

**APPLICATION FOR A MAP MODIFICATION ORDER FOR THE
ADDITION TO THE DEFINITIVE MAP OF A BRIDLEWAY
BETWEEN CRADLE LANE AND BRIDLEWAY 54 IN THE
PARISH OF HEADLEY
COMMENTS ON THE OFFICER'S REPORT FOR THE
REGULATORY COMMITTEE 10TH JANUARY 2007**

I am Maureen Comber. I have worked in a voluntary capacity for the BHS for over 30 years specialising in improving off road access to enhance the SAFETY of the riding public.

During my deputation I shall be referring to a book entitled 'Rights of Way – a guide to Law and Practice' by John Trevelyan and John Riddall. This book is the definitive text when it comes to rights of way law. I shall refer to it as 'The Blue Book'

I have a number of concerns about the report. They are:

1. Although I have requested it I have not been shown a title deed for the land at Baigents Hill through which ABC runs.
2. Currently there is an appeal lodged with the Government Office for the North East which will determine if horse riders have a right to ride on Broxhead, irrespective of the provision of bridleways.
3. All the relevant evidence is not contained in the report in front of you.
4. The correct time period is not being examined
5. Selected quotes from a previous PI are being used out of context and are misleading.
6. There is a conflict of interests in that the Council leases a portion of the land over which the claimed path runs

To consider each point in more detail:

1. Surely the starting point of any claim should be to ensure beyond doubt who owns the land. I understand that there is now a copy deed in the post which I have not yet received and which has only just become available. Please note that means that at the October meeting a decision was being asked for without proof of ownership!!!
To those of us who crossed the woodland, there was no apparent owner. Until 1999 the land was unfenced and open.
2. It is said that the right of access for horse riders is not contained within the lease of Broxhead but neither does the lease deny the right. Hopefully I will be able to show that whichever is the case, you will feel confident that a reasonable claim has been made out and the Order can be made so that the merits of the application, and the weight to be attached to the evidence of the witnesses can be decided at Public Inquiry. If that proves to be the case it should not incur having to make a difficult decision. **Page 127, Para 2 The Blue Book refers.**

Alternatively, the correspondence with regard to the appeal to the Government Office for the North East finished in November. Members may prefer to await that decision before further consideration is given.

3. I question whether it is right or reasonable for the Officer to include or ignore material submitted with the claim, for example legal events directly connected with the site, which although they may not have a direct bearing on the claim itself offer a more comprehensive understanding of circumstances and possible supporting evidence. **Page 113 of The Blue Book** states "*The Authority must consider all the relevant evidence available to it (and must be advised by its officers on the correct application of the law to that evidence).*"

4. The correct time period is not being examined. **Pages 58, 66 and 67 of The Blue Book refer.**

It is necessary to remember that the twenty year period is calculated backwards from the date of challenge, that is there is no fixed starting point only a fixed finishing point. **Pages 66, 73 The Blue Book refers.**

In considering a claim for a modification order to add a path to the definitive map, it is generally the practice of surveying authorities to consider evidence of use both for periods of 20 years and above treating these as relating to the presumption under statute and for periods of less than 20 years treating these as giving rise to an inference of presumption under common law

The question seems to be, were the steps taken by the purported landowner, i.e. notices, gate or challenges sufficient to rebut the presumption. **Page 67 of the Blue Book refers**

Looking at the statements from club members, all without exception say that the gate was put up to protect the camp site from travellers and protection from vandalism. The erection of a gate on only one end of a path leaving the path accessible throughout its length and no notices to the effect, cannot qualify as a challenge.

The only date for a verbal challenge is offered by Mrs Podvoiskis as August 1986. The twenty year period is therefore 1966-1986. The report makes it infinitely clear that there is no question of gates, fencing or challenges during that time. It cannot therefore be said that "*There is insufficient evidence of use, at any period, with which to infer a dedication at common law*"

This statement is also a direct contradiction to that at 11.7 of the report.

Point A - B is still a physical feature on the ground even though the path is covered in eight years of leaf mould as the enclosed photos show.

Routes D-E-F-G and F-H

At para.12.2 of the report the Officer says that because there has not been continuous use of the claimed route for a full 20-year period for that reason alone the claim must fail.

Page 63 in The Blue Book states that "there is no requirement that the use must have been constant although it must have been sufficient to satisfy the requirement that the way was 'actually enjoyed'." Interruption does not refer to interruption of use.

An obstruction by natural means such as vegetative growth is not an interruption within the meaning of the Act and is not a barrier to presumed dedication. This is because it is not a deliberate act by the landowner which acts as a challenge to the public.

In any event there is a clear 20-year period of use before 1989.

Para 13.12 of the Report declares that the claimed route did not connect at its western end with a public highway that carried bridleway rights.

Just because a right of way is annotated with the initials FP does not prevent the existence of higher rights. Pre the enclosure in 1964/5 the Common was criss-crossed with paths and BW54 was one of them. It appears on the Finance Act Map no differently to the other paths. It is a fact that in 1905 OS field examiners had been instructed to insert the initials 'FP' to avoid the chance of paths being mistaken for roads traversable by wheeled traffic. It is on record that horses freely used the common for 'air and exercise' and there is no reason to suppose that BW54 would be an exception.

5. Para 7.17 is misleading in that it says the Inspector from a previous enquiry came to the conclusion that bridleway rights did not exist from archive or user evidence. The report does not make it clear that the date of challenge was taken as 1965 or that the archive evidence convinced the Inspector that horse riders already had a right to roam therefore bridleway rights were not requisite.

6. Committee Members do not have to declare an interest to the fact that the County Council lease a portion of the land over which part of the claim runs – E-G, E-F. It is difficult to see how the Council can adjudicate without coming under some pressure from its Officers in more than one department.

CONCLUSION

I understand that need is not taken into account when evaluating presumed dedication but it can and should provide a link between what used to be accepted practice and the gradual reduction in the non-motorised public's right to the use and enjoyment of highways as a whole and their right to the enjoyment of 'air and exercise' in our open spaces.

In concluding I would point out that:

1. The making of this order would satisfy the need to address the concerns over public safety with regard to the Judicial Review proceedings in 1997
2. The route is an important link in the bridleway network connecting the Hampshire and Surrey commons..
3. The route in question appears on the Rights of Way Improvement Plan for the South Downs
4. Hampshire County Council purport to advocate access to the countryside for all users and economically speaking it presents best value with regard to activating the CAP's

I would just leave you with quotes from the Inspector's report at the 1997 public inquiry. Speaking with regard to the Creation Order for BW54 he says:

*"There is massive and virtually unchallenged evidence as to the need for a north/south equestrian link across Broxhead Common... **The advantages to the many horse owners resident in this 'Tolkien' area of narrow, twisty country lanes (which are unsuitable for dual user) are considerable.**".....*

*"The public themselves have consistently pressed for re-establishment of a link since the permissive route closed in 1989 **This prolonged campaign suggests a genuine need rather than merely a wished for facility**".....*

"I conclude that the convenience of the local residents (amongst whom I include the motoring fraternity who will also benefit from less horse traffic on local roads); and possibly (given the high horse population in the area within reasonable riding distance of Broxhead Common) the

convenience and enjoyment of a substantial section of the public, would be enhanced by the proposed upgrading."

Even the landowner of Broxhead Common, Mr A.J.P. Whitfield noted that the claimed route "leads north to the busy C102 an acknowledged 'rat run'The only riders who would benefit are those who would use Cradle Lane (a Byway Open to All Traffic) but even they would have to traverse the 'fast stretch' of the C102 and the two narrow dangerous bends which link the two rights of way."

Members I implore you, please make the Order so that, as the law requires, if a reasonable case has been made out, the merits of the application, and the weight to be attached to the evidence of witnesses, can be decided at Public Inquiry. Ten years is long enough to wait for this problem of public safety to be resolved and the seriousness of the problem is demonstrated by the action of Judicial Review which seemed to be the only method of engaging the County Council's attention to an intolerable situation.

Maureen Comber



Hampshire County Council

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

Chief Executive's
The Castle, Winchester
Hampshire SO23 8UJ
Telephone 01962 841841
Fax 01962 867273
DX Winchester 2510

Enquiries to

Christine Blunt

My reference

R40L/CB

Direct line

01962 8475751

Your reference

Date

16 January 2007

E-mail

row.notices@hants.gov.uk

FIRST CLASS

RECORDED DELIVERY

Dear Mrs Comber,

**WILDLIFE AND COUNTRYSIDE ACT 1981 - SECTION 53(2)
APPLICATION FOR A MAP MODIFICATION ORDER FOR THE ADDITION TO
THE DEFINITIVE MAP OF A BRIDLEWAY BETWEEN CRADLE LANE AND
BRIDLEWAY 54 IN THE PARISH OF HEADLEY**

At the meeting of the Regulatory Committee on 10 January 2007 consideration was given to your application to include this right of way on the Definitive Map and Statement. The Committee resolved not to make an Order for the modification of the Definitive Map and Statement.

Paragraph 4 of Schedule 14 to the Wildlife and Countryside Act 1981 gives applicants who have complied with paragraphs 1 and 2 of that schedule a right of appeal to the Secretary of State against the County Council's decision not to make an Order. If you wish to lodge an appeal, you should do so within 28 days of receipt of this letter. Notice of the appeal should be served on the Department for Environment, Food and Rural Affairs, National Rights of Way Casework Team, Citygate, Gallowgate, Newcastle upon Tyne, NE14WH, and also on my office within 28 days of the date of receipt of this letter.

Yours sincerely,

Christine Blunt

**Christine Blunt
Democratic Services**

c.c. Rights of Way Manager



INVESTOR IN PEOPLE

Chief Executive

Peter C B Robertson LLB Solicitor