

From [REDACTED]

To [REDACTED]

10 April 2016

Meltham Footpath 70/30

This report is in relation Meltham FP 70/30 and has two parts;

1. Investigating a claim a claim that a public footpath (Meltham 70) has been illegally blocked or obstructed.
2. Dealing with known evidence submitted by Kirklees Bridleway Group claiming that the route should be classified as a Bridleway.

The obstruction claim.

Kirklees Council, reacting to claim that the route has been illegally obstructed, have issued a Section 143 Highway Act Notice upon the owner stating that the owner has, without lawful authority or excuse, obstructed the highway. It threatens to remove the obstruction if the owners do not.

Claims by owner.

The owners report that when they purchased the land around 1977 there was a locked gate, at location B, across the route and the metal upright bar was in situ. They also explain that the gate posts supporting the gate fell down in 2002. That post and the gates were removed at that time. The gates are in the field adjacent to Meltham 70 and the old lock is still attached. They also tell me that the last wooden gate post was removed earlier this year as it had rotted through. They had placed it over the wall in the same field as the old gates. They had the current gates reinstalled in the same position in January 2016 as a direct result of use by horse riders causing nuisance to footpath users. The upright metal post is where it has always been and the gates and posts now in situ replace ones there previously.

Offsite examination.

Reference to old Ordnance Survey maps show that the route was not recorded as existing in 1854 but was in 1894. A gate was shown across the entrance in 1894.

The route is recorded on the Definitive Map, with a relevant date of 1985, and in the Statement as being 1.2 metres wide. No obstructions are recorded. The Definitive Map shows a gate across the entrance of the lane.

An examination of the site via Google Earth confirms the existence of the upright metal pole, the gates (over the wall) and the post as described in June 2015

Interestingly all footpaths on that sheet are also recorded as being 1.2 metres wide despite gates, gaps and stiles reducing the width considerably in some case to as little as 30cm.

It is noted that the Definitive Map extract provided by the Council does not show recorded legal events that have taken place nearby such as the diversion of Meltham 40 that crosses the path in question despite this event having taken place over 24 years ago.

Site visit.

The south end of the route, off Wilshaw Road, has an edge to edge concrete surface for some considerable distance.

At the entrance off Wilshaw Road there is a stone gate post (A), similar to many others still in use on other land off this road. The top hinge hole is visible and presumably the bottom hinge hole is buried beneath the surface. As stated above, the position of this gate post and associated gate is as shown on old OS maps dating back over 100 years. This obstruction is shown on the Definitive Map but not recorded on the Statement.

A few metres down the lane a newly erected and locked gate (B) blocks most of the width of the route. There is a gap to the west side that is divided in two by an upright metal pole. The pole does not show signs of being a gate post or being newly installed.

The gaps either side of the pole shows evidence of use by people of foot and on bicycle.

The gap either side of the pole is greater than the gaps on footpath 40 which cross the route to the north.

Between the old gate posts (A) and the new gate (B) is a metal T bar structure (C). This is padlocked into position and has been in position for some time.

The post and gates referred to by the owners and seen on Google Street View, as over the wall, are in situ.

At point B there is a rectangular concrete pad set into the ground. At each corner is a metal pole opening that appears to be to receive cattle gates. It is not possible without destructive testing to tell if the concrete pad was in situ when the route was concreted or if it was constructed at the same time.

At the west wall edge base (where the wooden post had been) excavation reveals a rectangular post hole that corresponds with the post over the wall in dimension. It appears from the concrete formation that the concrete was poured when the post was in location.

Slightly in from the original western post hole the metal upright pole is set in newer concrete.

In from that pole is another post hole that has been set in new concrete that appears to be part of the works carried out when the upright metal post was placed. The rectangular post hole now has been reused to house the new metal gate post for the new gate.

To the east of the lane at the base of the wall is an apparently identical rectangular post hole to that on the west.

In slightly from that appears to be the remnants of another redundant post hole, within old broken concrete.

To the west of this is a small metal pipe that would seem to be a receiver for a drop bolt.

Between the drop bolt and eastern wall the new gate post has been fitted and a small fence added.

Findings.

At some time post 1854 and pre 1894 the route was formed. There was a gate way across the route at Wilshaw Road.

At some time after this, the top gate was removed and a lower gate held by posts, probably across the whole route.

After this installation of a new gate the route was concreted across its whole width.

At some time afterwards the large gate was replaced with a smaller version on the inner western post which had to be concreted in. The gap between the then new gate posts was filled in with a metal upright pole. It is presumed that another upright receiving post and drop bolt receiving hole were installed at that time on the eastern side. It is unknown when this occurred but was the situation when the current owners purchased the land and the gate was already locked.

There is no reason to disbelieve the owners when they say that they purchased the route with a locked gate and post restricting access in 1977.

In 1985 the Definitive Map was sealed showing the gate obstruction in the wrong place and failing to record the gap that existed.

No evidence has been found that suggests when the way was dedicated or that it was dedicated without the restriction that currently exists.

The standing of the Definitive Map and Statement.

The relevant law relating to unlawful obstruction is set out in the Wildlife and Countryside Act.

56 Effect of definitive map and statement.

(1) A definitive map and statement shall be conclusive evidence as to the particulars contained therein to the following extent, namely—

(a) where the map shows a footpath, the map shall be conclusive evidence that there was at the relevant date a highway as shown on the map, and that the public had thereover a right of way on foot, so however that this paragraph shall be without prejudice to any question whether the public had at that date any right of way other than that right;

and

(e) where by virtue of the foregoing paragraphs the map is conclusive evidence, as at any date, as to a highway shown thereon, any particulars contained in the statement as to the position or width thereof shall be conclusive evidence as to the position or width thereof at that date, and any particulars so contained as to limitations or conditions affecting the public right of way shall be conclusive evidence that at the said date the said right was subject to those limitations or conditions, but without prejudice to any question whether the right was subject to any other limitations or conditions at that date.

Effect.

The Definitive Map shows a gate upon this highway.

The Definitive Map is definitively wrong in other areas close by.

The failure to list that obstruction is a failure of the Surveying Authority and not one of the owners.

The obstruction now complained of has been in existence since before the sealing of the definitive map and statement.

There has been no proved dedication of the way without the reinstated restriction.

Other nearby routes are obstructed lawfully and restricted to smaller widths.

The complaint has been made, I understand, by a horse rider unable to continue to commit public nuisance.

Options

The obstruction complained of is "wilful obstruction of the highway". This is a criminal offence but is usually dealt with in these circumstances by agreement or threat of action where it is accepted by all parties that an obstruction is illegal. In this case however the land owners, supported by evidence on the ground, say that the obstruction is lawful and the Council must prove, beyond all reasonable doubt, that it is not lawful.

The Council may accept that they cannot prove their argument or they could take the matter before a Magistrate to prove their case (beyond all reasonable doubt). I doubt they could achieve this.

It should be noted that the route is in full use by those entitled to use it and the obstruction, lawful or not, is *de minimis*. This is supported by other lawful obstructions elsewhere on the footpath circuit used without complaint.

Conclusion

My view is that any attempt by the Council to prove that the owners had no lawful authority or excuse for reinstalling the restriction would be doomed to failure.

Kirklees Bridleway Groups claim that the route is a bridleway.

I have examined the limited yet redacted evidence supplied Kirklees Council. Under current legislation the Groups plea has to show a reasonable allegation that their claim is correct and the Council must then investigate all available evidence.

The Groups historic evidence is piecemeal, unexplained and flawed. It does not provide any clue as to why they believe that the classification of this route by previous due process was flawed. As all the "evidence" they provide was available to the creators of the Definitive Map there is no "new evidence". Additional evidence that they have not adduced but that I have seen does not support their claim.

The "user evidence" adduced when sent to me had been both unnecessarily and heavily redacted. As such I could only view route plans. This did enable me though to identify that modern user evidence relied upon by all parties (bar possibly one) appear to have had to have ridden by finger posts that identified the route as "Public Footpath" thus destroying any claim they were using it as of right.

Additionally the reinstatement of the locked gate to curtail their public nuisance activities indicates that their earlier use counted for nothing.

I understand from sources with Kirklees Bridleway Group that the majority of users are claiming just a few years of passage "as of right" (despite the signs) and not enough to prove statutory or common law dedication.

The Council Officers, if they accept the application, under current legislation have to undertake extensive, expensive and time consuming sets of research to investigate the claim.

From all I have seen within the application (and from my own sources) I can say that this seems to be a complete waste of Officers time, will achieve nothing and that the owners should not concern themselves with the application.

Should you wish to discuss this further I am always happy to do so.

