



Order Decision

Accompanied site visit undertaken on 23 January 2024

by Mark Yates BA(Hons) MIPROW

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

Decision date: 29 April 2025

Order Ref: ROW/3311269M1

- This Order was made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 ('the 1981 Act') and is known as The Kent County Council (Byway Open to All Traffic EE496 and Restricted Byway EE497 at Wingham and Goodnestone) Definitive Map Modification Order 2022.
- The Order was made by Kent County Council ('the Council') on 22 July 2022 and proposed to add two rights of way to the definitive map and statement which form one continuous route in the parishes of Wingham and Goodnestone ('the claimed route').
- The Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.
- In accordance with Paragraph 8(2) of Schedule 15 to the 1981 Act notice has been given of the proposal to confirm the Order with modifications.

Summary of Decision: The Order is confirmed subject to modifications set out below in the Formal Decision.

Procedural Matters

1. I proposed in my Interim Decision ('ID') of 9 April 2024 to confirm the Order with modifications to change the status of the claimed route to a bridleway and modify the width of the route. This Decision should be read in conjunction with the ID with the numbers in square brackets equating to the relevant paragraphs in the ID. Two objections were made in response to the advertising of the proposed modifications.
2. I reached my ID on the basis of the written representations of the parties and an accompanied visit to the site. In reaching my final decision I have had regard to the further written representations of the objectors, namely the Council and the applicant (Mr Craddock). A submission has also been made by Mr and Mrs Eldridge in support of the modifications to the Order.

Main Issues

3. I set out the main issues in relation to the Order as made in the ID [4-6] and I need to have regard to these considerations in reaching my final decision. In terms of the objections to the ID, it needs to be determined whether any new evidence and/or argument presented, when taken in conjunction with the previously considered evidence, has a bearing on the conclusions reached in the ID.

Reasons

4. It is not argued that I was wrong to conclude that the claimed route is a highway. The main focus of the representations is whether the route is a historical bridleway or vehicular highway. I concluded in the ID that this issue was fairly evenly balanced. In light of the further submissions, I have re-visited the various pieces of
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documentary evidence and my conclusions on the weight that should be attached to them. Reference is made to the Decisions of two other Inspectors (case references ROW/3311019 and ROW/3311754). The latter relates to the continuation of the claimed route southwards of its southern termination point.

Status

5. I noted what is shown on various estate documents dating back to 1701 in the ID [7-14]. Of particular relevance were the references to the route as a '*shireway*' [7]. Additional information supplied seems to me to also provide some support for this word being used to refer to a bridleway. In the circumstances, I consider that these references should be taken to be more supportive of the existence of a bridleway.
6. In relation to the use of the word '*lane*' in one of the estate documents [8], it remains my view that this is a descriptive term that by itself does not indicate whether the route was considered a bridleway or a road. This is distinct from whether this word might provide some support for the route being a highway.
7. A 1767 survey of estate lands shows roads in the parish that were considered to be maintained at public expense [10]. I accept that this document provides some support for the claimed route being viewed as part of the local road network and should accordingly be put into the balancing exercise. This is further supported by the comparison exercise undertaken by Mr Craddock.
8. I found in the ID that the depiction of the route on the Greenwood map is more likely to be indicative of a vehicular highway [17]. Whilst the tithe maps may also provide some support for the route being a public road, there is the potential for this evidence to be indicative of a bridleway [21]. The Finance Act evidence [36] is more supportive of the majority of the route being viewed as a vehicular highway. However, uncertainty exists for the southern section of the route where it is shown passing through one of the numbered hereditament on the Finance Act map.
9. The documents prepared in relation to the proposed East Kent Light Railway [38-39] are supportive of a section of the claimed route being viewed as a bridleway. However, reference is made by the Council to this proposal not undergoing full public or Parliamentary scrutiny as the railway scheme failed to go ahead. Mr Craddock also refers to other instances where errors have been found within these documents in relation to rights of way. This is supported a little by the findings of the Inspector in the case of ROW/3311019. Overall, these matters cast doubt on the reliance that can now be attached to the railway documents.
10. Mr Craddock believes a notice published in the London Gazette on 23 October 1923 [40-41] provides support for the claimed route having at least bridleway status rather than it necessarily pointing to bridleway status. In terms of the highway inspector's map [42-43], it appears that its primary purpose was to identify the maintained and unmaintained county roads. The inclusion of the route may provide some support for it having vehicular status. This could also be applicable to the initial definitive map records [44]. However, in this case a proportion of the claimed route was removed from the highway inspector's map. I do not find a 1982 conveyance provides much assistance in terms of the status of the route beyond the northern section of the route [49].
11. I have to reach my decision on the basis of the evidence and submissions of the parties. In terms of the decision in the case of ROW/3311754, I am not aware of the cases made by the respective parties or indeed a good proportion of the

evidence that was relied upon. Therefore, I am reluctant to place a significant amount of weight on the findings of the Inspector. However, he concluded that a direct continuation of the claimed route carried historical public vehicular rights. This provides support for the route being part of a vehicular through route.

12. In light of the further submissions I am now persuaded that the evidence points more in favour of the claimed route being a historical vehicular highway. There is no dispute that this means the B-E section shown on the Order Map should be recorded as a restricted byway given the provisions of the Natural Environment and Rural Communities Act 2006 [6]. In terms of the A-B section, any current and future use by mechanically propelled vehicles is likely to be for the purpose of accessing the two properties served by this section. Furthermore, public access beyond point B would be limited to other forms of traffic. In the circumstances, I consider the character of the A-B section to be more in line with the definition of a byway open to all traffic. Given that historical vehicular highway rights have been found to subsist and the inclusion of this section in the list of streets, I agree with the Council that it should be recorded as a byway open to all traffic.

Width

13. I was not satisfied that reliance could be placed on the widths calculated from historical maps [54]. In the absence of any further evidence on this matter, I consider that regard should be given to what would be a reasonable width for the route. The reduction in width for the claimed route in the ID was on the basis of the route being recorded as a bridleway. I now need to consider what would be a reasonable width given my revised conclusion regarding the status of the route.
14. Mr and Mrs Eldridge have referred to various features that serve to restrict the useable width between points A-B which were evident during my site visit. The available width in places is only sufficient to accommodate a single vehicle and I see no reason why a greater width should be recorded in the Order now that this section would be recorded as a byway open to all traffic. In terms of the remainder of the route, this largely passes alongside field boundaries and in my view a uniform width of 3 metres for the route would be reasonable in the circumstances.

Conclusion

15. Having regard to these and all other matters raised in the written representations I conclude that the Order should be confirmed with the revised modifications.

Formal Decision

16. I confirm the Order subject to the following modifications:

- Delete the references in the Order Schedule to '3.5 metres' and '4 metres' and insert '3 metres'.

Mark Yates

Inspector

COPY OF ORDER MAP – NOT TO SCALE

