



WILDLIFE AND COUNTRYSIDE ACT 1981
THE SURREY COUNTY COUNCIL
UPGRADING OF FOOTPATHS NO.129 BYFLEET, 3 WISLEY (PART)
AND 566 WISLEY TO BRIDLEWAY STATUS
DEFINITIVE MAP MODIFICATION ORDER 2016

PROOF OF EVIDENCE (SUPPLEMENTAL)

RECOMMENCEMENT OF PUBLIC INQUIRY 6 February 2019

Mr Daniel Williams, Countryside Access Officer, Surrey County Council

Our ref. SM/DW/CP560
Pins Ref: ROW/3182825

Background

During the first day of this inquiry which was held on 22 May 2018 several new issues and pieces of evidence came to light which required substantial consideration. This led to the adjournment of the Inquiry. The new issues are considered below.

1. No-entry signs and associated wording plates

- 1.1. Currently there is one no-entry sign at the Byfleet end (A) of the claimed route with the accompanying plate 'except for access'. It is clear however that until several years ago there were two signs at this end. It is not known when the single sign was removed or by whom.
- 1.2. There were also two identical signs each side of the entry at Wisley Lane (H). It seems these were put in during 1999 or 2000 by Guilford Borough Council (GBC)¹. This is confirmed in letters from the GBC Officer Dennis Batchelor in letters of 15 October

¹ Who were not the Highway Authority.

1999 (e.g. CV25/61). A later Safer Guildford Briefing note from 2000 confirms that these had been put in (CV/25/55). They are visible on photos dated 3 November 2000 (See Document 2). In the letter and briefing note it is clear that recent works were to improve the way for pedestrians and cyclists and to prevent use in motorised vehicles (amongst other reasons).

- 1.3. The notices remained in place until at least February 2014, when Mr Garland informed Surrey Highways Engineer, Gavin Smith, that the no entry signs had fallen over. Mr Garland requested that they be removed. In an earlier exchange during April 2013 Mr Salaman and Mr Garland informed the Council that the residents were happy about the removal of the signs. Mr Smith responded that the signs had no traffic regulation order to prohibit highway users, and that the 'except for access' plates are not permitted to be used with the diagram 616 signs (NO ENTRY) at any time under the Road Traffic Signs and Usage Publication. Mr Smith noted that Muddy Lane is a private road over which runs footpath 566 and there is no requirement for these road traffic signs. (See Appendix CV6/183).
- 1.4. Mr Smith confirmed that they should be removed. It is not clear however if Surrey arranged for this to happen or whether they were removed by other persons unknown. The signs at H do not appear to be on highway land. Photographic evidence and google street view confirmed that they had gone by 2015. Mr Smith also suggested that an offence may have been committed by placing this sign here. The Traffic Signs Manual Chapter 3 Regulatory Signs (2008²) published by the Department for Transport does not describe any circumstances under which this sign could be used in this location. Given the above deficiencies it seems use by cyclists was not prohibited remained 'as of right'.

2. Height restriction sign

- 2.1 The document "*Subways for Pedestrians and Pedal Cyclists Layout and Dimensions. Highways Agency Standards TD 36/93*" and predecessor versions as supplied by Mr Garland lays out preferred widths, heights and general conditions for subways 'constructed' for pedestrians and pedal cyclists. The document TD 36/93 contains a summary as follows:

² <http://tsrgd.co.uk/pdf/tsm/tsm-chapter-03.pdf>, pg 26 and 27, see para 4.44 . (See Appendix CV/35)

“This Standard gives layout and dimensional requirements for the planning and design of subways for the exclusive use of pedestrians and for the combined use of pedestrians and pedal cyclists. Guidance is also included on headroom and width requirements for subways incorporating bridleways, surface finishes, lighting, drainage, handrailing, markings and signs”.

It then explains that it updates and supersedes earlier documents TD 2/78 and TD 3/79. It continues to note that the scope of the document is subject to situations where:

“..the constraints could prevent the desirable subway standards being achieved...”.

- 2.2 Throughout this document the various standards are referred to with the phraseology “..should be...” which suggests these are a set of preferred standards for good practice rather than conditions that must be complied with.
- 2.3 Mr Garland argues that these signs would prevent the acquisition of public bridleway rights because the subway beneath the M25 was not constructed to the relevant standard. This 1993 document would not have been relevant to the construction of the M25 which was completed here in 1983. Earlier documents TD 2/78 and TD 3/79³ are referred to in TD 36/93. These provide similar standards. It is more likely however that the standards for the construction of the M25 would have been signed off following multiple public inquiries during the mid to late 1970s before these standards came into force⁴. The Side Roads Order for this section was made on 24 May 1978; 2 months before document TD 2/78 was published, although it was not intended to show constructional details. The standards in “Roads in Urban Areas” of 1966⁵ seems to have been the relevant guidance and desired standards for combined cyclist/pedestrian use subways to apply at the time as indicated by para. 1.1 of TD2/78. In para. 4.3 of the 1966 it states:

“Consideration should be given to the possible need for subways for the combined use of pedestrians and cyclists. Combined subways should have at least 7 ft. 6 in headroom and a minimum width of 16 ft. 6 in. for one-way cycle traffic or 19 ft. 6 in. for two-way traffic: these widths include a single 6 ft. footway”.

³ See Appendix CV/36

⁴ Although construction of the Wisley to Chertsey section itself took place between September 1981 and December 1983.

⁵ See Appendix CV/37

- 2.4 This is currently the height available and signed underneath the motorway which, if the subway was constructed in accordance with the 1966 guidance and desired standards, could show that it was intended to be created for public use greater than pedestrian use.
- 2.5 The height restriction warning signs advise of the current limits and are currently placed near point B and each side of the motorway at D and E. There are also what appear to be highway posts near point F which 'may' have carried similar height restriction plates on them. There is no evidence available that such a sign was placed at or near H. Such warning signs are not mandatory and are used to alert drivers to potential dangers ahead and indicate a need for special caution⁶.
- 2.6 In the Interim Order Decision (ref. FPS/Q1770/7/85)⁷ issued by the PINS Inspector Helen Slade on 4 August 2017 a similar situation was considered where an alleged bridleway ran under the M3. In para. 61 of this report she confirms that the dedication of bridleway may arise because "*There is no requirement for a bridleway to confirm to the standards adopted by the Design Manual for Roads and Bridges*". This was with regard to an assertion in this case by Highways England that the route could not be a cycleway because of the height of the subways (in this case between 2.24 and 2.26m: approx. 7.4 feet)⁸. She also confirms in para. 64 that issues of safety, design standards and desirability were not matters that she could take into account.
- 2.7 During the Inquiry held by the Inspector Mr D. M. Sims into the proposed Side Roads Order for the M25 between Chertsey and South of Byfleet 197_ the height of the underpass for public footpath no. 3 and the private access was considered. At this time the headroom was going to be 2.3m (7 ½ ft). Woking Borough Council objected that the height was insufficient but Thames Water agreed to the 2.3m headroom which was deemed to be adequate⁹.
- 2.8 The issue of height is not relevant for the purposes of the tests outlined in section 12 of the Statement of Case. That a way was of a limited height, or 'arguably' dangerous or a public nuisance is irrelevant if it did not deter use of the way 'as of right'. Any

⁶ <http://tsrgd.co.uk/pdf/tsm/tsm-chapter-04.pdf> (Traffic Signs Manual Chapter 4 Warning signs 2013) See appendix CV/42, Pg. 35 and 39

⁷ A final decision report underpinning the interim decision was made on 3 July 2018.

⁸ See appendix CV/38 for both reports

⁹ See appendix CV/39, paras. 9.41-9.42 and 10.13.

dedication as a result of use is limited by the conditions in place whilst that right was being acquired. The Highways Agency (now Highways England) confirmed that they had taken no steps to prevent public use.

3. Crown Land

3.1 It has been assumed that the land under the M25, which is now in the ownership of Highways England (formerly the Highways Agency), must by necessity classify as Crown Land. As a general description such land falls into four main categories:

- Land belonging to The Queen as monarch
- The Queen's private property
- Properties of the Duchies
- Government land

3.2 It is recognised that Crown Land is not bound by the Highways Act 1980 and that the provisions of s. 31 of that Act cannot be relied upon unless an agreement is made between Crown and highway authority under s. 327 that a provision in that Act might apply. It has been argued however that Highways England, as a government owned company and not an executive agency (as Highways Agency were) would not be regarded to own the land as Crown Land¹⁰. S. 31 might then be said to apply. This position is confirmed in the documents titled “The Secretary of State to Highways England Company Limited, Transfer Scheme, made by the Secretary of State under section 15 of the Infrastructure Act 2015”, and confirmed by the Senior Lawyer of the Highways and Freight Team to the Department for Transport on 11 February 2015¹¹. It is not argued that this was the position during the period of use under consideration by the inquiry.

3.3 No provision has yet been obtained that s. 327 has been invoked although in February 2014 a representative of the former Highways Agency (CV18) confirmed that they had taken no steps to prevent public use of their land at this location. The land must therefore be considered Crown Land.

¹⁰ National Grid (July 2015) Position Statement in respect of Crown Land. Hinkley Point C Connection Project, CV41

¹¹ See Appendix CV/40

3.4 The evidence of use between 1983 and 2006 for the motorway section is sufficient to give rise to the presumption that public bridleway rights had been dedicated, in line with para. 12.9 of my Statement of Case at Common Law.

List of additions to appendices

CV/35	The Traffic Signs Manual Chapter 3 Regulatory Signs (2008) http://tsrgd.co.uk/pdf/tsm/tsm-chapter-03.pdf Pgs 26 and 27, Para 4.44
CV/36	TD 2/78 Pedestrian Subways: Layout and Dimension and TD 3/79 Combined Pedestrian and Cycle Subways: Layout and Dimensions
CV/37	Roads in Urban Areas, HMSO 1966; Para 4.3. https://archive.org/details/op1268330-1001/page/n0
CV/38	FPS/Q1770/7/85 Order Decision 24 July 2017 and FPS/Q1770/7/85M https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/636717/fps_q1770_7_85_interim_od.pdf https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/731935/fps_q1770_7_85m_final_od.pdf
CV/39	Extract from the Report by the Inspector Mr D M Sims FRICS, on the public inquiries held at Byfleet on 13-16 September 1977
CV/40	The Secretary of State to Highways England Company Limited, Transfer Scheme, made by the Secretary of State under section 15 of the Infrastructure Act 2015
CV/41	National Grid (July 2015) Position Statement in respect of Crown Land. Hinkley Point C Connection Project, paras. 2.4-2.5. https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN020001/EN020001-003855-8.34.10_Position_Statement_in_respect_of_Crown_Land.pdf
CV/42	Traffic Signs Manual Chapter 4 Warning Signs (2013) http://tsrgd.co.uk/pdf/tsm/tsm-chapter-04.pdf Pgs 35 and 39