

From: Michael Tonkin (Public Rights of Way Officer – Definition Team)

To: Public Rights of Way & Access

Subject: Claimed public footpath from Sea Street to public footpath ER276, Droveaway Gardens, at St. Margarets at Cliffe, Dover

File Ref: PROW/DO/C493 District: Dover

Summary: To seek delegated authority to decline to make an Order to modify the Definitive Map and Statement by adding a public footpath running from Droveaway Gardens to Sea Street

FOR DECISION

Introduction

1. The County Council is the Surveying Authority for Kent and is responsible for producing a Definitive Map and Statement of Public Rights of Way. The current Definitive Map and Statement were published on 31st May 2013. Under the Wildlife and Countryside Act 1981, the County Council is under an obligation to keep the Map and Statement under continuous review.

Procedure

2. The Countryside Access Improvement Plan, Operational Management document (2013) sets out the County Council's priorities for keeping the Definitive Map and Statement up to date and ensuring that the status and alignment of all PROW are correct in accordance with statutory duties by:-
 - a) Investigating and determining all claims in accordance with the statement of priorities
 - b) Investigating and determining anomalies in accordance with statement of priorities
 - c) Processing applications to change PROW in accordance with policy and statement of priorities.
 - d) Ensuring all changes are covered by a formal Order

Definitive Map modification cases will normally be investigated in the order in which applications are received, except in any of the following circumstances, where a case may be investigated sooner:

- Where it will satisfy one or more of the relevant key principles set out in paragraphs 4.14 – 4.25 of the CAIP Operational Management document,
- Where the physical existence of the claimed route is threatened by development,
- Where investigation of a case would involve substantially the same evidence as a route currently under investigation or about to be investigated.

Legal Tests

3. (a) Section 53 of The Wildlife and Countryside Act 1981 states that where the County Council discovers evidence which, when considered with all other relevant evidence available to it, shows that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path or a restricted byway or, subject to section 54A, a Byway Open to All Traffic, it shall, by Order, make such modifications to the Map and Statement as appear requisite.
- (b) Section 31 of the Highways Act 1980 states that “where a way over any land, other than a way of such character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of twenty years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it”. The period of twenty years referred to is to be calculated retrospectively from the date when the right of the public to use the way is brought into question.
- (c) Alternatively, a public right of way may be established over a shorter period of time under Common Law. In *Mann v. Brodie* (1885), Lord Blackburn considered that where the public had used a route “for so long and in such a manner that the [landowner]... must have been aware that members of the public were acting under a belief that the right of way had been dedicated and had taken no steps to disabuse them of that belief, it is not conclusive evidence, but evidence which those who have to find the fact may find that there was a dedication by the owner whoever he was”, i.e. the dedication of a way as a public right of way can be implied by evidence of use by the public (no minimum period is required) and of acquiescence of that use by the landowner.

The Case

4. A plan showing the claimed route is included at **Appendix A** to this report and a detailed description of the case can be found in **Appendix B** to this report. An analysis of the user evidence can be found at **Appendix C**. All other documents and correspondence can be found on the case file which accompanies this report at **Appendix D**.

Investigation

5. Investigations have included the inspection of County Council records and documents available from other sources.
6. I have considered all the evidence available. The documentary evidence and the results of the legal tests applied are set out and examined in **Appendix B**.

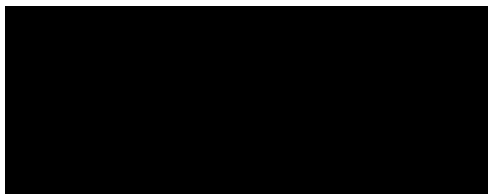
Conclusion

7. Investigations have been carried out in accordance with procedures and proper legal tests have been applied to the evidence gathered during the investigation. The result of the investigation is that a public right of way is not reasonably alleged to subsist.

Recommendation

8. I recommend that the County Council declines to make an Order to modify the Definitive Map and Statement by adding a public footpath running from Droveaway Gardens to Sea Street, as shown on the attached plan marked **Appendix A**.

Signature



Head of Public Rights of Way and Access, Growth and Communities

Date 8 October 2025

Background Documents:

- APPENDIX A – Plan showing the claimed route
- APPENDIX B – Main report
- APPENDIX C – Summary of user evidence in support of the application
- APPENDIX D – Case file

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