



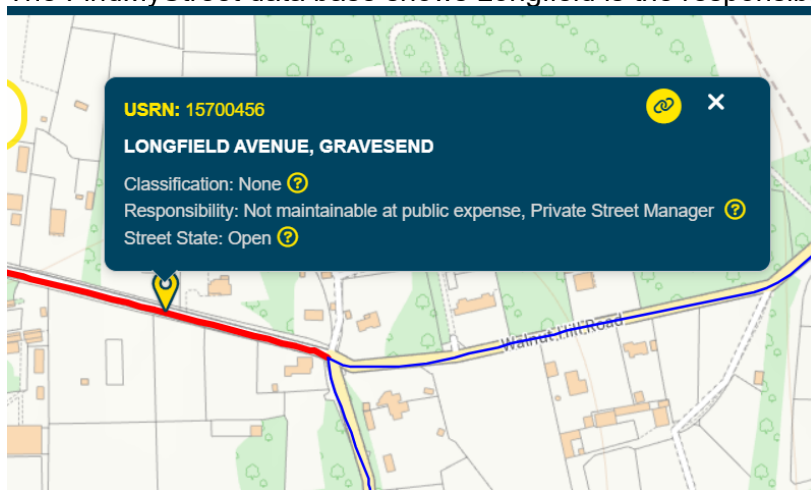
To: **Planning Reps**
From **Highways Development Management Officer**

Date 29th November 2023

Your Ref 20231177
Location 185 Old Road West

I note the applicant states that this section of Longfield Avenue is not adopted, but both Stony Corner and Walnut Hill Road are and maintained by the Highway Authority Kent County Council. It is also noted that the standard of maintenance of Longfield Avenue is variable along its length.

The FindMyStreet data base shows Longfield is the responsibility of a Private Street Manager.



However, to the best of my understanding Longfield Avenue can be considered to be a public highway albeit a privately maintained one, as the Highways Act 1980 contains the following passage,

31 Dedication of way as highway presumed after public use for 20 years.

(1) Where a way over any land, other than a way of such a 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 20 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.

(1A) Subsection (1)—

(a) is subject to section 66 of the Natural Environment and Rural Communities Act 2006 (dedication by virtue of use for mechanically propelled vehicles no longer possible), but

(b) applies in relation to the dedication of a restricted byway by virtue of use for non-mechanically propelled vehicles as it applies in relation to the dedication of any other description of highway which does not include a public right of way for mechanically propelled vehicles.]

(2) The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice such as is mentioned in subsection (3) below or otherwise.

(3) Where the owner of the land over which any such way as aforesaid passes—

(a) has erected in such manner as to be visible to persons using the way a notice inconsistent with the dedication of the way as a highway, and

(b) has maintained the notice after the 1st January 1934, or any later date on which it was erected, the notice, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway.

The **Natural Environment and Rural Communities Act 2006** Section 66 states'

1) No public right of way for mechanically propelled vehicles is created after commencement unless it is—

(a) created (by an enactment or instrument or otherwise) on terms that expressly provide for it to be a right of way for such vehicles, or

(b) created by the construction, in exercise of powers conferred by virtue of any enactment, of a road intended to be used by such vehicles.

(2) For the purposes of the creation after commencement of any other public right of way, use (whenever occurring) of a way by mechanically propelled vehicles is to be disregarded.

Whilst, a legal view should be taken, my understanding is that Longfield Avenue is a public highway albeit one maintained at private expense. Note should also be taken of the definition of street provided by the New Roads and Street Works Act 1991.

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The street authority and other relevant authorities

(1) In this Part "the street authority" in relation to a street means, subject to the following provisions—

- (a) if the street is a maintainable highway, the highway authority, and
- (b) if the street is not a maintainable highway, the street managers.

(2) In the case of a highway for which the Secretary of State is the highway authority but in relation to which a local highway authority acts as his agent under section 6 of the [1980 c. 66.] Highways Act 1980, the local highway authority shall be regarded as the street authority for the purposes of section 53 (the street works register) and sections 54 to 60 (advance notice and co-ordination of works).

(3) Subsection (1)(b) has effect subject to section 87 as regards the application of this Part to prospectively maintainable highways.

(4) In this Part the expression "street managers", used in relation to a street which is not a maintainable highway, means the authority, body or person liable to the public to maintain or repair the street or, if there is none, any authority, body or person having the management or control of the street.

(5) The Secretary of State may by regulations make provision for exempting street managers from provisions of this Part which would otherwise apply to them as the street authority in relation to a street.

(6) References in this Part to the relevant authorities in relation to any works in a street are to the street authority and also—

- (a) where the works include the breaking up or opening of a public sewer in the street, the sewer authority;
- (b) where the street is carried or crossed by a bridge vested in a transport authority, or crosses or is crossed by any other property held or used for the purposes of a transport authority, that authority; and
- (c) where in any other case the street is carried or crossed by a bridge, the bridge authority.

The applicant should in my opinion reposition the boundary treatment to a point at least 2m and ideally 2.4m back from the edge of the carriageway to protect the sight lines at the access to the property. Ideally the gate should also be set back, but this case by some 6 metres to ensure that the gates can be opened or closed with the vehicle parked clear of the carriageway. However, the situation regarding the existing gate is noted and providing it is in line with any relocated boundary treatment there would be no objections.

With regards to the 2m/2.4m set back note Manual for Streets states

X distance

7.7.6 An X distance of 2.4 m should normally be used in most built-up situations, as this represents a reasonable maximum distance between the front of the car and the driver's eye.

7.7.7 A minimum figure of 2 m may be considered in some very lightly-trafficked and slow-speed situations, but using this value will mean that the front of some vehicles will protrude slightly into the running carriageway of the major arm. The ability of drivers and cyclists to see this overhang from a reasonable distance, and to manoeuvre around it without undue difficulty, should be considered.

X distance is described as

7.7.2 The distance back along the minor arm from which visibility is measured is known as the X distance. It is generally measured back from the 'give way' line (or an imaginary 'give way' line if no such markings are provided). This distance is normally measured along the centreline of the minor arm for simplicity, but in some circumstances (for example where there is a wide splitter island on the minor arm) it will be more appropriate to measure it from the actual position of the driver.

As built I object to the proposal but this would be withdrawn if the boundary treatment were relocated as described above with a condition that all landscaping and any secondary boundary treatment is restricted to a maximum height of 1 metre between the fence and the carriageway.

Les Seaborn
Highways Development Management Officer