



Your Ref:

My Ref: RCA/Croydon

Date: 26th August 2021

Anthony Graham - Highways Records Officer
Croydon Council
Place Department
Highways Improvements
Bernard Weatherill House
Floor 6, Zone C
8 Mint Walk
Croydon CR0 1EZ

Dear Anthony

**Supplementary Questions Arising from my Report:
Wildlife & Countryside Act 1981, Section 53 & Schedule 14
Application for Definitive Map Modification Order
Alleged Public Bridleway along Hawkhurst Road, Kenley**

Following consideration of my report regarding the above, you have requested that I provide a further view on the likely status of the remainder of Hawkhurst Road (C-D-E on the attached Plan) and also the status of Longwood Road (C-F on the attached Plan). This advice should be read alongside my original report and its accompanying appendices as I do not propose to duplicate the information therein. Any additional appendices which arise as a result of this supplementary advice follow on numerically from the appendices in the original report.

Conclusions within my Original Report

Having considered all the available and relevant evidence relating to the status of Hawkhurst Road (shown A-B-C on the attached Plan), I concluded that the route had been dedicated as a public carriageway during the early Twentieth Century (Pre-1910). I further concluded that the provisions of the Natural Environment and Rural Communities Act 2006 applied to the extent that public rights for mechanically propelled vehicles were extinguished (and private rights for such vehicles reserved for the purposes of access to land).

Consideration of the Status of Longwood Road (C-F on the attached Plan)

The evidence in respect of Longwood Road (C-F on the attached Plan) is essentially the same as that relating to the first section of Hawkhurst Road (A-B-C on the attached Plan).

There is however one exception, that being that, rather than being excluded from valuation, the road (C-F on the attached Plan) appears to fall within Hereditament 2359 on the 1910 Finance Act Index Plan [App 12 pg. 192]. (i.e. This plot of land does not appear to be separated from the road by a red line boundary). However, the accompanying Field Book [App 25 pg. 882] records an area of 3 acres, 2 Roods and 5 perches (1.429 hectares), whereas the 1913 Ordnance Survey County Series plan records an area of 3.486 (1.410 hectares) for the plot of land plus an additional area of 1.578 (0.638 hectares) acres for the road.

In my opinion, this suggests that the road was not included within the valuation of Hereditament 2359, and it should have been separated by a red line boundary on the Index Plan. In other words, Longwood Lane (C-F on the attached Plan) should have been shown as being excluded from valuation. This

conclusion would also be consistent with the fact that Longwood Road is not separated from the surrounding road network by red line boundaries across each end.

Taking into account that above factors, it is my opinion that there is a reasonable allegation in favour of Longwood Road (**C-F** on the attached Plan) being subject to the same public rights of way as the section of Hawkthirst Road (**A-B-C** on the attached Plan) considered in my main report, namely Restricted Byway right.

Consideration of the Status of the remainder of Hawkthirst Road (C-D-E on the attached Plan)

The evidence in respect of the southern section of Hawkthirst Road (**C-D-E** on the attached Plan) is similar to that relating to the first section of Hawkthirst Road (**A-B-C** on the attached Plan) and the Ordnance Survey mapping evidence [**App 13 pg. 193-214**] certainly suggest that it was physically set out at the same time, and in the same manner the northern section of the road (**A-B-C** on the attached Plan).

Notwithstanding the above, there are three matters of evidence which need to be highlighted and considered.

The first of these is that the southern section of Hawkthirst Road (**C-D-E** on the attached Plan) is not included on the Highway Authority's highway records as being either publicly or privately maintainable, whereas the northern section (**A-B-C**) is recorded as privately maintainable public highway/carriageway.

The second is that section **D-E** of the southern part of Hawkthirst Road is not excluded from valuation on the 1910 Finance Act Index Plan [**App 12 pg. 192**], but is, instead included within Hereditament 2318, the Field Book [**App 25 pg. 878-881**] entries for which do not include any deductions in respect of public rights of way or user. They do however refer to the existence of a Cart Road and works executed on the Road to the value of £431.

Finally, the southern end of Hawkthirst Road (Point **E** on the attached Plan) terminates at its junction with Stumps Lane, which is understood to be recorded on the Definitive Map as a public bridleway, albeit a cul-de-sac itself.

I should stress that none of these issues prevent the southern section of Hawkthirst Road (**C-D-E** on the attached Plan) from enjoying the same status of the northern section (**A-B-C** on the attached Plan), namely Restricted Byway; nor would these factors have any bearing on the landowner's intentions (i.e. intention to dedicate) when the road was originally set out (pre-1910).

As discussed in the main body of my report, before a public highway can come into being, there must be both dedication (be it express/presumed or implied) and also acceptance by the public (which possibly may be by the local highway authority on their behalf). When all of the available and relevant evidence is taken into consideration, and assessed objectively, there is a clear case that there is, at very least a reasonable allegation in favour of Restricted Byway rights over the northern section (**A-B-C** on the attached Plan) of Hawkthirst Road.

When that same evidence is considered in the context of the southern end of Hawkthirst Road (**C-D-E** on the attached Plan) there is again, in my opinion, a reasonable allegation in favour of an inference of dedication of public carriageway rights, which now translate to Restricted Byway rights. However, there is perhaps not as strong a case as for the northern part of the road. The issue is perhaps whether the public have accepted such a dedication. It may be argued that the fact that this section of Hawkthirst Road (**C-D-E** on the attached Plan) is not included in the Highway Authority's records is

indicative that the dedication has not been accepted, at least as far as public vehicular rights are concerned. Such a proposition may be supported by the Ordnance Survey mapping [**App 13 pg. 193-214**] which indicates that over the years the physical appearance of this section of road (**C-D-E** on the attached Plan) has gradually degraded from a formally set out roadway with physical boundary features to a more undefined track, which is understood to now be considered (by way of local reputation) to be a bridleway.

The fact that section **D-E** of Hawkthirst Road was included in the same Hereditament as the adjoining plot of land does not preclude it being a public highway of some description. It simply suggests that it was not considered to be land vested in a rating authority (e.g. not maintainable at public expense). In a similar respect, the fact that the owner of the land did not claim any deductions in respect of public rights of way or user is not necessarily evidence that public rights were not considered to subsist, because such claims were discretionary. The remainder of the Road (**A-B-C-D**) is of course, excluded and this is strongly supportive of the proposition that it was considered to be a public highway.

Finally, the fact that Stumps Lane is recorded on the Definitive Map [**App 19 pg. 281**] as a bridleway means that the southern section of Hawkthirst Road (**C-D-E** on the attached Plan), if originally a public carriageway (and now a Restricted Byway), would be a cul-de-sac (at least for vehicular traffic). This is certainly no bar to the establishment of public rights, but it would raise the question as to why the public would drive to Point **E** on the attached Plan, then turn around and drive back. Other users may, of course continue their journey along Stumps Lane.

In conclusion, taking into account all of the available relevant evidence, including the above factors which differentiate the southern section of Hawkthirst Road (**C-D-E** on the attached Plan) from the northern section (**A-B-C** on the attached Plan) I am of the opinion that there is a reasonable allegation in favour of Restricted Byway rights over the southern section of Hawkthirst Road (**C-D-E** on the attached Plan). This is sufficient to trigger the Council's Duty, pursuant to Section 53 of the Wildlife and Countryside Act 1981 to promote a Definitive Map Modification Order to that effect. It should however be noted that the test for confirmation of such an Order is a more stringent test than the test for making the Order in the first instance, namely the civil standard of proof of the balance of probability. It is possible that this latter test might not be met and the Order would have to be either not confirmed at all, or modified to reflect a lower status of public right of way.

I trust that the above is of assistance, but if you have any queries, or need any points of clarification, please do not hesitate to ask.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Robin Carr', with a long horizontal flourish extending to the right.

Robin Carr FIPROW
Principal Consultant

