

SECTION 6 HIGHWAY RECORDS AND RELATED DOCUMENTS

REFERENCE MATERIAL

Statutes

Highway Act 1835 – sections 5 & 23

Highways Act 1862

Public Health Act 1872

Highways and Locomotives Act 1878 (see 'Turnpikes')

Local Government Act 1894

Local Government Acts 1924, 1929

Rights of Way Act 1932

National Parks and Access to the Countryside Act 1949

Highways Act 1980

Note: The above list is not exhaustive. They are some of the acts from which Highway Records may emanate.

Case Law

R v SSE & Somerset CC ex parte Masters [1999] CO3453/97 – amongst other things, evidential status of 1929 Handover Maps

Fortune and others and Wiltshire County Council [2010]EWHC 2683 (Ch) and [2012] EWCA Civ 334 – thorough examination of relevant highway documents and their evidential value

Other Publications

Articles in Sections 1 (History) and 9 (Evidence of the Existence of Highways) of the RWLR.

GUIDANCE

Introduction

- 6.1 All highway records have to be interpreted carefully, with particular attention paid to the meanings of words within the given context. Usually they will provide suggestive, rather than conclusive, evidence on the case as a whole, but they may be conclusive evidence of what they purport to show. Below are listed some of the types of highway records that may be presented at inquiries, with some general commentary. It is helpful, in understanding 19th century evidence, to know something of the development of the highway network in England and the legal framework within which the development took place. The RWLR article on 'Highway Use and Control up to 1895' provides a useful outline.

Manorial Records

- 6.2 Manorial records may include Court Rolls (which carry the same weight as their successors in Quarter Sessions); and books and papers relating to a variety of matters, including references to issues connected with highways and bridges.

Quarter Sessions and Petty Sessions

- 6.3 Quarter Sessions records go back a long way. They may provide conclusive evidence of the stopping up or diversion of highways. Presentments or indictments for the non-repair of highways may also be found here and may provide strong evidence of status where they are confidently identifiable. It should be borne in mind that Quarter Session records are conclusive evidence of those matters the Court actually decided, but are not conclusive in relation to other matters. Reliance on orders alone can be misleading and evidence of completion may be required. Petty Sessional records may also be a source of evidence.

Deposited Plans of Public Undertakings

- 6.4 The legal deposit of plans or public undertakings was first provided for in the 1793 Standing Orders of the House of Lords. The need for such deposits was recognised following the canal mania of the early 1790s when it became evident that canal bills were being hurried through Parliament without proper scrutiny. Thereafter, promoters of canal or waterworks bills (and later bills for other public undertakings) were required to submit to the Lords plans of works, books of reference, and other papers before a bill was brought up from the Commons to the Lords. In 1837 an Act compelled the local deposit of plans of public undertakings with the Clerk of the Peace, although in practice local deposit had been taking place from a much earlier date.
- 6.5 Plans of canals, river navigations and highway diversions are common from 1793 onwards. By the early 19th century, records of harbour works and turnpike improvements are also found. From 1829 until the late 19th century railway undertakings predominate. (Canal, Railway and Turnpike

documentary evidence is covered in more detail in later sections of these guidelines). Papers relating to schemes for street lighting, tramways, gas, electricity and water undertakings become numerous in the late 19th century.

- 6.6 Any of these various types of document may provide evidence on adjacent paths, roads or tracks and therefore could be relevant as evidence in relation to the existence of Highways.

County Records

- 6.7 County records go back into the 19th century and may consist of any of the following, in addition to those items already mentioned:

County Surveyor's Annual/Quarterly Reports

Report of County Works Committee

Special Reports on Main Roads

Various minutes, estimates, tenders and grants

Rights of Way Reports

1929 Handover Maps and Records

County List of Streets

County Surveyor's Map and other records of Roads and Bridges

Aerial Photographs

Definitive Maps and Statements

Often these records bear notes relating to rights of way. Some of the annotations may have been for internal administrative purposes and may sometimes reflect only the views of the surveyor or engineer of the day. The evidence they provide therefore needs to be viewed in context. An article in Section 9 of the RWLR called 'Highway Authority Records' provides helpful background, particularly on those relating to County Roads and the Definitive Map.

1929 Handover Maps

- 6.8 The following comments apply to the 1929 and all other formal handover/takeover documents and to today's List of Streets⁸. The view that this form of documentary evidence may be relevant appears to have been endorsed by Hooper J in *R v SSE and Somerset County Council ex parte Masters 1999*. The Secretary of State for the Environment (SSE) had argued that such documents were a positive indication of what the Highway Authority then believed to be the status of the roads listed.

⁸ Section 36(6) of the Highways Act 1980 requires every highway authority to make and keep up to date, a list of streets within its area which are highways maintainable at the public expense.

Hooper J rejected as irrelevant a counter argument that SSE's conclusion was one which could not lawfully be reached in the light of *Stevens v SSE 1998*. He found that SSE's decision to treat the handover documentary evidence as a relevant consideration had not been one that no reasonable tribunal could have taken on the evidence available, i.e. it was not 'Wednesbury unreasonable'⁹. It should be noted that it is unsafe to hold that the fact that a road does not appear to have been accepted by the new highway authority at the time of handover necessarily suggests that it can not have been a highway.

- 6.9 The evidential strength of handover and similar documents is that they are conclusive evidence of the highway authority's acceptance of maintenance responsibility, a commitment that would not normally have been undertaken lightly. However, Inspectors should be mindful that these documents were principally for internal administrative use, were not readily available to the public and did not purport to be a record of rights. Consequently, while such evidence may weigh in favour of the existence of public rights, their evidential weight will be for the Inspector to decide in the context of other evidence.

Highways Act 1980 Section 56

- 6.10 It is sometimes argued that a successful claim against a highway authority under HA80, s56, at the Magistrates' Court and is a legal event which establishes a public right. The Court's decision may be legal evidence of a maintenance responsibility, and may be evidence in support of public rights; but it is not, in itself, conclusive in that respect.

Deposited Maps of Admitted Rights of Way

- 6.11 Under s31(6) of the Highways Act 1980 a landowner can deposit with the appropriate Council a map of their land on a scale of not less than 6 inches to the mile with a statement indicating what ways (if any) over the land they admit to have been dedicated as highways. If this is done, a statutory declaration by the owner or his successors in title should be lodged within 10 years to the effect that no additional way (other than specifically indicated in the declaration) has been dedicated. Similar statutory declarations should be made every subsequent 10 years.¹⁰ As this procedure was first introduced in the Rights of Way Act 1932, records of any statutory declarations made can go back many years. In the absence of proof to the contrary, a properly made statutory declaration of this type is sufficient evidence to rebut the intention of the owner or his successors in title to dedicate any additional highway during the associated relevant period. Councils are required to keep a register of these deposits and declarations for public inspection.¹¹

⁹ *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1KB223

¹⁰ This figure was amended from six years to 10 years by the Countryside and ROW Act 2000 and came into force in England on 13 February 2004 and in Wales on 31 May 2005. Transitional provisions apply to deposits and declarations made prior to the change.

¹¹ Brought into force in England on 1 October 2007 (Statutory Instrument 2007/2334) and in Wales on 15 January 2006

- 6.12 Following the 1932 Act, many local authorities began to produce lists and maps usually only of non-vehicular rights of way, which may survive in more or less detail. Such documents may reflect the view of the authority, and may provide supporting evidence of the status of a way, but are not conclusive.

Parish Records

- 6.13 Prior to 1894 when the Local Government Act transferred responsibility for the maintenance of public highways to Rural District Councils, such responsibility generally belonged to the parish. Relevant Acts often included provision for the use of locally available materials and there was a statutory requirement upon parishioners to fulfil a fixed annual labour commitment. The final responsibility for maintenance lay with the local Surveyor of Highways who was obliged to keep a detailed account of public monies expended. Some of these records survive, usually in county archives. Under the 1862 Act parishes could combine to form Highway Boards, and their records are also found in county archives.
- 6.14 It is generally accepted that longer distance use of horse drawn vehicles increased significantly during the late 18th and early 19th century. Some highways which had been adequate for hoofed traffic were unsuitable for wheeled traffic and consequently fell into disuse. Parishes were often reluctant to expend time, money and effort for the benefit of travellers who merely passed through. It was frequently the maintenance of highways, which was the main point of contention in legal wrangles concerning the highway network, not the rights to use a particular highway.
- 6.15 Because of the reluctance of some parishes to spend money on highway maintenance, a rebuttable presumption can arise from an entry in a local Highway Surveyor's Account Book. However, it is necessary to check that the highway can be identified accurately from the records. Some of the names used may since have been changed, corrupted or, like some highways, have fallen into disuse.
- 6.16 More recent parish records are also of great importance, particularly those relating to the Parish Survey from which the Definitive Map followed. These usually include a statement which accompanied the Draft Map, a survey card and also the relevant contemporary parish council minutes.

Deeds of Sale (Conveyance or Transfer)

- 6.17 The inclusion of a specific reference to a public right of way within (or adjacent to) land being conveyed is of some evidential value. However, it should be borne in mind that the conveyance or transfer was essentially dealing with private rights of property and was not prepared with a view to defining public rights. Similarly, the inclusion in a conveyance or transfer of mutual private rights for the purchaser and others over the land is not conclusive evidence that there is no public right over it. Mutual private rights might have been included by the conveyancer out of

abundant caution. The evidence provided by a conveyance or transfer needs to be considered along with all other relevant evidence.

- 6.18 Sales particulars, as opposed to the actual conveyance document, should be treated with special caution. The art of embellishment in advertising is not a newly acquired skill. Nevertheless, if a public right of way were admitted, a convincing reason for disregarding the entry would need to be provided before it could be entirely discounted.