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# Order Decision

by Paul Freer BA (Hons) LLM PhD MRTPI

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

Decision date: 11 January 2024

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## Order Ref: ROW/3311754

- This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Kent County Council (Restricted Byway EE269A at Goodnestone) Definitive Map Modification Order 2022.
- The Order is dated 22 July 2022 and proposes to modify the Definitive Map and Statement for the area by upgrading a Bridleway to a Restricted Byway as shown in the Order plan and described in the Order Schedule.
- There were four objections outstanding when Kent County Council (KCC) submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for determination.

## Summary of Decision: The Order is confirmed

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### Background and Procedural Matters

1. The application is made on the basis that any existing rights for mechanically propelled vehicles were extinguished on 2 May 2006 by virtue of the coming into effect of section 67 of the Natural Environment and Rural Communities Act 2006. Accordingly, the applicant submits that the claimed route ought to be recorded as a Restricted Byway.

#### Main Issues

2. The main issue here is whether a highway shown in the map and statement as a highway of a particular description (Bridleway EE269A) ought to be there shown as a highway of a different description, specifically a Restricted Byway.
3. The Order was made under the 1981 Act on the basis of events specified in sub-section 53(3)(c)(ii). If I am to confirm it, I must be satisfied that, on a balance of probability, the evidence shows that a Restricted Byway subsists along the route described in the Order.

#### Reasons

4. The application is made by Mr Hugh Craddock on behalf of the British Horse Society. The case in support is based entirely on documentary evidence.

#### Assessment of the evidence

5. The Order Route first appears on an Estate Map dating from 1736 showing land to the north of the Order Route. The map shows a way running south from Staple Road that is annotated 'to Goodnestone'. It is reasonable to conclude that this is a reference to the Order Route. A later Estate Map dated 1767, and which only shows carriageways, depicts a road maintainable at the public expense known as 'Woodshole Lane'. It is again reasonable to conclude that this is the Order Route.
6. The Order Route then appears on mapping as an established physical feature from the mid-18th Century onwards, and this depiction continues on almost all of the subsequent mapping during the 19th Century. The Order Route is depicted on these maps in the same

manner as what are now modern-day highways. This supports the contention that the Order Route historically formed part of the local road network.

7. The exclusion of the way from tithes on the 1841 Tithe Map for Goodnestone further supports this proposition, as does the depiction of the way on the First Edition Ordnance Survey Map (1872) which shows it coloured ochre in the same manner as Cave Lane and describes it as 'Road'.
8. The Finance Act map shows the claimed route included within the colour wash for three different landholdings. In respect of two of those landholdings, the accompanying Valuer's Field Book include deductions for 'paths'. However, because there is more than one public right of way in the area, it is not possible to establish conclusively whether these deductions apply to the Order Route.
9. The evidence indicates that the Order Route may have fallen into disuse by the early 20th Century. However, in a review of the Definitive Map undertaken in 1970, the Order Route was identified on the Definitive Map as a Byway Open to All Traffic (BOAT). The 1970 Review was abandoned in 1983 and consequently that status was never confirmed. Nevertheless, the identification of the Order Route as a BOAT at that time suggests that the historical use by mechanised vehicles was recognised and may have been ongoing.

### **Width**

10. There are no remaining historical physical features or boundaries between which a measurement can be taken. In the absence of any other information available to define the width of the Order Route, the approach adopted by KCC is based on what is reasonable for two users to pass comfortably. As a Restricted Byway and based on a theoretical need for two horse-drawn vehicles to pass comfortably, it is accepted by KCC that a width of 4.6 metres is appropriate and not unreasonable. I see no reason to take a different view.

### **Other Matters**

11. The letters of objection raise concerns that include the route being open to abuse by off-road vehicles, fly tipping, loss of fauna and flora, the hazard posed by falling into the disused chalk pit that adjoins the route and highway safety at the junction of the route. Whilst these are clearly matters of importance to the objectors, they are not relevant to my consideration of this Order which seeks to determine whether the evidence shows that a Restricted Byway subsists along the route.

### **Conclusion**

12. Aside from the 1767 Estate Map, no other piece of evidence positively identifies the Order Route as a public road. However, other pieces of evidence are individually and cumulatively consistent with the possibility that the Order Route was historically a public road. Moreover, there is no incontrovertible evidence that points in the other direction.
13. Furthermore, there is strong evidence in support of Twitham Lane having historically been a carriageway. The Order Route is an obvious continuation of Twitham Lane. Logic dictates that, more likely than not, the claimed route ought also to have been a public carriageway that once formed part of a longer carriageway between the hamlet of Twitham and Goodnestone. The positive identification of the Order Route as a road maintainable at public expense known as Woodshole Lane strongly suggest that the way was historically considered to have a higher status than a Bridleway.
14. From that starting point, and taking the evidence as a whole, I consider that on the balance of probability the Order Route historically formed part of the local highway network and therefore ought now to be recorded on the Definitive Map as a Restricted Byway. Consequently, having regard to the above and all other matters raised, I conclude that the Order should be confirmed.

**Formal Decision**

15. I confirm the Order.

*Paul Freer*

INSPECTOR

COPY OF ORDER - NOT TO SCALE

