

ROW/3264111: The Kent County Council (Bridleway EE490 at Eastry) Definitive Map Modification Order 2020

Comments of the British Horse Society on the objector's statement of case

A. Introduction

A.1. These are the further representations on behalf of the British Horse Society ('the society') in relation to the Kent County Council (Bridleway EE490 at Eastry) Definitive Map Modification Order 2020, under the Planning Inspectorate reference: ROW/3264111. The representations relate to the statement of case submitted by ET Landnet Ltd on behalf of Mr Simon Roscoe, the objector to the order, dated 16 September 2021.

A.2. We refer below to paragraphs of that statement of case as 'para.*n*'. We refer to our own statement of case as BHS SOC I.Y.*n* (where 'I' refers to either part I or II, and '*n*' is an optional paragraph number).

B. Comments on the objector's objection

Para.1

B.1. The applicant states that:

A copy of the objection is annexed hereto, and the contents are confirmed.
The Objector relies upon the matters contained therein.

B.2. In its statement of case (BHS SOC I.B.3), the society referred to the objector's objection (as now annexed to his statement of case), and addressed the objection in the context of each relevant piece of evidence. We therefore do not further address the objection here.

B.3. However, some comments are made here on the objector's statement of case.

C. Comments on the objector's statement of case

Para.2.1

C.1. The objector seeks to diminish the weight attached to Boteler's sketch map (BHS SOC II.B) on the grounds that:

There is no evidence that [Boteler] was aware of the status of any route shown on his map.

C.2. As we state at BHS SOC II.B.5,¹ William Boteler intimately was familiar with Eastry, where he was born and lived. He was the key contributor (as regards his local area) to the

¹ Drawing on *East Kent History*, the website of the Addelam History Research Group: see footnote 10 to BHS SOC II.B.5.

contemporary county history of Kent and to the subsequent study of Eastry published in 1870. No-one could have better credentials for his knowledge and understanding of the parish. As a local member of the gentry, he would have been influential in the parish vestry (the then medium for local government), and annually would have elected the parish lay surveyor. He may himself have been the surveyor in one or more years — we do not know. But clearly, from his life and works, his knowledge of the parish was second to none, and he would have had a good understanding of the local highways and other roads.

C.3. The Boteler sketch map is impeccable in this respect: it correctly and exceptionally identifies the 'Tenants Way' as a way which is not a public road, and the 'Bridle Way to Knowlton' as a highway which is of lesser status than a public road. Otherwise, there is an excellent correlation between those ways shown on the sketch map and those which today are recognised as public roads. We address the absence of annotation of the order way at BHS SOC II.B.8–9.

Para.2.2

C.4. We, and the order-making authority, say that the order way is presented on the tithe map in the same manner as other local roads, *viz*, as enclosed and excluded from assessment. The objector states that, in effect, it cannot be known that other local roads were, at the time of the tithe survey, public roads, and therefore the comparison is flawed. We do not agree. The parish of Eastry is a typical rural community where, even now, almost all development has taken place within the Eastry village envelope. Leaving aside obvious modern intrusions (notably the Eastry bypass section of the A256²), the public road network today is congruent with the road network impliedly identified as such on the tithe map in 1841 — as explained at BHS SOC II.D.10 (and, of course, leaving aside the order way itself). There is also a good correlation with the publicly-maintainable road network identified in the Contracted map of principal roads in Eastry (BHS SOC II.CA). While, even in rural areas, new roads may be constructed or adopted, or old roads extinguished, over the intervening period, such cases tend to be isolated and are plainly identifiable — for example, part of a carriage drive to a country house taken over by the highway authority. We can be confident that, modern A-roads aside, today's pattern of public roads is derived from ancient usage.

Para.2.3

C.5. We address the objector's criticism at BHS SOC II.K.12–19. Our submission explains the tendency for railway surveyors to admit false negative data (for example, to record a highway as of lesser or no status) in place of false positive data (for example, to record a highway where none exists at all).

Para.2.5

C.6. The objector espouses an unsupportable policy for the appraisal of evidence, to the effect (as we understand it) that, where the decision-maker (in this case, the order-making authority) disagrees with a party's interpretation of one piece of evidence, it then is bound to disagree with that party's interpretation of any other piece of evidence. We know of no such policy, and the objector adduces no case law or guidance to support his policy.

² The Betteshanger bypass section of the A256, further south, follows the line of the Dover, Waldershare and Sandwich turnpike and is not a new alignment.

Para.3

C.7. The objector refers (in para.2.4) to the recording, in the same railway plans, of the nearby crossing for Black Lane (EE488) as a footpath (now recorded on the definitive map and statement as a bridleway). The objector does not, however, explain how either the order way or Black Lane might have been recorded as a right of way (of whatever status), given that the objector's position is that the order way is not a right of way at all. Given that the entry for the order way in the book of reference was plainly the subject of consultation with Eastry Rural District Council (which is entered as the owner and occupier of the bridleway), it would have taken a fundamental error to have made such an entry where there was no right of way of any kind. But it is, in our view, entirely plausible that Eastry parish council (which is entered as the occupier of Black Lane) might have intimated to the railway surveyor that Black Lane was only a footpath, contrary to the position which (subsequently) was taken by Eastry Rural District Council (see BHS SOC II.K.17), and which has been confirmed by its addition to the definitive map and statement as a bridleway. It seems that the railway surveyor relied on the parish council to supply information as to public footpaths, but consulted the rural district council in relation to bridleways and public roads. This, in our view, explains why Black Lane was under-recorded as a footpath.

Para.4

C.8. The evidence of the Finance (1909–1910) Act 1910 does not, as the objector claims, 'challenge... the existence of a public right of way' — please see BHS SOC II.L.9–10. The evidence merely is neutral.

Para.5

C.9. We do not accept that the evidence overall is 'balanced' in the sense of being neither nor for against confirmation of the order. The evidence put forward by the society is summarised at BHS SOC I.H and itemised in the table at I.J.1.

C.10. Some of the evidence, particularly the Finance Act evidence, does not assist the society's case, nor does it harm it, but the society has included it to give the fullest possible picture. None of the evidence contends against the existence of the order way. Nor has the objector supplied any evidence which does so. Accordingly, the society submits that the correct conclusion, taking account of all the evidence, is that the order way is a public right of way, and that the most credible inference from the available evidence is that it is a public bridleway.

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