

**EBBESBOURNE WAKE: OBJECTIONS AND
REPRESENTATIONS TO ORDERS AFFECTING
ROAD USED AS A PUBLIC PATH NUMBER 3**

Purpose of Report

1. To consider and comment on objections and representations received to the making of an Order under Section 54 of the Wildlife and Countryside Act 1981, reclassifying Ebbesbourne Wake Road Used as a Public Path (RUPP) Number 3 to Byway Open to All Traffic (BOAT), and an Order made under Section 54 of the 1981 Act, providing for the width of the way to be 30 feet or 9.14 metres. The route of RUPP 3 is shown on the plan at **Appendix A**.

Background

2. Ebbesbourne Wake RUPP 3 was claimed as a public right of way by the Parish Council at the preparation stage of the Definitive Map. The Parish Council surveyed the path on the 30th July 1950, noted its surface was metalled and passed the following comment:-

"This is an important road and should be kept open and in repair."

3. The track was included on the Definitive Map as a RUPP with a width of 9 feet. No objections were made to this classification.
4. As a RUPP the way fell to be reclassified under the National Parks and Access to the Countryside Act 1949, as amended by the Countryside Act 1968.
5. The test for reclassification was:-

"The considerations to be taken into account in deciding in which class a road used as a public path is to be put shall be:-

- (a) whether any vehicular right of way has been shown to exist;*
- (b) whether the way is suitable for vehicular traffic having regard to the position and width of the existing right of way, the condition and state of repair of the way, and the nature of the soil;*
- (c) where the way has been used by vehicular traffic, whether the extinguishment of vehicular rights of way would cause any undue hardship."*

6. After consideration of evidence relating to the way and a consultation exercise, the County Council decided that the correct status for the reclassification of the way was as a BOAT.
7. When the proposed reclassification was advertised, Ebbesbourne Wake Parish Council made representations, in 1973, that the way should be reclassified as a bridlepath or footpath as it considered the way quite "unfit for traffic".
8. The objection was due to be determined by the Secretary of State for the Environment at a Public Inquiry, but, before the Department of the Environment was able to convene an Inquiry, the Wildlife and Countryside Act 1981 was brought into force, affecting the reclassification of RUPPs. Section 54(3) lays down the test now to be applied in reclassifying a RUPP:-
 - (3) *A road used as a public path shall be shown in the definitive map and statement as follows:-*
 - (a) *if a public right of way for vehicular traffic has been shown to exist, as a byway open to all traffic;*
 - (b) *if paragraph (a) does not apply and public bridleway rights have not been shown not to exist, as a bridleway; and*
 - (c) *if neither paragraph (a) nor paragraph (b) applies, as a footpath.*
9. Officers researched the history of the track and noted, amongst other evidence to support public vehicular rights over it, that it was actually legally laid out in the Ebbesbourne Wake Inclosure Award of 1792, made under an Act of Parliament, as a *"public Carriage Road and Driftway of the breadth of thirty feet - being part of the Road which leads from the village of Ebesborne-wake to Sutton Mandeville."*
10. The public vehicular rights have never been stopped up. When, in 1985, the Council's Rights of Way Panel considered the status to be given to RUPP 3, it was resolved that it should be reclassified as a BOAT.
11. On the 15th November 2001, an Order was made, under Section 54, providing for the way to be reclassified as a BOAT. Since the Council's attention was drawn to evidence relating to the width of the way, an Order was also made, under Section 53, providing for the width to be modified from 9 feet to the historic width of 30 feet (9.14 metres).

Objections and Representations to the Orders

12. **Ebbesbourne Wake Parish Council** objects to the Order reclassifying the track as a BOAT as it *"cannot see the justification for making a track, suitable only for walking and hacking (and unused by 4-wheel vehicles in living memory) into a byway open to all traffic. It may not alter the final decision, based on the 1981 Wildlife and Countryside Act, but this Parish Council considers that in the year 2001 usage of RUPP 3 has reverted to pedestrian and horse use only, as a matter of actual fact. Therefore, this Council asks that the County Council looks again at the criteria on which the original judgement was based and also at the overall number of byways "open to all traffic" within the Chalke Valley area."*

13. **Mr. G.L. Foyle**, on behalf of Foyle Brothers of North Hill Farm, objects to the reclassification of the RUPP to a BOAT as he maintains Ebbesbourne Wake BOAT 2 over the majority of its length, and as RUPP 3 branches off BOAT 2 extra vehicles using the byway will be at his expense. Mr. Foyle has requested that a Vehicle Restriction Order be placed on RUPP 3 should it become a BOAT.
14. **Mr. B. Riley** of Bradford on Avon has written to give his full support to both Orders as he believes the evidence *"could hardly be more authoritative in each case."* Mr. Riley also makes reference to the fact that at the Public Inquiry held into the reclassification of BOAT 2, the Parish Council and Mr. Foyle admitted that RUPP 3 is a vehicular highway.
15. **Mrs. Weatherill**, on behalf of Wiltshire Bridleways Association, wrote to give the Association's support to both Orders.
16. **Wiltshire Wildlife Trust** objects to the reclassification of the RUPP as a BOAT as the track runs alongside an area of chalk grassland that has been designated a Site of Special Scientific Interest (SSSI) and is a Candidate Special Area of Conservation.
17. **Mrs. Carless**, on behalf of Swallowcliffe Parish Council, has objected to the Order as it is believed that reclassifying path 2 as a BOAT would increase the traffic using the Herepath.
18. Ten letters of support for the reclassification of the RUPP to a BOAT have been received from The Solent and District Land Rover Club.
19. The letters will be available for inspection in the **Members' Room**.

Legal points to consider

20. Paragraph 8 above sets out the test to be applied under Section 54 of the Wildlife and Countryside Act 1981 in reclassifying a RUPP. The test is absolutely unequivocal; if public vehicular rights exist, the way must be reclassified as a BOAT. If this does not apply, then the way must be reclassified as a bridleway unless it can be shown that equestrian rights do not exist.
21. Section 53 of the 1981 Act imposes on the County Council, as a surveying authority, a statutory duty to keep the Definitive Map and Statement up to date. Section 53(3)(c)(iii) requires that an authority issues a modification order where:-

"the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows:

(iii) ... any other particulars contained in the map and statement require modification.

This sub-section provides for altering the definitive width of a way.

22. Section 32 of the Highways Act 1980 states:-

"A court or other tribunal before determining whether a way has or has not been dedicated as highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled and the custody in which it has been kept and from which it is produced."

Comments on the Objections/Representations

23. The Parish Council does not appear to accept the fact that the County Council can only reclassify the RUPP under the strict test laid out by Parliament in Section 54 of the 1981 Act. Factors such as alleged current use, and the overall number of BOATs in the area, are not ones which can be lawfully considered.
24. Mr. Foyle is concerned with the maintenance of the track. The County Council is, and will under Section 54(4), continue to be responsible for the maintenance of the right of way. It is noted that Mr. Foyle does not challenge the decision to reclassify the way as a BOAT.
25. With regard to Mr. Foyle's request for a Road Traffic Regulation Order, the County Council's policy is that permanent Traffic Regulation Orders on BOATs will be introduced only in response to specific problems and where a degree of enforcement action can be taken. If the way is confirmed as a BOAT, its condition can be monitored to ascertain if a specific problem arises which could be addressed by an Order.
26. The support of the people who have written to make representations that the Orders should be confirmed is welcomed.
27. Wiltshire Wildlife Trust and Swallowcliffe Parish Council object to the reclassification on grounds which may not legally be taken into account by the County Council or the Secretary of State. Part of the RUPP does run alongside an SSSI. The A4 at Savernake runs through the centre of an SSSI, Salisbury Plain is also an SSSI directly crossed by very busy main roads and there is no suggestion of closing any of these roads. The RUPP is surfaced and use of it by vehicles will not affect the adjoining land's SSSI status. Ebbesbourne Wake 2 is already a BOAT.

Conclusion: Options Considered

28. The law is unequivocal in the tests to be applied in relation to a RUPP reclassification.
29. The evidence to support public vehicular rights on the way has not been disputed or challenged by the objectors. Officers therefore believe that the only option available was to make the Order and now seek its confirmation.

30. Having "discovered" evidence, to use the words of Section 53 of the 1981 Act, that the track was legally set out under the Inclosure Award as a 30 foot road, the Council was also legally bound to modify the width from 9 feet to 30 feet or 9.14 metres. No objections have been made with regard to the modification of the width, but letters of support have been received.

Recommendation

31. That the Order be submitted to the Planning Inspectorate, together with the objections and representations made, and the comments thereon, with the request that the Orders be confirmed without modification.

Reason for Recommendation

32. To comply with the law.

RICHARD J. LANDER

Director of Environmental Services

The following unpublished documents have been relied on in the preparation of this Report:

Correspondence with objectors and those making representations.

Environmental impact of the Recommendations contained in this Report:

Enhancement of the rights of way network.