mrs Hayes was being lead, she would not have been party to that information and makes no reference either way to this point in her evidence.

3 Mrs Hayes states that there was a bridleway sign at the Grays Road end of the track in the 1950's. At that time, Parish and District Councils would erect such signs on an informal basis, records of which the County Council does not hold. It was not until the Countryside Act of 1968 that County Councils were given a duty to signpost rights of way where they leave a metalled road.

3.1 In addition, Grays Road lies within the London Borough of Bromley and I have been informed by Bromley that the survey carried out from June 1950 to November 1951 under the provisions of the National Parks and Access to the Countryside Act 1949 records this section of the route as FP 264. It is described clearly at the Parish and Draft map stages as a 'footpath through the main entrance to farmyard, well defined rough track to Orpington Urban District Council boundary'. The Parish survey was carried out at the start of the 1950's and clearly at this time the surveyor deemed that this section of path was a footpath. Similarly no objections were received to the status of footpath when the Draft map was published for public comment in circa 1953. There is no mention within this Statement of any erected signposts. Furthermore it is interesting to note that many other paths within the Statement do make reference to the presence of signposts. Therefore it is reasonable to infer that had there been any signs at the time of the survey they would have been recorded.

3.2 Mrs Hayes refers to the fact that the previous occupier (owner?) of Grays Lodge had stated that it was a pity the track had been downgraded. However, in response to this, the routes have only ever been formally recorded on the Definitive Map of Public Rights of Way as public footpaths. I am aware that Westerham Parish Council in 1959 lodged an objection to the Kent County Councils Draft map on the basis part of the route had been shown as a CRF (Cart Road Footpath). This objection was upheld and the route was subsequently recorded as a footpath for its entire length. Technically therefore, since the common understanding of a CRF at that time was set out in the Open Spaces Society's memorandum (to assist in the surveying and mapping of a right of way prepared in January 1950) as being a private road over which the public had a right of way on foot only, it does not appear therefore to have been recognised with higher rights at any time. In addition, there would of course have been the opportunity for landowners and occupiers

to object at the provisional mapping stage to the status of a footpath; none it would appear were made.

- 3.3 No evidence was provided to the County Council from the previous occupier (owner?) of Grays Lodge. However, just because the previous occupier thought the track had been downgraded - due to farm machinery being stolen and therefore the farmer having been compelled to lock the end gates – this in itself does not confirm the route was formerly a bridleway. The locking of the gates occurred in 1977 and at this time the routes were formally recorded as public footpaths as indeed they had been since 1952.
- 4 The County Council is not aware that the Wildlife & Countryside Act 1981 states anywhere that fewer than 20 claimants could be cited on a Section 53 rights of way application and guarantee the successful upgrading of a route. The 1981 Act does not refer to the number of users that are required to establish this. Section 53 (3)(c)(ii) states that ‘where the County Council discovers evidence, which when considered with all other relevant evidence available to it, shows that a highway shown in the Map and Statement as a highway of a particular description ought to be there shown as a highway of a different description, it shall by order make such modifications to the Map and Statement as appear requisite. Likewise Schedules 14 and 15 of the same Act also remain silent on the number of users which are required to successfully upgrade a route. This purely comes down to a question of fact and degree of evidence.
- 4.1 Section 53 applications are in the main resolved in conjunction with Section 31 of the Highways Act 1980; again no mention is made to the number of users within this Act. Section 31, states that ‘where a way over any land, other than a way of such character that use of it by the public could not give rise at common law to any presumption of dedication 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’ The key parts of this section are **‘as of right’...‘use by the public’...‘for a full period of 20 years’**. Within this investigation the County Council considered the period from 1957 to 1977 as locked gates were erected in 1977 (date of challenge) which prevented equestrians from using the route. The County Council concluded that use was ‘as of right’; it was the sufficiency of use for a full period of 20 years which was in question. As stated within the County Council’s Report which is attached at **Appendix A**, there were only 9 users of the route and of those only 1 had used the route for a full period of 20 years. There is little use throughout the relevant period with 4 of the witnesses only using the route for between 2 and 6 years. There is also evidence from 3 witnesses that during the relevant period logs were placed across the route

thereby preventing use on horseback. One witness stated that a small diversion was necessary in order to avoid the obstructions. The placing of these logs shows a clear lack of intention by the landowner to dedicate higher rights during the relevant period.

- 4.2 There is no documentary evidence to support the application and therefore the case rests solely on the user evidence, copies of which are attached at **Appendix B**. (Please note that 7 user evidence forms were submitted with the application and a further 2 were submitted during the course of the investigation. Of these 9 witnesses, 4 were formally interviewed and 2 completed a detailed user evidence form. In each of these cases it is this form that was analysed and has been attached at **Appendix B**. With the remaining 3 witnesses their original user evidence form was analysed and copies of these are attached at **Appendix B**). The user evidence was not sufficient to substantiate that the rights are reasonably alleged to subsist.
- 4.3 The County Council is not able to consider the desirability of the route and the fact that it makes 'possible a safe circular home and back ride'. All that can be considered is whether or not the rights subsist or are reasonably alleged to subsist.
- 5 The County Council carried out a 28 day consultation process and the replies from all those who responded are detailed within the report. However, in this respect, the County Council was not able to consider the suitability of the route as part of the investigation. Comments expressed in such a manner have therefore been ignored.
- 5.1 In relation to the placing of logs across the route, the County Council would disagree that this is 'barely relevant' as stated by Mrs Hayes. This is due to the fact that 3 of the witnesses referred to the logs as obstructing the way and whilst in other locations equestrians may have jumped them; here witnesses stated that the logs challenged their use. As stated above at paragraph 4.1, one witness mentioned a small diversion and 2 others stated that the way was closed in the early 1970's firstly, by a log. Therefore in this case the County Council takes the view that the placing of logs was very relevant to the decision it has reached.
- 6 Within the Report the County Council made mention of the Section 31(6) deposit which was submitted by the landowner, however as this was not formally completed by the submission of a Statutory Declaration as required by the Act, this was not taken into consideration when assessing the actions of the landowners and occupiers.

In summary therefore there is no documentary evidence to support the upgrading of these routes and on the basis of the evidence provided, the

evidence is weak. The County Council considered whether or not equestrian rights subsist or are reasonably alleged to subsist, but has reached the conclusion that there is not enough user evidence to substantiate either test. In addition to the lack of user evidence, during the relevant period, various witnesses refer to other obstructions placed across the route indicating a lack of intention by the landowner to dedicate higher rights.

Finally, as stated above part of the route is included within the London Borough of Bromley. When the investigation was carried out, the County Council considered the whole route as user evidence forms relate to the entire route. In addition the consultation also referred to both sections and relevant consultees for both Kent and Bromley were consulted. I note however from Mrs Hayes letter that Bromley have not as of yet sent a copy of their Notice of Decision to Mrs Hayes. I have spoken with Mr Gray of the London Borough of Bromley and he has informed me that the case must be put before their appropriate sub-committee, but unfortunately this has been delayed on several occasions and will still not be put before the Committee until at least September. Although, as stated above the research conducted by the County Council does cover both sections and this has been sent to the London Borough of Bromley for their information.

The landowner (Mr J Warde) and two of the adjacent landowners (Ms E J Kentish and Mr L Ringrose) have detailed their comments to the appeal and these are attached at **Appendices C, D & E**.

Mrs Laura Wilkins
Senior Public Rights of Way Officer
PROW/SE/C282
9 August 2010