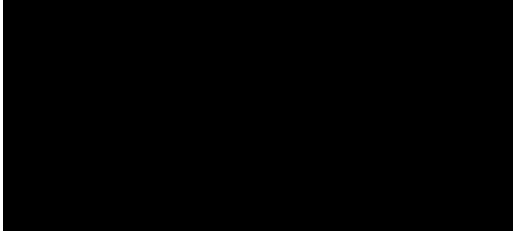




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GOVERNMENT OFFICE
FOR THE SOUTH EAST

Mrs M Comber



Bridge House
1 Walnut Tree Close
Guildford
Surrey
GU1 4GA

Your ref:

Tel: 01483 882504
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Our ref: GOSE 108/2/HAMP/4

Date: 12 October 2001

Dear Madam

**WILDLIFE AND COUNTRYSIDE ACT 1981 – SECTION 54 AND SCHEDULE 14
CLAIM TO SHOW FOOTPATH 3 HEADLEY AS A BRIDLEWAY
APPEAL BY THREE COUNTIES BRIDLEWAY GROUP**

1. I am directed by the Secretary of State for the Environment, Transport and the Regions to refer to your appeal made under section 53 and paragraph 4(1) of Schedule 14 to the Wildlife and Countryside Act 1981. This appeal is against the refusal of Hampshire County Council to make an order modifying their definitive map and statement to show Headley Footpaths 3 as a bridleway.
2. An Inspector has assessed all the representations made for and against the appeal and a copy of his report is attached to this letter (numbers prefixed "IR" below refer to paragraphs in the report). The Inspector recommended that the appeal be dismissed.
3. The Secretary of State notes that the original claim related to the "old" footpath 3, which is now depicted on the Definitive Map as footpath 3, part of footpath 54 and footpath 48. Since the claim was made the relevant section of footpath 54 has been given bridleway status by means of a Creation Order. The County Council decided to look separately at the remaining sections of the claimed route and their decision of 3 December 1997 relates to only to section now shown as Footpath 3 on the Definitive Map. You expressed concern that this treatment of the claim may have disadvantaged it.
4. It is a matter for the County Council themselves to decide the way in which claims are dealt with, in the light of the relevant circumstances. The Secretary of State does not have the power to determine whether the County Council acted correctly in a particular case. However, the Inspector has dealt with all sections of the claimed path in his assessment of



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the evidence (IR17) and the Secretary of State has reached a decision on the appeal on this basis.

5. The Secretary of State agrees with the Inspector that the issue turns on the Adjudicator's recommendation relating the FP3 (IR18). The Secretary of State accepts that there are gaps in the evidence which make it difficult to be certain about the precise events that took place during the 1964 review. Nevertheless, for the reasons given by the Inspector in IR19, the Secretary of State agrees with the Inspector that, on the evidence before him, the balance of probabilities is that the Adjudicator's recommendation related only to the section of the old FP3 from the C102 to the junction of FP4 (now part FP54).
6. The Secretary of State agrees with the Inspector, for the reasons that he gives in IR21, that the user falls evidence falls short of what is required to show a presumption of dedication of the way.
7. The Secretary of State therefore accepts the Inspector's recommendation and dismisses the appeal.
8. The Secretary of State is aware that the County Council is still carrying out investigations regarding the part of the claimed route which is now FP48, in connection with the adjoining paths to the north. Nothing in the Secretary of State's decision on this appeal prevents the County Council from making a Modification Order relating the FP48, should their further consideration indicate this is justified.
9. A copy of this letter has been sent Hampshire County Council.

Yours faithfully

J PALMER

NFI

WILDLIFE AND COUNTRYSIDE ACT 1981**APPEAL**

**BY MRS MAUREEN COMBER AGAINST THE REFUSAL BY HAMPSHIRE
COUNTY COUNCIL TO MAKE AN ORDER TO MODIFY THE DEFINITIVE
MAP AND STATEMENT BY UPGRADING HEADLEY FOOTPATH NO.3 TO
BRIDLEWAY**

Inspector: Mr WB Thrush CBE CEng FIEE
File Number: GOSE/108/2/HAMP/4

To the Right Honourable John Prescott MP
Secretary of State for the Environment, Transport and the Regions

Sir

I have the honour to report that I have carefully considered all the evidence relating to the appeal by Mrs Maureen Comber, under Section 4(1) of Schedule 14 to the Wildlife and Countryside Act 1981, against the decision by Hampshire County Council not to make an Order under Section 53(2) of the Act to modify the definitive map and statement by upgrading Headley Footpath 3 (FP3) to bridleway.

1. The application to the Council in February 1996 was for restoration of bridleway status for the whole of the old FP 3 Parish of Headley which, as a result of a second review of the definitive map in 1964, became FPs 3, 48 and part 54. Since the application was made, the relevant section of FP 54 has been upgraded to bridleway status by a separate Order. The Council based its decision to refuse the application on consideration of FP3 only, because it plans to deal with FP48 as part of a claim for a longer route in due course.

2. This report contains the gist of the representations made, an assessment of the evidence in relation to the relevant statutory criteria, and my conclusion and recommendation.

THE CASE FOR THE APPELLANT

The material points are:

3. The application and evidence submitted related to the full length of the old FP 3 Parish of Headley, which should have been dealt with as a whole. But the Council only considered that section which is the present FP 3. Surely it is not permitted to decide only part of a claim in this way.

4. The main basis of the claim is that mistakes were made by the Council in the procedures for the 1964 second review of the definitive map. Headley Parish Council had requested that old FP 3 be upgraded to bridleway. The Adjudicator at a hearing on 1 March 1965 was satisfied that there were no obstructions on the path before the Forestry Commission took over the lease around 1962, and that bridleway rights had been attained by equestrian user over a 20 year period before that date, and he recommended it be upgraded accordingly. He was better placed in 1965 to come to an informed view than would be the case now.

5. Even though there was no objection to his recommendation in the Official Book of Records of the review, the Council failed to advertise it, and the path was not upgraded. The Official Book of Records may not have been a statutory document, but it was clearly very strong evidence of the status of paths at the time, and of the sequence of events during the review.

6. Following the public inquiry in 1997 relating to a proposed Order to upgrade FP 54, the Inspector concluded that no mistakes had been made in 1965 in the procedures for the review of the path in question, for which the Adjudicator's recommendation to upgrade had been subject to an objection and taken to a second hearing. However, this objection did not relate to the section of FP54 that is part of the present claim, and the Inspector observed that mistakes may well have occurred on other sections of FP3. Thus his decision related to a different path, and cannot be applied to FPs 3 and 48 as the Council believes.

7. Five user evidence forms were submitted with the application, claiming use of all three sections by three riders, and of FPs 54 and 3 by two riders, over the period 1963-1995. In addition a number of letters of support for the application was received, but these provided no evidence of use of any specific paths.

THE CASE FOR THE HAMPSHIRE COUNTY COUNCIL

The material points are:

8. The Appellant's argument that mistakes were made in the 1964 review of the definitive map was not accepted by the Inspector at the 1997 public inquiry into FP54. The Council argued that, although the documentary evidence which survives is incomplete, it is sufficient to show that there was no error. The Inspector wrote in his decision letter "I have examined the documentary evidence extremely carefully. It seems to me that the statutory process had been followed and that the Headley Parish Council had been kept informed throughout.....I conclude on the balance of probability that a mistake about the status of the Order route (ie FP54) had not been made by the OMA during the second review". In light of his comments it was recommended that the application should be refused.

9. The review of the definitive map consisted of several stages. First a draft map and statement were prepared and advertised. If any objections were made the Council appointed a person to hear them and determine whether any modifications should be made. This determination had to be notified to the objector and advertised, and could lead to further objection and a second hearing. Then a provisional map and statement were prepared, consisting of the drafts modified in accordance with the outcome of hearings and any appeals.

10. The draft map for the area was the same as the previous definitive map, showing FPs 3, 4 and 5. Headley Parish Council objected to all three, and the first hearing decided that all should be added as bridleways. The Forestry Commission then objected in respect of FP 4 only, and a second hearing was convened to consider the objection. There were no other appeals, and no objections to the resultant provisional map.

11. If this was the whole story, then FP3 in its entirety should have been upgraded to bridleway. However, the book of objections had no statutory significance, but was a simplified record in note form, and a useful way of keeping track of the progress of

the review. It is necessary to look at the records in more detail to establish the true sequence of events.

12. The Parish Council debated whether to ask for the whole of FP3 to be upgraded, or to limit its request to the part south of Picketts Hill. In the event its letter of objection simply refers to the three paths by number. But prior to the hearing it sent a further letter, with supporting statements, making clear reference only to the section of FP3 from the C102 road to the junction with FP4 (now part FP54). It did not mention either of the other two sections, thus it specifically excluded the present FPs 3 and 48 from the detailed evidence it submitted to the hearing. The Adjudicator recommended that FP 3 be upgraded, but the note recording this does not exclude any part of it.

13. The next legal step was to notify the Parish Council of the decision, and to advertise the recommended map amendments. This was done, and the notice in the Hampshire Telegraph describes changes to the map in accordance with the Parish Council's letter to the first hearing - that is, they refer only to the section of FP3 from the C102 to the junction with FP4. The Parish Council made no further objection, and there was no objection to the resulting provisional map. Hence no error was made.

14. The first Definitive Map had a relevant date of 31 March 1952, and the associated Statement made no mention of stiles. The revised 1964 Statement described six stiles, two of which remain in place and make it impossible for horses to use the definitive line of FP3. In addition, at the 1997 inquiry evidence was presented to show that FP (now bridleway) 54, at the western end of FP3, was closed to equestrian use since 1975.

15. Two of the user witnesses state that they did not use all the definitive line of FP3 as it was blocked by stiles. Two others state that they do not recall ever riding along FP3. The Appellant also appears to have diverged from the definitive line over "the middle piece which runs through woodland with stiles and gates". None of the forms was accompanied by a map, thus the precise routes taken cannot be determined. It is evident that any use which has taken place has used gated routes off the line of the claimed path.

ASSESSMENT OF THE EVIDENCE

16. Section 53(2) of the 1981 Act requires that an Order be made on the expiry of any period such that the enjoyment by the public of the way during the period raises a presumption that the way has been dedicated as a public path, or on the discovery of evidence that, taken together with all other available evidence, shows that a right of way not shown on the definitive map and statement subsists, or is reasonably alleged to subsist, over land in the area to which the map relates.

17. Whether or not the Council was entitled to consider only one section of the claimed path in its determination, I deal with all sections in this assessment of the evidence.

18. The Appellant's case is based on her assertion that procedural errors were made by the Council in the second review of the definitive map. It seems to me that the issue turns on the interpretation of the Adjudicator's recommendation, after the first hearing, that FP3 should be upgraded. The Appellant argues that it means the whole of FP3, while the Council considers that it means only that part for which the Parish Council made detailed submissions to the hearing. No specific evidence that clarifies the matter was produced.

19. However, from the evidence that is before me, it appears that the statutory procedure was followed by the Council, and the Parish Council as objector was notified of the decision following the first hearing. Although entitled to do so, it made no further objection with regard to FP3, and neither did it object to the resulting provisional map. Thus it is reasonable to conclude that it was satisfied with the outcome as notified to it, as advertised in the local paper, and as reflected in the provisional map.

20. Therefore I conclude, on the balance of probability, that the Adjudicator's recommendation related only to the section of old FP3 that became part of FP54. Also, and notwithstanding the observation by the former Inspector, I do not consider the evidence shows that procedural mistakes were made in respect of FP3 in the 1964 second review.

21. The user evidence produced falls far short of what is required to show a presumption of dedication of the way, if that was the Appellant's intention. The witnesses were not specific about the route claimed, most admitted they had not followed the definitive line over the middle section, and two stated they had never ridden on FP3. In addition I note that part of the route was not open to equestrians after 1975, and that another part had been crossed by stiles since 1965 or thereabouts.

CONCLUSION

22. I conclude that the requirements of the 1981 Act are not met, and that the Hampshire County Council was right to refuse the application.

RECOMMENDATION

23. I recommend that the appeal should be refused.

I have the honour to be
Sir
Your obedient Servant

WB Thrush

