

Hampshire County Council

Item 13

Regulatory Committee

19 October 2005

**Application for a Map Modification Order to record bridleways on Broxhead Common in the Parish of Headley**

**Report of the Director of Recreation & Heritage**

Contact: Colin Piper Ext. 6043      colin.piper@hants.gov.uk

### WILDLIFE AND COUNTRYSIDE ACT 1981

#### 53. Duty to keep definitive map and statement under continuous review

- (2) As regards every definitive map and statement, the surveying authority shall -
- (b) .... keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence.... of any of [the events specified in sub-section (3)] by order make such modifications to the map and statement as appear to them to be requisite in consequence of that event.
- (3) The events referred to in sub-section (2) are as follows -
- (b) the expiration... of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path;
- (c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows -
- (i) that a right of way which is not shown on the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way to which this Part applies;

**HIGHWAYS ACT 1980**

**31. Dedication of way as highway presumed after public use of 20 years**

- (1) Where a way over land, other than a way of such a 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.
- (2) The period of 20 years.... is to be calculated retrospectively from the date when the right of the public to use the way is brought into question....

**WILL DILE AND COUNTRYSIDE ACT 1981**

**Presumed Dedication at Common Law**

Use of a way by the public without secrecy, force or permission of the landowner may give rise to an inference that the landowner intended to dedicate that way as a highway appropriate to that use, unless there is sufficient evidence to the contrary. Unlike dedication under S.31 Highways Act 1980, there is no automatic presumption of dedication after 20 years of public use, and the burden of proving that the inference arises lies on the claimant. There is no minimum period of use, and the amount of user which is sufficient to imply the intention to dedicate will vary according to the particular circumstances of the case. Any inference rests on the assumption that the landowner knew of and acquiesced in public use.

**1. Summary**

1.1 The Three Counties Bridleways Group has made an application to have several routes, that cross Broxhead Common in Headley, recorded as bridleways. The application is based on user evidence which purports to show that the public has acquired a right of way through long usage. The application is recommended for refusal primarily on the grounds that there has not been 20-years continuous use of the same route, within the relevant period. There is also evidence that the landowner had no intention of dedicating a public right of way over the relevant part of Broxhead Common.

**2. Claimant:**

The Three Counties Bridleways Group  
 Mrs M Comber  
 The Old Cottage  
 Frith End  
 Bordon  
 Hampshire  
 GU35 0QS

### **3. Landowner:**

Mr A Whitfield  
Headley Wood Farm  
Headley  
Bordon  
Hampshire  
GU35 8SG

### **4. Description of the routes**

4.1 The claimed routes cross Broxhead Common as shown on the map attached to this report. In the north they start at three points: Bridleway 54 (point A), a road known as Picketts Hill (point B) and the A325 at its junction with the old road to Kingsley (point C). From these three points the routes run generally southwards and join together (at points D and E) to cross Bridleway 46 (point F) and end in the south at Bridleway 4 (point G). The only part of the claimed routes that still exists on the ground, as a recognisable path or track, is the section between B and D with a very narrow worn path between D and A.

### **5. Background to the claim**

5.1 Broxhead Common is a large area of mainly heathland on the east side of the A325 (Farnham Road) north of Lindford. The common is bisected by the B3004 (Broxhead Farm Road) that runs between Sleaford and Lindford. The common to the west of the B3004 is owned and used by the Ministry of Defence as a training ground whilst the land on the east side of the B3004 is privately owned and partly managed by the County Council as a nature reserve.

5.2 In 1964 the character of the eastern half of Broxhead Common was altered by the then landowner who converted the middle portion of the land from heath to pasture and erected fences to separate the two. This led to a dispute over the management of Broxhead Common and its registration under the Commons Registration Act of 1965. The outcome was an agreement between all the parties that was ratified by the Court of Appeal in 1978. One of the terms of the agreement was that the owner of the common should let approximately 100 acres of the remaining heathland, on the west side of the new fields, to the County Council.

5.3 In 1980 Hampshire County Council entered into a formal agreement with the landowner to lease and manage approximately 100 acres of the common. Under the terms of the lease the County Council was to manage the site for the benefit of wildlife whilst at the same time permitting public access. The claimed bridleways run entirely over that area of land that is leased by the County Council, and which is also a registered common.

- 5.4 There then followed a campaign by horse riders to secure a north-south bridleway route across the common. The 1964 Definitive Map recorded three routes that crossed the common from east to west, Bridleways 4, 46 and 47, but the only north-south route, at that time, was a footpath (number 54). An application was made in 1993 for a Map Modification Order to upgrade the footpath on the basis of long use by horse riders. At the same time negotiations were taking place between the County Council and the landowner regarding the dedication of a bridleway route.
- 5.5 The negotiations for a dedication were unsuccessful and the County Council refused to make a Definitive Map Modification Order for Footpath 54 because there was insufficient evidence of use. The riders then lobbied for a Creation Order to upgrade the footpath and eventually the County Council agreed to make one. In the meantime the County's refusal to make a Map Modification Order was successfully appealed and the Government Office of the South East directed the Council to make the Order. There were objections from the landowner to both the Creation Order and the Map Modification Order, which resulted in a public inquiry being held into both orders in 1997.
- 5.6 The Inspector first considered evidence concerning the Map Modification Order because, if bridleway rights were confirmed, then the Creation Order would not be necessary. Supporting the County Council's position, he came to the conclusion that within the relevant period for consideration there was insufficient evidence of public equestrian use of the Order route to support a claim of presumed dedication. Turning to evidence for the Creation Order he concluded that "...there is massive and virtually unchallenged evidence as to the need for a north/south equestrian link across Broxhead Common" and consequently confirmed the Order which created bridleway rights over Footpath 54.
- 5.7 The settlement in the Court of Appeal in 1978, and the subsequent Lease Agreement between the landowner and the County Council, does not give horse riders a right of access to Broxhead Common. Although Broxhead Common is a registered common and therefore access land as defined by the Countryside & Rights of Way Act 2000, this status does not convey a right of access to horse riders. There is a right to open access for walkers only. Horse riders have a right of access for air and exercise to Metropolitan Commons but not to commons in rural districts as at Broxhead.
- 5.8 The present application for a Map Modification Order, if agreed and confirmed, would have the effect of establishing another north-south bridleway route across Broxhead Common as well as a link west to Kingsley. The circumstances are different from the claim for an upgrade of Footpath 54, therefore the Inspector's conclusions from the 1997 Inquiry cannot be relied upon to determine this case, but are referred to for background information.