

Definitive Map Review: Kenn
Claimed Public Right of Way: Part Former Driveway of Haldon House, Clapham

Report of the Deputy Executive Director of Environment, Economy and Culture

Please note that the following recommendation is subject to consideration and determination by the Committee before taking effect.

Recommendation: It is recommended that a modification order be made to record a public footpath between Underdown Road and Brenton Road at the hamlet of Clapham in the parish of Kenn, along the route shown on the attached drawing number EEC/PROW/11/54 between points A – B.

1. Summary

The report examines a claim that a route in the hamlet of Clapham within the parish of Kenn in Teignbridge District, having no current recorded highway status, should be recorded as a public right of way.

2. Background

Members of the public appear to have used the route for many years as access between two public roads, but found it obstructed at times last year during residential development on adjoining property with gates locked and “No Entry” signs placed. This raised concerns that public use might be permanently denied, and led some local residents to supply evidence of past use with a view to the route being recorded as a public right of way.

The parish-by-parish review in Teignbridge District was completed some years ago, whereby individual claims can now be examined and determined as and when they arise.

3. Description of Route

The route lies on the south-eastern edge of the hamlet of Clapham, towards the western side of the parish of Kenn. From Underdown Road at the point marked A on the drawing it runs for 460 metres south south-eastward then east north-eastward, crossing the River Kenn and ending at the point marked B on Brenton Road.

Recent residential development at the western end has led to the first 50 metres or so of the original line being replaced by a surfaced driveway nearby. The route continues as a narrow worn path between verges and hedges for some 300 metres, until near the river bridge it is joined by a farm track which can be seen on the drawing diverging to the south-west. That track leads to the farmstead at Hill Farm, as marked on the location plan. The remaining 110 metres of the claimed route serves as vehicular access to that farm, and has a metalled surface.

The route has an interesting history. The villages of Kenn and Kennford lie to the east beyond the A38, and the roads around Clapham have long been relatively quiet and are used by riders from local stables. For centuries however the main Exeter – Plymouth road passed through the hamlet, Underdown Road being constructed by Exeter Turnpike Trust in the late 18th Century as an improvement over the original line a little to the north-west.

In the mid 18th Century Haldon House was built on the side of Haldon Hill above the hamlet, a mansion designed in imitation of Buckingham Palace but of which only one wing survives now used as an hotel. Access to the house from the main road altered over time, but it seems that by the early 19th Century the driveway began at a gateway which survives and appears on the drawing across the road from point A. The building shown beside this entrance was built as a gatekeeper's lodge.

In the early 19th Century the Turnpike Trustees decided to divert their Plymouth road eastward to run in part on the line of the Newton Abbot road through Kennford. As a result the approach to Haldon House from that road lay along Brenton Lane, which involved two right-angle turns in Clapham. Perhaps mindful of the tendency of carriages to overturn and potential for collisions with gate pillars, the owner of the house constructed an extension to the drive giving a straighter approach to the gateway.

This extension is the route in question, and was thus in origin a carriageway in the sense of a way for carriages rather than a public vehicular right of way. It was not gated but was not expressly dedicated as a highway, nor has it been adopted as such. Since Haldon House ceased to be a stately home and the estate was broken up, the route seems to have served as vehicular access only in part to Hill Farm and later to premises built beside it at the western end.

4. Basis of Claim

A highway may be created through dedication by the landowner of a public right of passage across his land, coupled with acceptance of the route by the public. Such dedication may be expressed through some overt action; or presumed, either from documentary evidence recording at some time in the past the status then attributed to the way concerned, or from a period of undisputed use as of right and without interruption by members of the public.

Section 31 of the Highways Act 1980 states that where a way has been enjoyed by the public as of right and without interruption for 20 years, it is to be deemed to have been dedicated unless there is sufficient evidence that there was no intention during that period to dedicate it. The period is calculated retrospectively from the date when the right of the public to use the way is brought into question. At common law a similar period of use terminating at any time may also raise a presumption of dedication.

Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 enables the Definitive Map to be modified if this authority discovers evidence which, when considered with all other relevant evidence available to it, shows 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. The alternative of "subsists or is reasonably alleged to subsist" has received recent attention from the courts, and is regarded to mean that while for confirmation of an order it is necessary to show on a balance of probability that a right of way exists, the test for making an order is a lesser one.

5. Evidence of Public Use

Evidence forms have been supplied by ten persons detailing use over various periods since the 1980s. All except one were using the route up to the time it was obstructed. All used the route on foot, four also using it on horseback, four on bicycles and one in a car. Reasons for thinking the route public include observing its use by others, the absence of signs to the contrary and the way the route is depicted on O.S. maps. Frequencies of use vary from several to two hundred times a year. Believed status includes bridleway, restricted byway and byway open to all traffic.

Seven of these persons used the route on foot over the twenty years prior to its recent obstruction, but only two used it on horseback or bicycle over that time. Three users mention finding the route gated at times in 2010, but others do not which confirms that gating was intermittent. None mentions being stopped, turned back or told the route was not public.

None of the users is clear as to ownership of the route. All live locally, or did so at the time of their use and used the route mostly for purposes of recreation.

6. Documentary Evidence

The route appears on large scale O.S. maps from the late 19th Century onwards, and appears today as an ungated lane which might suggest to potential users that it was public. It is not however shown on modern maps marked as a route with public access, and depiction on earlier maps is no evidence of a public right of way.

The route was not put forward as a public right of way at the time of compilation of the Definitive Map in the 1950s, or at the reviews initiated in the late 1960s and late 1970s. No landowner has utilised the statutory method of showing lack of intention to dedicate by statement and declarations under s. 31(6) of the Highways Act 1980, or by a statement under s. 31(5) that notices inconsistent with dedication have been torn down or defaced.

7. Consultations

The following have been consulted and invited to give information relating to the status of the route, it being assumed in the absence of a response that no such information is held:

County Councillor A Connett	– no response
Teignbridge District Council	– no response
Kenn Parish Council	– see below
Country Land & Business Assoc.	– no response
National Farmers' Union	– no response
Open Spaces Society	– no response
ACU Land Access Bureau	– no response
Byways and Bridleways Trust	– no response
British Driving Society	– no response
Cyclists Touring Club	– no response
British Horse Society	– no response
Ramblers' Association	– see below
Landowners	– see below

The clerk of the Parish Council states the Council is aware people have used the track as a footpath and bridleway but cannot confirm any dates or length of time it has been used.

The area footpath officer of the Ramblers' Association states that as much as the Association would like to support the claim for a right of way none of its members are known to have used the route.

The route does not appear nowadays to be expressly owned by anyone. The owner of the property marked on the drawing as "Rathgar" is understood to enjoy a private vehicular right of access over part of it, as is the owner of Hill Farm. Neither objects to use by walkers, and it seems the gates were only erected as a safety measure during building works.

8. Reasons for Recommendation/Alternative Options Considered

Despite the belief in higher status, evidence of use so far supplied appears sufficient only to make it reasonable to allege the existence of a public right of way on foot.

9. Legal Considerations

The implications/consequences of the recommendation have been taken into account in preparing the report.

10. Carbon Impact Considerations

There are no implications.

11. Equality Considerations

There are no implications.

Ian Harrison

Electoral Division: Exminster & Kenton

Local Government Act 1972: List of Background Papers

Contact for enquiries: Michael Martyn

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Background Paper	Date	File Ref.
Correspondence File	2010-2011	DMR/MM/KENN

mm030511prc
sc/cr/former drive haldon house clapham
02 170511



map ref: **SX8986 & SX9086**

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FORMER PART HALDON HOUSE DRIVE
CLAPHAM, KENN
CLAIMED HIGHWAY

drawing number EEC/PROW/11/54
 date April 2011
 scale 1:2500
 drawn by MM

Notation

Claimed highway A - B (460 metres) **-----**

Ian Harrison

DEPUTY EXECUTIVE DIRECTOR OF ENVIRONMENT, ECONOMY & CULTURE

