

Email Exchange with Andrew Griffiths, Legal Team

From: Andrew Griffiths (Legal Services) [mailto:Andrew.Griffiths@southglos.gov.uk]

Sent: 20 December 2023 14:14

To: Julian Darling

Cc: Darren Davison; Cath Clemence; Matthew Lipton

Subject: RE: [EXTERNAL EMAIL] - Extent of public highway - Henfield Road

Dear Julian

My apologies for delaying coming back to you but I'm grateful for your e mail below and the information in it which is very helpful and shall, of course, be properly considered as part of our enquiry. I will pick this up again with the Highways team in the New Year

With regards and all good wishes for Christmas and the New Year.

Andrew Griffiths

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Working days - Tuesday to Friday (inclusive)

From: Julian Darling <jdarling@paston.co.uk>

Sent: Monday, December 11, 2023 6:31 PM

To: Andrew Griffiths (Legal Services) <Andrew.Griffiths@southglos.gov.uk>

Cc: Darren Davison <Darren.Davison@southglos.gov.uk>; Cath Clemence <Cath.Clemence@southglos.gov.uk>; Matthew

Lipton <Matthew.Lipton@southglos.gov.uk>

Subject: RE: [EXTERNAL EMAIL] - Extent of public highway - Henfield Road

Some people who received this message don't often get email from jdarding@paston.co.uk. [Learn why this is important](#)

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Dear Andrew,

Thank you for your letter of 1 December which, I suggest, raises a number of issues which I will attempt to clarify.

The basis of my case is that there is clear historical evidence showing the extent of the public highway on Highways England land in 1964 when the M4 was built, and on NORFT land in 1970 and confirmed in 1983 by the Chief Commons Commissioner, and I can find no evidence whatsoever showing **any** decommissioning of any parts of these lengths of highway since then. Therefore, on the principle of 'once a public highway, always a public highway,' the Council's Highway Record needs to be amended to correct the situation.

In my experience, practising as a chartered surveyor for over 50 years, it is only when something like a planning issue comes up that historical records are researched and the existing plans are questioned, particularly when a previously rural backwater like Lyde Green Road (aka Henfield Road) comes forward for development.

The situation with the bell-mouth in 2016 was also researched by Cath Clemence, your Highway Records and Searches Officer, who wrote on 5 October:-

"I refer to your letter dated 1 September 2016, together with enclosures.

1. We have referred the matter to our legal team. We agree that the Council's Highway Record is incorrectly shown. We confirm that the 'bell-mouth' entrance into Lyde Green Farm is not part of the adopted highway and is 'Common Land'.
2. We agree that we will amend the Highway Record accordingly.
3. The Council's digital Highway Record is based on former local authority paper record maps and records, which evolve over time."

There is therefore a clear precedent and practice to amend highway records.

When the bell-mouth was reinstated in 2017, you wrote to Edward Jackman at Thrings on 14 July 2017 stating:-

"The recent alteration to the highway record (to remove the bell-mouth) was, in hindsight, effected by officers applying what was felt to be practical common sense. However, in the absence of any documentary evidence to support what officers believed *should* be the position, the Council was exposed to the risk of challenge and so the alteration was reversed to its original position (with the bell-mouth as highway)"

Despite what you say above, we **had** produced documentary evidence (from the then County Surveyor and the Chief Commons Commissioner) and I venture to suggest that your action was motivated by the risk of challenge, (which I would not anticipate on this occasion). As I said in my letter to you of 17 November, we (eventually in 2020) accepted the reinstatement of the bell-mouth on the principle that 'once a public highway, always a public highway' as there was

some doubt about the colouring on the 1st Edition of the Ordnance Survey, but I have to say that it was pretty dubious evidence!

With respect, I believe you are wrong to say in your letter that "In the case of the two examples below, the circumstances are really no different." In fact, they are the complete opposite; I have produced clear historical evidence of the extent of the public highway and I do not believe there is **any** evidence of subsequent decommissioning of any part of the lengths of highway involved.

I fully sympathise with your team inheriting records from two successive previous authorities, but as Cath Clemence's letter of 5 October 2016 accepts, errors do occur and they can be corrected over time. And, for good measure, can I point out two further errors in relation to Lyde Green:-

1. The common land boundary for G/CL/393 from your records is shown twice – in different places; on one map adjacent to the new length of road on Highways England land and on another map on land which included part of the decommissioned old road on NORFT land, and
2. The registration of Lyde Green Common under the Common Registration Act 1965 should surely have included all of the land shown on the plan attached to the 1910 Scheme of Management, now under the management of your Council. Hence the offer in my letter of 17 November to you to correct this error and undertake to dedicate as common, under S16 of the Countryside & Rights of Way Act 2000, the land identified as 'replacement common land' shown on plan IMA-19-167 020 D which, from my research, is not already public highway or required as highway in the NORFT planning consent P19/16524/F.

I am most grateful to you for personally leading this review, particularly with your current workload and staff shortages, and I hope you will be able to accept my evidence and proposal shortly.

With kind regards,

Julian Darling

From: Andrew Griffiths (Legal Services) [<mailto:Andrew.Griffiths@southglos.gov.uk>]

Sent: 01 December 2023 11:26

To: Julian Darling

Cc: Darren Davison; Cath Clemence; Matthew Lipton

Subject: RE: [EXTERNAL EMAIL] - Extent of public highway - Henfield Road

Dear Julian

I was just in the process of preparing to send this when yours of this morning arrived. My apologies once again for not responding promptly, Mondays are non-working for me and I have a particularly unreliable phone (and was travelling to the office this morning when you called) but thank you for your update below and this morning. Thank you also for suggesting a site meeting to discuss your findings although I'm not sure such a meeting can take us much further at present as I think the issues are quite clear.

Broadly what you are seeking is the correction of what you consider to be 'errors' on the official highway record to reflect what you conclude is a more accurate historical position, evidenced by a series of historic maps and other supporting documents. Achieving this could

obviate the need for Norft to provide exchange common land that has been conditioned as part of Norft's planning consent.

You'll appreciate that the highway record in our possession was inherited from two previous County Council Highway Authorities (Gloucestershire and then Avon) The presumption, therefore, is that if there were manifest errors on the face of the official record, they would (in all likelihood) have come to light much earlier, both highway authorities having the means and opportunity make any necessary correction(s)

Whether or not errors have been made by a predecessor authority (which we can't confirm) and however persuasive the available evidence might appear to be, officers at South Gloucestershire are unable to simply alter the official record to reflect what might reasonably be supposed to have been the intentions of those responsible for its original preparation.

You are quite correct to point out that this did occur in 2016, regarding the bell mouth, although this was reversed in 2017 following external advice to officers that in the absence of unequivocal evidence of an obvious omission or an error having been made, there was no lawful justification for the correction.

In the case of the two examples below, the circumstances are really no different. South Gloucestershire officers will not know what other evidence might have been available to Gloucestershire CC's (or subsequently Avon CC's) technical officers at the appropriate time or indeed their intentions in informing what finally appeared on the highway record so we cannot automatically assume that errors were made.

Officers here will need to make detailed enquiries of the available historical records (such as they are) and it may also be necessary to seek an external legal view as to their effect, or otherwise, before consideration can be given to whether corrections are necessary or appropriate.

Subject to this, proper consideration can then be given to the issues of common land replacement as per your planning consent.

I and my colleagues shall begin that process now and shall report further as soon as practicable which I hope is helpful.

With kind regards

Andrew Griffiths

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From: Julian Darling <jdarling@paston.co.uk>

Sent: Friday, November 17, 2023 2:44 PM

To: Andrew Griffiths (Legal Services) <Andrew.Griffiths@southglos.gov.uk>

Cc: Darren Davison <Darren.Davison@southglos.gov.uk>; Cath Clemence <Cath.Clemence@southglos.gov.uk>; Matthew Lipton <Matthew.Lipton@southglos.gov.uk>

Subject: RE: [EXTERNAL EMAIL] - Extent of public highway - Henfield Road

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Dear Andrew,

It is my turn to apologise for not acknowledging your very helpful email before this. But I have tried to ring you this week and left messages.

We did, of course, have exhaustive correspondence in 2020 about the entrance to Lyde Green Farm where we accepted the reinstatement of the bellmouth, on the principle that 'once a public highway, always a public highway' as there was some doubt about plans showing a bellmouth prior to County Surveyor's plan dated 18 September 1970. The SGC highway records were amended in 2016 (without the bellmouth), and then again in 2017 (with the bellmouth) as shown on your Ordnance Survey 100023410 plan attached to my email of 1 March 2023 to Cath Clemence.

1. Length of highway immediately south of the motorway on National Highways title plan GR323349.

The extent of the dash lines on the MoT SRO plan, indicating the extent of the public highway, certainly come up the southern boundary of the of the National Highways land title GR323349 abutting the NORFT land title GR330614 (regardless of any cattle grid) while the SGC highways plan stops just short of it on either side of the road against the wing fencing (presumably prepared when there was a cattle grid). But on the principle of 'once a highway, always a highway' surely the SGC plan needs to be corrected to reflect the MoT SRO plan.

2. Length of highway on NORFT land title GR330614 immediately to the south of National Highways title plan GR323349.

The position here is the reverse of the bellmouth situation; the County Surveyor's claim in Objection 101 in 1970 shows the extent of the public highway abutting the National Highways land as an extension of the dash lines on the MoT SRO plan and this was confirmed by the Chief Commons Commissioner in 1983 as 'not common land' and 'shown as highway land on the definitive map of county highways maintained by the County Council'. Therefore again 'once a highway, always a highway' and with no subsequent evidence of decommissioning, this is clearly an error in subsequent mapping and needs to be corrected.

Given the Council's ability to amend plans today, based on historical evidence showing the extent of the public highway, as was done in 2016 and 2017, I hope you will feel able to make these corrections. This would then removes the need for replacement Common land shown on the Replacement Common Land plan IMA-19-167 020 D detailed in Condition 11 of NORFT's planning consent P19/16524/F.

I understand that the removal of Condition 11 can only be achieved by a S73 application, but I hope we can agree these corrections in advance as part of a package deal in which I will nevertheless undertake to dedicate as common, under S16 of the Countryside & Rights of Way Act 2000, the land identified as 'replacement common land' shown on plan IMA-19-167 020 D so that Lyde Green Common will then include all the land shown on the plan attached to the 1910 Scheme of Management which is not already public highway or required as highway in the NORFT consent P19/16524/F.

I would be very happy to meet you, together with your colleagues, at your offices if that would help to resolve the matter.

With my regards,

Julian Darling

From: Andrew Griffiths (Legal Services) [<mailto:Andrew.Griffiths@southglos.gov.uk>]
Sent: 27 October 2023 13:32
To: jdarling@paston.co.uk
Cc: Darren Davison; Cath Clemence; Matthew Lipton
Subject: [EXTERNAL EMAIL] - Extent of public highway - Henfield Road

Dear Julian

My apologies for missing your call earlier and trust this finds your e mail working again. I was looking at this matter again only yesterday and confirm that I met with my colleagues, provisionally, last week initially to consider the highway questions but there shall be more to do to determine the commons question you've raised.

As to Henfield Road and as a matter of record, you will recall that there has been exhaustive correspondence concerning the legal status of Henfield Road and particularly its bellmouth at the entrance to Lyde Green Farm, between Michael Tatters at Things LLP and my colleague Lorraine Neve as lately as October 2020.

With that in mind, I'm happy to attempt answers (in red) to your following questions, recognising that my responses do not bind the Council to confirming anything other than is shown on its highway or commons records.

1. Lengths of highway immediately either side of the motorway.

These are both new sections of highway covered by the Hambrook – Tormarton Special Road (Side Roads) Order signed off by the Minister of Transport on 28th April 1964 shown on the attached plan. I have attempted to show the extent of the dash lines illustrating the edge of the verges either side of the new road coloured blue on the Land Registry plan GR330614, and confirmed by the National Highways Land Registry title plan GR323349. Please particularly note the southern boundary on the SRO plan and NH LR plan about the land edged red on LR title plan GR330614 and includes the area of cattle grid which no longer exists. Can you please confirm your agreement?

From our examination of the three plans, bearing in mind we aren't cartographers, that appears to be the case (albeit the SRO plan's dashed line appears to extend slightly further?) I have no knowledge of a previous cattle grid so cannot confirm or otherwise.

2. Length of highway immediately to the south of NH title plan GR323349.

The County Surveyor submitted Objection 101, under the Commons Registration Act 1965, on 18th September 1970 setting out lengths of County Highway maintainable at public expense which were not common land (attached) and this Objection was upheld by the Chief Commons Commissioner in his decision on 27th July 1983 (attached), so surely this wider section of highway should be included in to the County Highway Record? It was clearly intended to meet up with the southern boundary of the SRO 1964 plan. Can you please confirm your agreement?

The presumption is that the County Engineer's knowledge of the extent of what was adopted highway (when the Objection 101 was made in 1970) was definitive and it follows that in 1983 ..when the objection was finally determined.. the opportunity was available to Avon County Council's highway engineer to amend the highway record to reflect that. South Gloucestershire, as the successor highway authority to Avon is unable to account for why this was not done. The paper records to which officers have access don't assist us in determining the answer on which basis we are unable to conclude, definitively, that the highway record is 'in error'. The highway record therefore continues to reflect the historical position.

3. Bell mouth entrance to Lyde Green Farm.

You will remember the confusion over the bell mouth when it was removed from the County Highway Record in 2016 in line with the plan attached to Objection 101 above (your email of 5th October 2016 refers), but was reinstated in 2017 on the instructions of Andrew Griffiths and subsequently shown on the attached County Highway Record plan. Can you please confirm your agreement?

It's a matter of record that the highway record was amended in 2016 and the amendment reversed in 2017 on the basis of there being insufficient documentary evidence to justify the 2016 amendment having been made (see above) This is the explicit issue that was debated with Messrs Thrings in 2020 and the Council's definitive position is that the bellmouth is adopted highway.

I hope these responses may be of some assistance and in the meantime, I am looking at your question on the dedication of common land and shall revert to you as soon as possible.

With kind regards

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