



Claire Saunders
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Dear Ms Saunders,

Footpath 24 and the Green Lane Foot Crossing (Green Lane, Ashtead to Links Road, Ashtead)

You will be aware from the meeting on 29th January 2016 with representatives of Network Rail that the latter contend the crossing between the two sections of Footpath 24 above is not a Public Right of Way (PROW). At this meeting both the representatives of the Residents' Association and the local MVDC Councillor, Paula Hancock, disputed this assertion. At this meeting, Network Rail was using this statement to justify the intention not to proceed with a scheme to establish the feasibility and cost of a sloped footbridge to replace the foot crossing.

Since that meeting, Network Rail have held a drop-in session at the Ashtead Peace Memorial Hall to outline their plans for the Level Crossing upgrade due in 2017, but also to explain their rationale for their supposed assessment that the Green Lane crossing is high risk. They also displayed a poster on which three options were stated:-

- a) Stepped footbridge
- b) Use of miniature stop lights (MSL)
- c) Closure

However, having spoken to several residents who attended this drop-in session, when their representatives were questioned over the PROW issue, their response was to abdicate responsibility and to divert the enquiry to Surrey County Council Rights of Way. Therefore on this basis we thought we would set out our reasons and evidence for the establishment of a PROW and let you take up the issue with Network Rail.

At this point it is worth explaining the history of the various crossing points in Ashtead.

An Act of Parliament in 1856 authorised establishment of the Epsom and Leatherhead Railway Company [E&LR] before an agreement was reached by the sponsors with the Hon. Mary Howard, Lord of the Manor, in order to purchase land needed for the track bed and other works. Details may be found in a terrier at the National Archives under reference RAIL 414:525.

The rail corridor traversed three ancient track-ways which extended northwards from the village: -

(a) From Farm Lane around the old eastern end of Craddocks Lane towards Woodcock Corner and on to Chessington, with branches to Epsom and Horton. (Lady Howard Crossing)

(b) Along the western edge of Woodfield to pass beyond Caen farmstead before heading towards Ashtead and Epsom Gaps and the way to Kingston. (The present iron footbridge crossing)

(c) Extending Agates Lane over Barnett Wood Lane to proceed along the driftway [Green Lane] again to Ashtead and Epsom Gaps before joining the road to Kingston market. (Green Lane crossing)

The Crossings

(a) Lady Howard Crossing

Initially it was proposed that a bridge should be provided to carry the road to Chessington, along the parish's eastern boundary, over the new railway line. Mary Howard, however, is reported to have required a tunnel on the original alignment of Craddocks Lane to retain access between fields in the divided parts of Woodfield Farm. Consequently a level crossing became established with accommodation for a porter who set local signals manually and acted as a gate-keeper. It remains in use as part of a bridle- path.

The 'cattle creep' also survives as a pedestrian link between St Stephen's Avenue and Overdale.

(b) Common Lane/Woodfield Lane/Station Approach to the northern-eastern edge of the Woodfield

The road from Common Lane (later Woodfield Lane) was extended and made up as Station Approach by the London & South-Western Railway Company in 1859. Access to the northern half of The Woodfield was provided by a 'private accommodation crossing' to the Common, although in 1886 new inter-locking double gates were installed with wicket gates for passengers.

During 1882 a land exchange had taken place which permitted what is now Woodfield Road to be connected through part of the garden to Felton's Bakery in a zig-zag to the later named Links and Ashtead Woods Roads. This increased traffic to the Caen Leys estate and led to a County Court case about passage from the level crossing east of the station to the Bakery: in July 1894 it was determined that Pantia Ralli, then Lord of

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Ashtead Manor, had not dedicated that section for public use and it remained a 'private' road' which could be closed at will.

In 1930 the level crossing was rebuilt and equipped with fresh gates operated from a re-sited signal box placed next to them on the up side at the eastern end of the platform. Its dedication to public use followed in 1937.

(c) The Highways Board/ Felton's Crossing

A road connection to Weller's Cottages on the western edge of north Woodfield had passed over a level crossing west of the station again controlled by a porter. In 1910 the old greenway was recognised to be public right of way before S 16 Railway Clauses Act was invoked, following an action by AG v. S. W. Railway in 1905, to allow the footpath to be raised from the level over a footbridge without special Parliamentary Powers. Ashtead Parish Council Minutes, 3 July 1911, record the approval at Quarter Sessions of arrangements to close and divert the ancient roadway west of Ashtead Station [over the present iron bridge].

(d) Green Lane/Agate's Crossing

The width of a field acquired by the Railway Company in 1857 contained another ancient track which had already been established by the Norman Conquest connecting the Saxon stede in Ashtead to Kingston. For the 1839 Tithe Map, Plot 189 extending from Barnett Wood Lane to the field boundaries beyond which the railway was to be developed is described in the terrier as 'Driftway' i.e. part of the ancient drove way along which herds were moved between the village and market in Kingston. Although only a shaw is depicted between fields 187 & 190, in the 1895 Ordnance Survey Map the driftway, named Green Lane, is extended as a single dotted line to and from the railway lines before continuing in double dashes and noted 'F. P.'

On 5 April 1870 farmer J Agate had applied, on behalf of landowners and others, for an archway under the line in lieu of the level crossing but that had been refused.

After the manorial estate had been broken up, Francis Larken Soames, solicitor, purchased Green Lane with over 135 acres of former New Purchase/Caen Farm land north of the railway line. The conveyance of 13 February 1880 specified a 'right of way in common with other persons entitled thereto, with or without horses, carts and carriages, over and along the road or way crossing London and South-Western Railway to Barnett Wood Lane'.

In 1889 W R Cassels (purchaser of over 16 acres of land from Soames in 1881 for the erection of Alderleif/Caen Leys, now Ashley Court) sought a subway for carriages and foot passengers from Barnett Wood Lane and, during 1891, A W Robertson requested a road-bridge. Both proposals for improvement were rejected by the Railway Company.

The disputed Public Right of Way at Agate's

As remarked earlier, a thoroughfare at this point is depicted on early edition O. S. maps and, after Soames' land acquisition, had continued via ladder stiles abutting double gates. The latter were, however, kept locked with keys provided for landowners on the Caen Leys estate development.

Ashtead Parish Council Minutes for 19 April 1909, reveal that Mr (J) Soames had been requested to erect a stile or wicket gate to the [recently constructed] fence enclosing his land, which obstructed the right of way from Green Lane to Ashtead Woods. The motivation for the closure after the Soames family had been in possession without making any difficulties over the passage for almost 30 years is unclear. It is, however, suspected to have been a ploy calculated to bring pressure to bear on the Lord of the Manor for him to relax restriction of access along his private road to what is now Links Corner (see above).

The Railway Company took advantage of this development by removing existing balks of timber laid to form a causeway between the railway lines. The matter then descended to farce. On 27 April 1909 the Parish Council was reported to have arranged for wicket gates to be provided & [replacement] planking laid down at the Green Lane Crossing where a footpath was claimed to exist. Occupiers also complained about the removal of gates and denial of freedom of movement provided in deeds to their properties. On 13 July 1909, following further representations from persons who owned rights in the crossing, gates were replaced in their original position and wickets removed. Ashtead Parish Council wrote to the South Western and Brighton Railway Company requesting that wicket gates or stiles be reinstated: on 12 July 1910, the railway company minuted that, under pressure by Ashtead Council, stiles or wickets were to be fixed without any admission that a right of way existed.

The Solicitor to the joint railway companies subsequently wrote to the Council asking for agreement to the following memorandum: -

“The Ashtead Parish Council allege that there is a public footpath across the railway in the parish of Ashtead at a point marked A on this plan, and the Parish Council hereby admit that there is no other public footpath within the limits shown by this plan, that is to say between the points marked B and C thereon. (The point B represents the signal-box at Ashtead Woods and the point C represents the crossing at Woodfield Bakery *) The L and SWR and the LB and SCR deny that there is any public footpath across the railway within the said limits on the plan, but without prejudice or admission that a public footpath exists they will fix wicket gates on each side of the railway at or near the said point A for the use of persons desiring to cross the railway, subject to the right, if any, of any person to have such wicket gates removed, and the railway fence restored”

* [B would have been Lady Howard Crossing and C where the iron bridge now stands]

Jurisdiction on the question rested with Epsom Rural District Council which ratified the memorandum on or immediately after 30 July 1912. In the Minutes of the Epsom RDC Council from July 1912 (SHC6070/3/14 Page 150) under the heading “Level

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Crossing, Green Lane” it was stated “Read letter dated 30th July from the Ashtead Parish Council, withdrawing their letter of the 2nd July, and consenting to the erection of wicket gates, provided the Council claimed that the footpath existed and was one over which they had sole control. Resolved that the Clerk be instructed to exchange counter parts of the Agreement with the Railway Companies.”

Conclusion

Since absence of a public right of way was never conceded by the Councils the above arrangement would remain binding unless and until successors to the contracting parties (Network Rail and MVDC) come to an agreement to supersede it. Very much to this point is the 1912 proviso reserving control of the footpath to [Epsom Rural District] Council.

The footpath crossing the railway has been in continuous public use for centuries, both before the railway was constructed and afterwards. The footpaths are shown on a succession of historic maps, and also on the 1895 Ordinance Survey Map. It also shows, we were told, on the Surrey County Council Definitive Map of c.1960 and later editions. The Oxford Dictionary meaning of the word “definitive” is “*a definitive decision is one which is not only conclusive but also carries the stamp of authority or is a benchmark for the future.*”

Network Rail maintain they have proof the footpath across the railway is not a PROW but to date have declined to produce this evidence. In an email to the Residents’ Association they say:-

“My legal colleague is called Damian Hajnus. I have discussed your request with him this morning and unfortunately a lot of the liabilities files are confidential. He has stated that he will try and find some docs to share with you that are not confidential. I have tried to summarise the evidence below:

The crossing at BTH3 16m 55ch is a s.68 accommodation work provided in enclosure no.26 in the Parish of Ashtead (described as arable, owned by Hon. Mary Howard and severed by the construction of the railway) authorised by the Epsom and Leatherhead Rly Act 1856. RCCA 1845 incorporated in cl.1.

The Act does not contain any specific provisions relating to the crossing.

- Land on which the crossing is situated was acquired under the terms of conveyance dated 1st August 1857 from the Hon. Mary Howard (extracts from the deposited plan and book of reference attached). (**These were not attached**)
- Historically, Network Rail’s predecessors have always maintained that no public rights of way existed across the railway at that point e.g: Wicket gates were provided under the terms of agreement dated 22/11/1911 and not to facilitate a PROW;
- Non-dedication signs have been displayed at the crossing at least since 1949 (please see attached) photographic evidence from 1940’s or 50’s and from 1990’s.

- In 1955 Surrey CC unsuccessfully claimed a PROW under the National Parks and Countryside Access Act 1949 – objected by BRB.
- 1969 – BRB ‘allows the footpath to remain’ in its correspondence;
- 1984 – Surrey CC complaint regarding lack of lighting on the crossing rejected by BRB on the grounds of lack of such obligation on BRB’s part as the crossing did not serve a PROW.

Consequently, in Network Rail’s opinion, no PROW subsists across the railway at Green Lane. Attached is an extract from Surrey’s Definitive Statement which confirms it.

Taking these points seriatim, yes wicket gates were installed under the Memorandum put forward in 1911, but importantly neither Ashtead Parish Council nor later the Epsom RDC conceded that this crossing was **not** a PROW and in fact maintained the opposite view **that it always had been and still was.**

Network Rail maintains signs have always been displayed saying this crossing was not dedicated to the public. Why then have these signs only now been re-erected in advance of the meeting in January? Why does Network Rail’s web site declare this as a public crossing? The fact that signage may or may not have been present does not get around the fact that both Ashtead and Epsom Councils refused to concede the crossing was NOT a PROW and these are minuted in Council proceedings. We would argue the signs were wrongly erected showing false information.

We do not know what evidence was produced for the 1955 decision, but clearly the history above and the time line showing continuous public use both before and after the railway was built was not taken into account.

The 1969 statement might reflect the Railway's one-sided view of the 1912 compromise proves nothing because the footpath has always been there and therefore BRB would be unable to remove it without a public hearing.

The 1984 statement was dealt with by Surrey CC but to our knowledge was never subject to public scrutiny by residents of Ashtead who were very familiar with the long established continuous public use of the long established footpath.

Finally, with regard to “Surrey’s Definitive Statement” we are unaware of any published legal process by which this statement was agreed after due public consultation. It is surely ultra vires the power of the Council to unilaterally submit to Network Rail’s assertions without due public and legal processes which would include public consultation. After all the Council cannot even paint a single yellow line on the road without a lengthy public advertisement and a period during which the public must be consulted and allowed to object.

Network Rail are, it appears, happy to abdicate the decision on this subject to Surrey County Council and we would therefore ask that you respond to Network Rail that despite what they say, the crossing at Green Lane has always been and will continue to be a Public Right of Way. We are happy to share our evidence with you, and we will continue to press Network Rail for sight of their evidence in support of their counter argument.

Yours sincerely,

David Baker
Committee Member for Highways and Railways
Ashtead Residents' Association.

