



Order Decision

Site visit made on 21 December 2021

by R J Perrins MA ND Arbor Tech Arbor A

an Inspector appointed by the Secretary of State

Decision date: 15 February 2022

Order Ref: ROW/3259150

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as West Sussex County Council (Cuckfield Rural No.2 (addition of Public Bridleway and the upgrade of Public Footpath 51ESx to a Public Bridleway)) Definitive map Modification Order 2019.
- The Order is dated 12 November 2019 and proposes to modify the Definitive Map and Statement for the area by adding a bridleway and upgrading a section of existing footpath to a bridleway as shown in the Order plan and described in the Order Schedule.
- There were four objections outstanding when West Sussex County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is not confirmed

Procedural matters

1. The Order follows a successful appeal to the Secretary of State under Schedule 14 of the 1981 Act. Notwithstanding that decision (ref:FPS/P3800/14A/5 issued 9 August 2019), I shall consider the matter afresh on the totality of evidence before me. I should also emphasise that the tests differ for the making of an Order and for its confirmation. I return to this below.
2. As the Order was made on the direction of the Secretary of State, the Order Making Authority (OMA) have taken a neutral stance. The case in support of confirmation was made by the original applicant and Schedule 14 appellant (Mr Paul Brown).
3. I undertook a site visit on 21st December walking the route, where possible, from its northern end where the existing public footpath joins Grinstead Lane in a southerly direction across Girl Guiding UK property to where it joins the quarry land managed by Ibstock Bricks. Subsequent to that, I was met by a representative of Ibstock Bricks and walked the proposed route across the quarry. That was necessary and required in the interests of health & safety.

Main Issues

4. The Order was made under section 53(2)(b) of the Wildlife and Countryside Act 1981 ('the 1981 Act') in consequence of an event specified in section 53(3)(c)(i).
5. Therefore, the main issue is whether the discovery by the OMA of evidence which (when considered with all other relevant evidence available) is sufficient to show that a right of way, which is not shown in the definitive map and statement, subsists over land in the area to which the map relates from points

A-B. With regards to points B-C whether the description on the map and statement should be a different one such that the definitive map and statement require modification.

Reasons

Background

6. To justify an Order being made it suffices that a public right of way is *reasonably alleged* to subsist. However, the standard of proof that must be applied when consideration is given to confirming an Order is higher. At this stage, evidence is required on the balance of probabilities that a right of way as described subsists along the Order route. The burden of proof lies with those who assert the existence of a public bridleway.
7. In essence, I must consider whether the evidence shows that in the past the Order route has been used in such a way that a public bridleway has been established. The application and deliberations of the previous Inspector were based solely on historical documentary evidence. No user evidence was, or has been, subsequently submitted. The applicant has submitted further documentation and a number of objections have been raised.
8. As set out by the previous Inspector the route runs (Points A-B on the Order plan) along a boundary between two parishes which also forms the boundary between historically divided areas of land. The route between Points B-C (again as shown on the Order Plan) is currently recognised as Footpath 51Esx.
9. I shall not refer to each and every document although I have obviously considered all evidence provided. Not all of those documents show the claimed route, or the position is uncertain, and some duplicate other maps. For the purposes of this Decision, I shall focus on the core strands of evidence relied upon by the previous Inspector in reaching their decision along with the matters in dispute and subsequent evidence.
10. To that end, there is little merit in rehearsing the reasoning of the previous Inspector. I shall, where necessary, expand upon that reasoning in the light of the new evidence, representations not seen by the previous Inspector, and my site visit. Little has changed in terms of background and the salient points as set out previously are:
 - The area has been subject over the years to the extraction of marl and clay for brickmaking and small-scale iron smelting.
 - The route crosses the quarry and would not be useable until the quarry is restored.
 - A railway was constructed in the late 1870s but does not affect the appeal route.

Physical Evidence

11. Unlike the previous Inspector I have visited the route and found it impossible to walk the whole of the Order route without deviating from it. It was obstructed at several points by fences (existing and dilapidated), overgrowth, and trees. The quarry works also interrupt a large section of it. There was though, from the point it joins the current public footpath, in a southerly direction, evidence of what could have been a sunken way running alongside

the field boundaries with New Coombe Farm to the west. The banking running alongside the sunken way appears to have been in place for some considerable time given the mature trees that grow on it.

12. The route is clearly not usable as a bridleway (or even a footpath in places) at present but that does not mean that this was always the case. If it was ever a public bridleway in the past and has not subsequently been formally stopped up or downgraded it remains a highway of that status. No evidence of the route having been stopped up or downgraded has been put forward. There is also nothing to suggest from the evidence, or what I saw on site, that the route could not have been negotiated on horseback, or leading a horse, at some time in the past.

Common Law dedication

Pre-1841 Commercial and Ordnance Survey Mapping

13. This is well-rehearsed by the previous Inspector and the view that the submitted maps were not determinative of the status of the route as a highway is compelling and requires no rehearsing. In that light, the applicant seeks to demonstrate that the application route did enjoy public status as set out in English Local Government Vol. 5 - *The Story of the King's Highway*.
14. I accept that the extracts provided, point to the King's Highway being an abstract conception and that a road may not have existed where people travelled. Rather, it was a term of easement; a right of way enjoyed by the public at large from village to village, along a customary course. Furthermore, I accept that there would have been an enormous amount of wayfaring life, and the existence all over the kingdom of passable bridleways is probable. However, there is nothing before me to suggest that this text applies specifically to the route before me, it is simply setting out the history of highways and their care and maintenance, it adds no weight to the case put forward.
15. Thus, I agree with the previous Inspector in that the maps suggest the physical existence of a route with similar alignment but do not determine its status.

Tithe Map, Apportionments and Post 1841 Ordnance Survey Mapping

16. There is no dispute that the area crossed by the appeal route is the subject of two Tithe Apportionments. The previous Inspector sets out in detail what those maps purport to show and that normally it is only possible to infer from the maps that the route existed on the ground. Although, I agree that very occasionally such documentation offers more of an insight into the status of the tracks shown on them.
17. The appellant has submitted an extract of the original West Hoathly Tithe map and copies of the apportionments for New Coombe Farm, Blacklands Farm and Cookhams Farm. The appellant further sets out that plots to the west of the route, north of point A, were included in the hereditament of Sharpthorne Farm and the appellant compares the field numbers therein with those shown in the First and Second Edition OS maps of West Hoathly. I accept that comparison shows an increase in field areas with fields subsequently including the woodland part of the proposed route. However, the suggestion that such a finding means the route and woodland were absorbed into the new Coombe Farm estate is uncorroborated.

18. To the east of the proposed route, fields were held by Cookhams Farm with Field Nos 268 and 269 to the south with the latter known as Cinder Wood. Fields 274 and 275 are labelled as arable on the Wessex Archaeology plan and I recognise that a strip of woodland is shown along the western boundary and next to the proposed route. However, that strip does not appear to be continuous (as reflected by other submitted maps) and as such does not support the view that Cookhams Farm is unlikely to have used the proposed route to access the fields.
19. I have also had regard to the First Edition of the 1:2500 maps of Sussex, and recognise they indicate a double pecked track serving Cookhams which leads into Field 2374 shown as woodland. However, I am not convinced that demonstrates the owners of Cookhams Farm would not have used the proposed route to egress or access its fields. Whilst it appears the double pecked track leads to the field north of the woodland, one cannot discount Cookhams Farm using access onto Top Road and then along the appeal route to access fields further to the north.
20. I am also directed to the 1867 Courtland Estate sales prospectus which provides details of field acreage. When that is compared with other maps then Nine Acre Field is consistently measured with an area in excess of 10.5 acres. It is suggested that indicates the arable area of the field was only 9 acres and the difference was the area of the woodland strip. In turn that suggests Blacklands Farm did not make any claim of land ownership of the appeal route between 1841 and 1897. However, again there is nothing of substance to corroborate that view.
21. Whilst it is not clear from the submissions, all of these matters appear to have been set out to corroborate the view that the appeal route was a public one and the adjacent landowners did not rely on it for access. For the reasons given I find they add little to that argument. Furthermore, I see no reason to disagree with the previous Inspector who found, in respect of the post 1841 mapping, that by the 1874 County Map, the road was not in public use and did not continue to the north of parcel 2373, or was not being used as a through route of any consequence.
22. Moreover, the maps and documents cannot provide evidence of the status of any route in highway terms or the continued existence of a through route along the line of the appeal route. There would seem little merit in me rehearsing all the arguments once again. That leads me to the history of the property.

Property history

23. As set out by the previous Inspector some of the appeal route land was sold as part of one of the lots when the Courtland Estate was sold in 1867. Cookham Lane was referred to in the sale lot for Cookham Farm and the appellant suggests this may have been made possible as the owner of Courtlands Estate was also the owner of Shapthorne Farm. Thus, the lane wasn't between two landowners. Even if that were so, I fail to see how that adds any weight to it being a public way. In the same way, the appellant's evidence that East Grinstead was granted a weekly market by royal charter in 1247 adds little to the submissions already made.
24. I also fail to see the relevance of two extracts of a plan showing strips of land along Horsted Lane north of Cinder Hill. I am also referred to a meeting held in

the Crown Inn in 1859, of which no record is submitted, but which the appellant considers support the extracts and the argument that there was a discontinuance of driving and wayfaring to and from East Grinstead. These assertions must carry no weight and the suggestion that the manor of Broadhurst would have made submissions regarding the yield of arable crops at that meeting is simply without substance.

25. I do however consider the article 'The Origins of Plawhatch Estate' to be particularly salient to my deliberations, as it was to the previous Inspector. The Inspector draws on a particular passage by the author Major REW Grubb describing the indenture plans and a description of the proposed route. It is clear that the Inspector gave this article considerable weight, finding that it supported the argument that a through route existed and that it had fallen out of use.
26. The Inspector sets out that the article written by Major Grubb was 'strong evidence' in support of the existence of the route and that he would not have mentioned it had it been a private route. That, in combination with the documentary and landscape evidence, was enough to support a route of higher status than a footpath. I understand the approach and those findings. However, as set out above, the standard of proof that must be applied when consideration is given to confirming an Order is higher one. The evidence before me has not been tested. Furthermore, a submission from Major Grubb's son cannot be ignored and it is to that which I now turn.
27. Firstly, I recognise the article by Major Grubb was for the church magazine, it was not a legal document in any way. Secondly, his son sets out that three years prior to the article he took on running the family business. His father at that time was at the end of his career, not interested in the nuances of detail, and had always been clear to his son in saying that the route was not a public route. In his son's words, the article would have been written by an elderly gent who enjoyed writing and putting his own interpretation on things.
28. Furthermore, as his son also sets out, Major Grubb is no longer with us to confirm or expand upon his view of what the appeal route was used for. Whilst the evidence of Major Grubb's son has also not been tested, it seems to me a family member would be best placed to give a reasoned view on Major Grubb's writing. It does therefore cast considerable doubt upon the content of the article and any reliance upon it to form a sound conclusion on the appeal route being a public one. There is some inevitability therefore, in the face of that, that I must significantly reduce the weight I give to the article.

Other matters

29. In addition, representations refer to the appellant having previously said that part of the proposed route did not exist and was unsuitable as a footpath, when making representations concerning another footpath matter some years ago. Whilst the appellant has not had the opportunity to respond to those claims, nor have those statements been tested, it nevertheless casts a degree of doubt upon the evidence.
30. That has not been aided by the appellant's evidence as a whole; a large amount of material has been submitted. As the previous Inspector found, much of that is merely speculation on by whom, or how, the route might or might not have been used. That is also reflected by some of the additional information

submitted as part of this appeal in what appears to be a scatter gun approach to the matter. I point this out as I must have some confidence that the evidence is robust and without contradiction.

31. The onus is upon the appellant to meet the burden of proof in demonstrating the existence of the public bridleway. In light of the contradictory statements submitted by interested parties, and on balance, that burden has not been met.

Conclusions

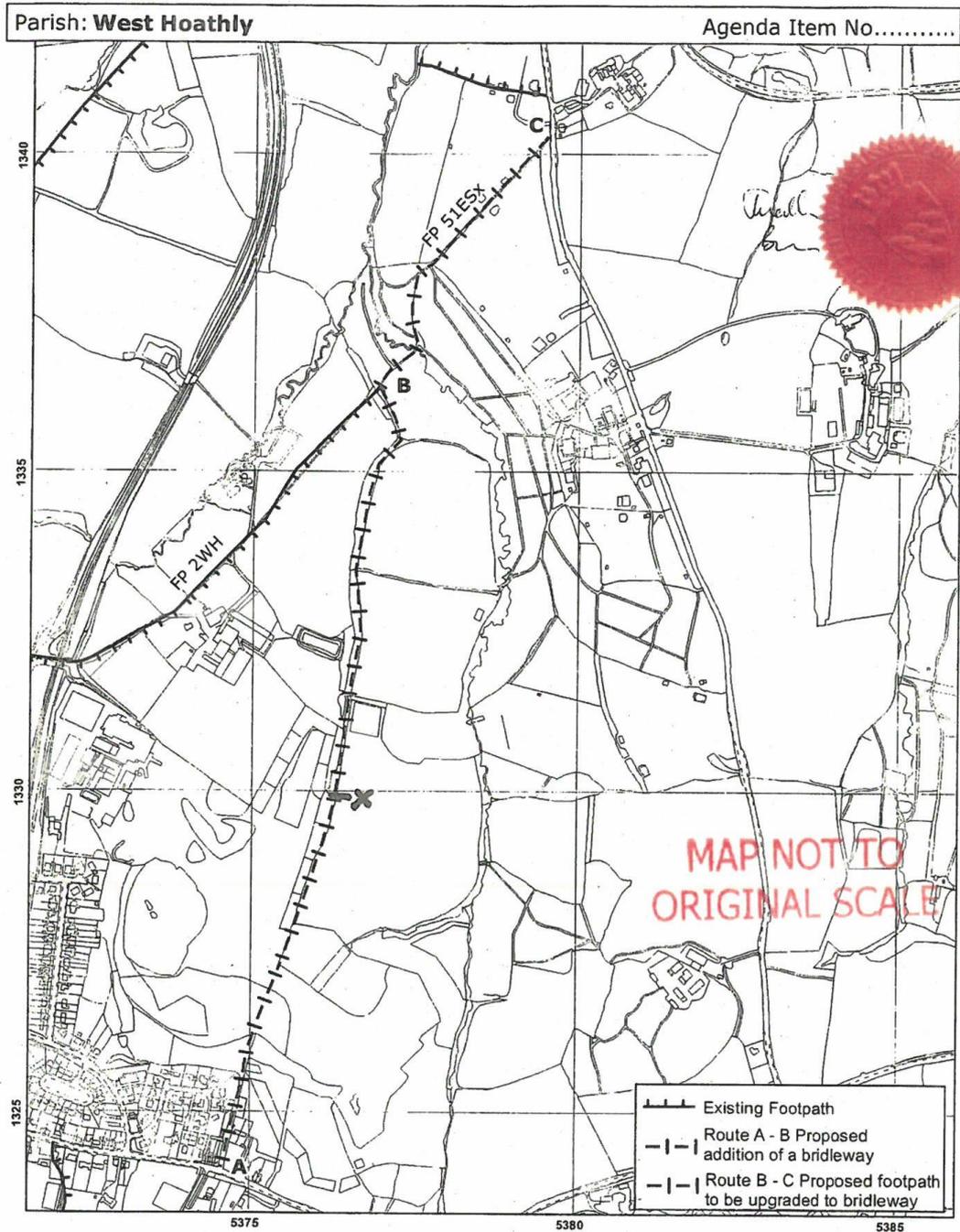
32. From all that I have seen and read and as set out by the previous Inspector I find that the appeal route physically existed on the ground. There is nothing before me to bring me to any other view. In the same way there is no evidence that it was ever stopped up by legal order or that its declining importance was ever challenged by the public.
33. In addition, it seems from the evidence, and what I saw on site, that the appeal route between Points A and B could have been used with horses or for driving stock. The section from B to C is already recorded as a public footpath. However, from what I saw on site it does not share the same characteristics as that which I set out above for part of the route between Points A and B; for example, it could not be described as a sunken way. Nevertheless, on balance, I find that there would have been some sort of route from Points A to C.
34. However, there remains no express evidence to support public status of the appeal route between Points A and B. The previous Inspector placed a great deal of reliance upon Major Grubb's article in respect of the proposed route being a bridleway. That appears to be the deciding factor for the previous decision maker in finding that the whole of the proposed route was reasonably alleged to be a public one. With regards to points B to C, it was further relied upon to support the conclusion that it should be recorded as bridleway.
35. Whilst I accept the approach of my colleague, I have a higher bar to consider. As set out, I give, in the light of new evidence, that unlikely but crucial document (Major Grubb's article) in determining this appeal very little, if any weight. Accordingly, and somewhat inevitably, it is my view that, on the balance of probabilities, the evidence currently available does not indicate that the definitive map and statement is incorrect and that the status of the Order route should be altered, or that the map should be added to.
36. Having regard to these and all other matters raised, I conclude that the Order should not be confirmed. Given that, there is no need for me to address matters concerning quarry reinstatement or the width of the appeal route.

Formal Decision

37. The Order is not confirmed.

RJ Perrins

Inspector



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Plan: 01755	1:5,500 at A3	OS Sheet: TQ 33 SE	Photocopy liable to distortion
Date: 01.11.2019	Grid Ref: 5375 1330	Matt Davey Director of Highways, Transport and Planning	