

# Winkland Oaks bridleway

## FPS/W2275/14A/23

### BHS comments on objector's comments

#### A. Introduction

A.1. This is the response of the appellant, Hugh Craddock on behalf of the British Horse Society, to the undated comments made on behalf of the objector, Mr W Hickson of Winkland Oaks Farm, by Harry Kenton of BTF Partnership.

A.2. Reference is made to the appeal map, at page 8 of the appellant's statement of appeal ('SOA'), and the points therein labelled C, D and E.

A.3. The appellant relies on its statement of appeal, which includes the available evidence in connection with the appeal, and its response dated 21 November 2020 to the statement submitted by the surveying authority,. The following comments relate to points of contention between the appellant's statement of appeal and the objector's comments. It does not purport to set out the appellant's full case.

A.4. The appellant refers below to its statement of appeal in the form 'SOA' followed by numbered reference to items or paragraphs within.

#### B. Ground (a): the physical 'coming into existence' of EE427

B.1. The objector states that:

...the Tithe map produced in support of the appellant lends no further weight to the use of the route nor its status. Instead conclusions have been reached on the presence of a form of route, the use of which is not prescribed nor evidenced.

B.2. The objector appears to have confused ground (a) of the appeal with the evidential value of the tithe survey (SOA, item IV.D) addressed in ground (b). Ground (a) asserts that the surveying authority was wrong to conclude that the appeal way inevitably is later (and indeed comparatively recent) in origin than its continuation southeast along bridleway EE451 to Ringwould. This is because the original Sutton tithe map held in the National Archives (SOA, illustration xiii) depicts the appeal way between D and E as a path or track, thus demonstrating that the way existed as a physical entity in the first half of the nineteenth century (there is no question that the way between C and D also subsisted at, and before, this time).

B.3. There is no further evidence as to whether the appeal way post-dates (or for that matter, pre-dates) the origin of bridleway EE451, and the appellant contends that the surveying authority was wrong to treat the appeal way necessarily as of later provenance. It therefore is possible, but unproven, that the order way and bridleway EE451 are coæval in origin, and so likely both to be of at least bridleway status.

## C. Ground (b): the Tithe Map designation of 'public roads and waste lands'

C.1. The objector proposes, in the context of the tithe survey evidence (SOA, item IV.D) of designation of the order way between C and D as 'public roads and waste lands', that:

...the claim more aptly fits the description of a private farm drive over which is the present footpath. This would explain the change in identification of the route past the farmyard.

C.2. It is inherently unlikely, in relation to the Ripple tithe survey, or generally, that the description of a way as one of the 'public roads' (it is not suggested that the appeal way is, or was, waste land) is applied to a private road which is also a public footpath. A footpath is not a 'public road' — but a bridle road is (at least in the contemporary context of the tithe survey). The objector has not offered any evidence to the contrary.

C.3. It is, however, possible that what today is regarded as a public footpath was, at the time of the tithe survey, considered to be a public road or bridle road, so that ways described in the survey as 'public roads' are now (in common with the order way between C and D) recorded in the definitive map and statement as public footpaths. This is not evidence that such ways were, at the time of the survey, considered to be public footpaths comprised within private roads — only that such ways incorrectly have been recorded in the definitive map and statement with inferior status than that recognised by the tithe survey.

## D. Ground (c): the depiction of the claimed route on the First Edition OS Map

D.1. The objector proposes that the appellant's claim that:

...the route is denoted as a metalled track along the route to the farmyard would appear to more reasonably denote a private farm road as opposed to any public route, particularly given its apparent termination within the Farmyard.

D.2. The appellant has claimed (SOA, IV.E.6) only that: 'the metalling of the way throughout, is consistent with the status of the way as a public bridleway' (emphasis added).

## E. Ground (d): the Finance Act 1910 records

E.1. The objector refers to the appellant's 'unfounded and hastily determined improvident conclusion', and observes that the evidence under this heading 'fails to provide any objective evidence as to the use of the route'. As to the latter observation, we agree.

E.2. The objector overlooks that the evidence relating to the Finance (1909–1910) Act 1910 was included in the appellant's SOA to convey a complete representation of the relevant data, notwithstanding that the Finance Act data add nothing to the evidence in support of the appeal. A full explanation is given by the appellant (SOA, IV.H.10–11) why the absence of any deduction for rights of way on the hereditament relating to Winkland Oaks Farm — even where the right of way was known to and accepted by the landowner — may be perfectly consistent with the landowner's best interests.

E.3. It is unlikely, contrary to the objector’s suggestion, that ‘the route was not included within the Finance Act because it did not exist’ (at the date of the survey: around 1910–15), because the evidence suggests that a right of way along the line of the appeal way has existed since *at least* the tithe survey in the early nineteenth century — even if it were only, as the objector contends, in the form of the footpath now recorded on the definitive map and statement.

E.4. Thus a public right of way did exist across the hereditament at the time of the Finance Act survey — and it was not acknowledged by any deduction. This is unremarkable, and no conclusions can be drawn.

## F. Ground (e): the Electricity Supply Acts 1882 to 1922 notice

F.1. The objector concludes that:

The Electricity Act merely indicates that a public right of way existed and offers no insight as to the extent of that Right of Way.

F.2. We address this contention in the SOA (IV.K) and in our comments on the surveying authority’s statement of case (at item F).

## G. Ground (f)<sup>1</sup>: whether the claimed route formed a single entity with Hangman’s Lane

G.1. The objector further observes that:

When considering whether the claimed route formed a single entity with Hangman’s Lane, it was apparent from the appellants original application that the two formed two separate routes, formed at different times in history. It is now subsequently being argued that they are of the same formation to try to refute the councils reasoning for refusal. Subsequently this does not form a convincing rationale.

G.2. The objector is correct that the appellant’s position has evolved on the question of the provenance of the appeal way. The appellant’s application for a definitive map modification order suggested that<sup>2</sup>:

Between C and E, the application way is of more uncertain origin, and may have become established as a public road, privately maintainable, only in the late eighteenth or early nineteenth century.

Whereas the appeal now proposes (SOA, I.G.1) that:

The appeal way between C and E, in common with the majority of public paths in Kent, may well be of ancient origin.

1 In its appeal, this ground was incorrectly labelled ‘ground (e)’ and referred to as such by the objector. It should have been labelled ‘ground (f)’, and here is referred to as such.

2 Hangmans Lane document analysis (in application for a definitive map modification order), v.1.31, para.1.E.2.

G.3. The evolution reflects reanalysis of the available evidence. While the objector suggests that the revised analysis ‘does not form a convincing rationale’, we suggest that, on the contrary, the revised position offers a more credible explanation of provenance.

G.4. Historical evidence for the existence of field paths is generally absent until the early nineteenth century (often beginning with evidence arising from the tithe survey), but that does not mean that most field paths are of recent origin — only that the evidence of much older, and indeed ancient, origin is lacking.<sup>3</sup>

## H. Eastry Rural District Council evidence

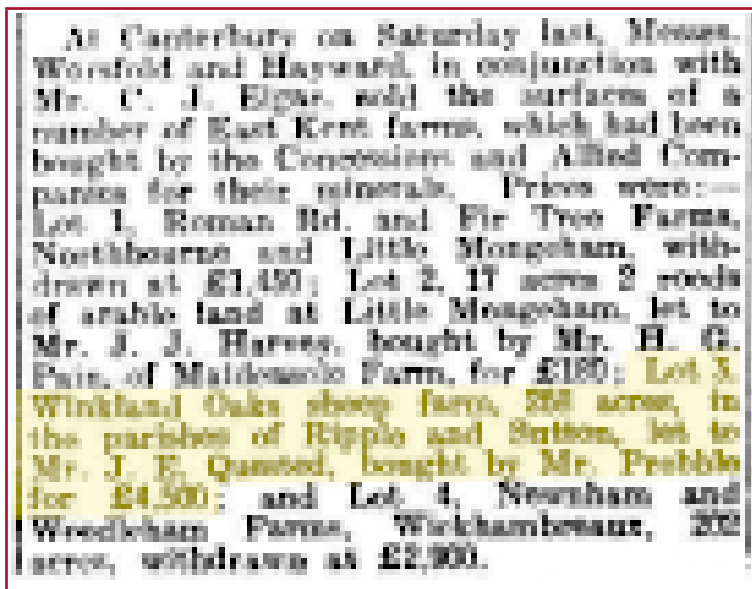
H.1. It is notable that the objector does not even refer to the evidence that the Eastry Rural District Council, in the first half of the last century, considered the appeal way to be a bridleway (SOA, items IV.G, IV.I, IV.J and IV.L). This evidence shows that, over a period of around 20 years, the council’s experienced surveyor and the council itself considered and accepted that the appeal way was a bridleway. Such evidence, from a time before statutory records were prepared of the rights of way network, cannot lightly be dismissed.

H.2. We raised the possibility (SOA, para.IV.I.6) that Mr J E Quested, who in 1911 expressly asked the surveyor to meet him at Winkland Oaks Farm to view the ‘dangerous’ state of the appeal way, and who appeared to consider the council liable for repairs:

...was later reported in 1918 as the lessee of Winkland Oaks Farm (but not necessarily the tenant).

H.3. That possibility is attributable to the following newspaper reports:

### Dover Express and East Kent News, 21 June 1918



At Canterbury on Saturday last, Messrs. Worfold and Hayward, in conjunction with Mr. C. J. Elgar, sold the surfaces of a number of East Kent farms, which had been bought by the Concessions and Allied Companies for their minerals. Prices were:— Lot 1, Roman Hd. and Fir Tree Farms, Northbourne and Little Mongeham, withdrawn at £1,450; Lot 2, 17 acres 2 rods of arable land at Little Mongeham, let to Mr. J. J. Harvey, bought by Mr. H. G. Pain, of Maidstone Farm, for £180; Lot 3, Winkland Oaks sheep farm, 258 acres, in the parishes of Ripple and Sutton, let to Mr. J. E. Quested, bought by Mr. Probble for £4,500; and Lot 4, Newham and Woodham Farms, Wickhamstead, 202 acres, withdrawn at £2,900.

3 Paths laid out at the time of inclosure are necessarily contemporary with the inclosure process (although they may replace much older ways across the common being inclosed), but very few areas of Kent have been subject to inclosure.

**FREEHOLD FARMS,**  
Extending to an area of  
**611 a. 2r. 33p.**

**Lot 1.—ROMAN ROAD and FIR TREE FARMS,** in the Parishes of Northbourne, and Little Mongeham, containing 124a. 0r. 12p., in the occupation of Mr. P. J. Bond on a yearly tenancy, subject to notice given to expire on the 11th October, 1918.

**Lot 2.—17a. 2r. 0p.** in the Parish of Little Mongeham, let to Mr. J. J. Harvey, subject to notice given to expire on the 11th October, 1918.

**Lot 3.—WINKLAND OAKS FARM,** in the Parishes of Ripple and Sutton, containing 268a. 0r. 4p., in the occupation of J. E. Quested, Esq., on a yearly tenancy subject to notice to expire on the 11th October, 1918.

**WINKLAND OAKS FARM, FOR SALE.**

The sheep farm known as Winkland Oaks Farm, situate in the parishes of Ripple and Sutton, comprising 268a. 0r. 4p., and let to Mr. J. E. Quested at an annual rent of £200, led to some spirited bidding. The runners up were the tenant and Mr. Prebble, and amid applause the latter secured the farm for £4,500.

H.4. The report that Winkland Oaks Farm was 'let to Mr J E Quested at an annual rent of £200' and 'in the occupation of J E Quested, Esq' is strongly suggestive that Mr Quested not only leased the farm, but in 1918 was in occupation as the farmer.<sup>4</sup> It would be astonishing if Mr Quested's correspondence, seven years earlier in 1911, took place at a time before Mr Quested entered into the tenancy of Winkland Oaks Farm, merely as a matter of coincidence.

H.5. Perhaps the objector could have clarified this matter from his own knowledge — but instead, no comment is made whatsoever on any matter concerning the Eastry Rural District Council evidence. We suggest that the objector might have been expected to rebut the tentative conclusion drawn — that Mr Quested recognised that there was a bridle road through his own farm, and expected the highway authority to maintain it — had it been mistaken. We conclude that it was not.

<sup>4</sup> It is not suggested that Mr Quested was himself resident at the farm (the correspondence is stated to be 'from Mr J.E. Quested of Folkestone': SOA, IV.I.3), but that he would have had a farmer-manager in place. It seems that Mr Quested was a man of some local reputation, and farmed a number of holdings in the area. He was also a local councillor and alderman and justice of the peace.

## I. Summary

I.1. The appellant therefore reiterates that the evidence of (at least) bridle road status is clear from the tithe survey data, consistent with other nineteenth century sources, and confirmed by very strong highway authority evidence dating from the early twentieth century, which is founded in correspondence with what appears to have been the then occupier of Winkland Oaks Farm (an appearance which the objector has not addressed).

I.2. The objector states that:

All OS plans presented as evidence fail to identify the route C – E as a bridleway, with sales particulars plans as late as 1936 also failing to do so. It would appear to be extremely coincidental that throughout a period spanning in excess of 100 years, not a single plan identifies the route as anything other than a private track or road.

This is to misrepresent the evidence. None of the Ordnance Survey County Series maps (of which the first and second edition maps are included in the SOA , items IV.E and IV.F) identifies the appeal way as anything other than what it plainly was: a track, used by vehicles, initially enclosed leading to Winkland Oaks Farm, and subsequently unenclosed across farmland. That representation is consistent with the appeal way having public footpath, bridle or carriageway rights — or none. This is because the Ordnance Survey adopted a simple hierarchy of footpath, bridleway, cart track or road, and marked a way according to the ‘highest’ element in the hierarchy which was in use (purportedly being indifferent as to whether public rights subsisted).

I.3. Contrary to the objector’s assertion, none of the evidence submitted in the SOA ‘identifies the [order way] as anything other than a private track or road’, nor has the objector submitted any such evidence.

I.4. Finally, as the appeal way is an obvious continuation of an ancient and well-documented bridleway, Hangman’s Lane, it would be remarkable if it too were not a bridleway. The evidence suggests that it is.

Hugh Craddock, for  
British Horse Society, South and East Kent area  
2 January 2021