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| **Order Decision** |
| Inquiry opened on 15 March 2021 |
| **by Sue M Arnott fiprow**  |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 02 July 2021** |

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| **Order Ref: ROW/3231731 ‘Order A’** |
| * This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981. It is known as the West Berkshire District Council (Pangbourne & Purley-on-Thames, Saltney Mead Public Footpath) Definitive Map Modification Order 2019.
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| * The Order is dated 14 March 2019. It proposes to modify the definitive map and statement for the area by adding public footpaths in the parishes of Pangbourne and Purley-on-Thames, as shown on the Order map and described in the Order schedule.
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| * There was one objection outstanding when West Berkshire District Council submitted the Order for confirmation to the Secretary of State for Environment, Food & Rural Affairs.
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| **Summary of Decision: Confirmation of the Order is proposed, subject to the modifications set out in the Formal Decision below.**  |
| **Order Ref: ROW/3231732 ‘Order B’** |
| * This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981. It is known as the West Berkshire District Council (Purley-on-Thames, Springs Farm Public Footpath) Definitive Map Modification Order 2019.
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| * The Order is dated 14 March 2019. It proposes to modify the definitive map and statement for the area by adding public footpaths in the parish of Purley-on-Thames, as shown on the Order map and described in the Order schedule.
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| * There was one objection and three other representations outstanding when West Berkshire District Council submitted the Order for confirmation to the Secretary of State for Environment, Food & Rural Affairs.
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| **Summary of Decision: The Order is confirmed.**  |

Procedural Matters

1. This inquiry was scheduled to be held in Calcott near Reading in July 2020. The introduction of restrictions as a result of the Covid-19 pandemic meant that a meeting of this nature could not be held in public as planned and consequently the proceedings were put on hold.
2. In order to progress this matter without further delay, all interested parties were invited to consider whether a change of procedure would be acceptable in these circumstances. As a result, it was agreed that the Orders would be determined by means of an inquiry held virtually.
3. I therefore held the event on 15 and 16 March 2021 with the aid of Microsoft Teams technology. I am extremely grateful to all concerned for their assistance in making this alternative arrangement during difficult times.
4. In advance of the inquiry, on 5 March 2021, I made an unaccompanied visit to the site in order to inspect as much of the Order routes as was possible from adjacent definitive footpaths. At the close of the event, no-one requested that I make a further inspection.
5. When West Berkshire District Council (WBDC) considered the applications for definitive map modification orders submitted by Mr Szegota, it concluded that the requested orders should not be made. In essence this was because of the effect of the widespread path closures introduced in 2001 due to the outbreak of Foot and Mouth disease. Following a successful appeal[[1]](#footnote-1), WBDC made Orders A and B on the direction of the Secretary of State on the basis that rights of way had been reasonably alleged to subsist.
6. As a consequence, WBDC took a neutral stance as regards confirmation of both Orders. In the absence of support from the order-making authority, Mr Szegota presented the case for confirmation of the Orders at the inquiry.
7. In response to advertisement of the Orders being made, objections were submitted on behalf of the landowner alongside three representations. At the inquiry the case against confirmation of the Orders was led by Mr Booth on behalf of the landowner.
8. Purley-on-Thames Parish Council disagreed with the proposals on the grounds that it saw the claimed routes as unnecessary given that other definitive and permissive paths in the area provide sufficient access for the public.
9. Pangbourne Parish Council expressed support for the proposed paths but stated it was “*happy to be guided by the response from Purley Parish Council*”. However, at the inquiry the representative of Pangbourne Parish Council confirmed that it does support the Orders although no material evidence was submitted.
10. The third representation was one of support from the Pang Valley Group of the Ramblers’ Association (RA). On its behalf RA Footpath Officer Mr Hatcher submitted a statement in which he made detailed legal submissions on the interpretation of the ‘interruption’ to public user of the claimed paths caused by the Foot and Mouth restrictions.
11. At the inquiry, a further submission was made in writing by Mr Pike who also referred to the Foot and Mouth legislation and to the interpretation of ‘interruption’ in Section 12 of the Inclosure Act 1857.
12. In reaching my conclusions in this case I have taken account of all relevant written material before me together with direct evidence given at the inquiry. I have also had regard to advice and guidance issued by the Department for Environment, Food and Rural Affairs (Defra) and to judgments of the courts.
13. In addition section 32 of the Highways Act 1980 provides that a court or other tribunal, before determining whether a way has or has not been dedicated as a highway, shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified by the circumstances.

**Main Issues**

1. In brief, the main issue here is whether the evidence is sufficient to show that, in the past, the Order routes have been used in such a way and on such terms that public footpaths can be presumed to have been established over them.
2. Both Orders were made on the basis of events specified in sub-section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 (the 1981 Act). This means that if I am to confirm them, I must first be satisfied in each case that, on the balance of probability, the evidence shows public rights of way subsist along the routes described in the Order. A ‘reasonable allegation’ is not sufficient at this stage.
3. For Order A, these routes lie between points marked on the Order map as C-C1-C2-E and C2-F1-F; in Order B, the routes are labelled A-A1-A2-B and A1-C, where Points A, C, E and F lie on established definitive public footpaths.

Reasons

***Historical documentary evidence***

1. In the comprehensive report submitted to its delegated decision-maker, WBDC first examined a number of historical documents, including a map by Rocque dated 1761, an enclosure map of 1855, Ordnance Survey (OS) maps of 1879, 1899 and 1912, and plans prepared under the Finance Act 1910. On these early documents, little can be ascertained of relevance to the Order routes but it is clear that Westbury Lane and what is now Springs Farm (previously known as Scraces Farm) have existed since the eighteenth century at least. In addition, the present definitive footpath PURL/1/1 is shown on the 1855 map and by 1879 the route A1-A2-B appears to form part of an access track to the farm.
2. More recent documents compiled during the preparation of the first definitive map and statement under the National Parks and Access to the Countryside Act 1949 were also considered along with the OS map of 1967 and other plans. It seems the route A1-B was included on the list of public rights of way claimed by the parish in 1950 but, for reasons unknown, did not appear on the final 1961 definitive map (nor on subsequent editions in 1994 or 2000). A 1985 farm development plan indicated a gate in the vicinity of C1 but also an “access gate” nearer to point B[[2]](#footnote-2). A plan dated May 1998 showing council proposals for a possible cycle route nearby did not indicate either of the claimed footpaths. Neither did a 2000 estate map show these routes, and a 2014 walking map produced by Purley Parish Council showed public and permitted paths but not the Order routes. Finally, on the 2017 OS map the claimed footpaths are not depicted although the physical track between points A1, A2 and B is marked as is the concrete bridge (marked ‘Footbridge’) at point C.
3. WBDC concluded that this documentary evidence does not prove the existence of a public right of way along either of the Order routes although it does show how the surrounding landscape has evolved over time. I wholly agree with that analysis and find this early evidence of no assistance in determining the present legal status of the claimed footpaths. However, it does provide evidence of the physical existence of a track along A1-A2-B over many years beyond the twenty of relevance in this case[[3]](#footnote-3).

***Aerial photos***

1. WBDC considered the evidential value of the various aerial photographs alongside the documentary evidence I have outlined above and embraced them in its conclusions.
2. I have instead chosen to consider these photographs alongside my analysis of the user evidence. In this context I fully recognise that aerial photographs can, at best, provide a visual representation of the physical effects of use of a particular route on the ground. They cannot usually distinguish between the type of user that has made the marks, whether human feet, bicycles or horses, or other vehicles or animals, and neither can they demonstrate whether such use was public or private. Nevertheless, these photographs can, to an extent, corroborate evidence from path users, particularly in terms of the lines usually taken (and thus worn on the ground) and the levels of use (a heavier footfall usually resulting in greater erosion of the ground surface).
3. Prior to the period which is of particular relevance there are three aerial photographs: from May 1976, November 1986 and August 1991. On each photo the Order A routes are discernible as worn paths between points C-C1-C2-E and from C2 to F although the earliest photo shows this on a line slightly further north. Whilst all three photographs show the old farm track between A1, A2 and B with defined boundaries, the first two shown no sign at all of A-A1 since it was not until the late 1980s that the concrete post and high chain-link fence was erected around the ‘inner farm’ area at Springs Farm, thus establishing a physical boundary to the immediate east of the route now claimed as A-A1. The 1991 photo shows the merest hint of what might be a worn line on the ground but this is far from clear; however there is a worn line across the field between A2 and C.
4. In September 1996 and again in 1999 both the Saltney Mead routes appear as distinguishable worn trods. In 1996 A2-C is less clear but is apparent on the ground in 1999. A1-A2-B appears on both as a poorly defined track and in fact is grass-covered by 1999.
5. At the inquiry this 1999 photograph prompted some debate with Mr Booth interpreting two diagonal lines across the field as ‘desire lines’, worn by pedestrians taking short-cuts from the railway path to points A2 and B respectively. Mr Szegota disputed this, suggesting instead that these were vehicular tracks made from collecting bales at the end of the harvest. A close examination of the photo indicates that Mr Szegota’s theory is more probably the correct one since one can just discern two parallel lines in each case, suggesting wheel marks as opposed to feet.
6. On the 1996 photo it is difficult to identify any worn path between A and A1 since the field is ploughed, leaving only a narrow headland. However, it is possible that, being taken in September, the ploughing may have been recent which might explain the similar lack of any evidence of the definitive footpath to the south west of point A. In 1999, I doubt very much that the wide brown even-width track that appears between these two points was established by pedestrians when vehicle movements seem more likely but it is of course possible that people walked on it without leaving any additional mark.
7. There are two photos available from 2003 – one black and white and one colour. On the colour photo, C-C1-C2-E is discernible but C2-F1 is more clearly defined, curving slightly at F1 westwards. It is noticeable that by 2003 a trod had developed in a south-west to north-east direction parallel and to the south of the Thames Path (definitive footpath PURL/8/1). It might appear from this record that the majority of users of C2-F1 stopped at that point, turning left or right but having no need to progress to point F.
8. The 2003 black and white photograph focuses on the routes south east of point C. A worn line is visible between A2 and C and between A2 and B although both may represent vehicle tracks. To a lesser extent a line between A2 and A1 is identifiable. This photo does not show any defined trod between A and A1 although shadow from vegetation growing alongside the boundary fence may be obscuring any ground features.
9. A similar picture is presented by the 2009 black and white photos submitted with the application although, taken from a slightly different angle, parts of a worn line are visible along A-A2 and A1-A2 is a little more defined.
10. The 2010 photos, again in monochrome, show both paths[[4]](#footnote-4) at Saltney Mead. Lines A2-B and A2-C appear less like vehicular tracks, A1-A2 is clearly defined and A-A1 is hard to trace other than near point A in the vicinity of the electricity pylon.
11. No date is given for the aerial photos that form the base for a plan of land-ownership information[[5]](#footnote-5) including farm access routes. These appear to show some fields after harvest of a hay crop with C-C1-C2-E clearly visible as a worn path, and also C2-F1 and A2-C. Route A1-A2-B is delineated as “Farm Track” and any possible underlying features between A and A1 are masked by the annotation “Access route to fields …”. However, what is clear from this photo, as well as all those post-dating 1999 is that there is no sign of any ‘desire lines’ leading from the railway footpath to points A2 or B as were suggested in the 1999 photo.
12. The various aerial photographs I have examined above are supplemented by a number of photos taken from ground level dating from December 2016 through to March 2017 in relation to the Saltney Mead paths, one taken on 16 January 2017 showing Heras fencing at the concrete bridge at point C laid to one side.
13. Photographs taken on the same dates for the Spring Farm paths show that on 1 December 2016 the route from A to A1 was still open although the surface had been ploughed[[6]](#footnote-6) and that the boundary to the east at that time included a reasonably substantial hedge. On that same date, fence posts had been erected at point B and fencing across the claimed footpath C-A2 at point C. By 16 January 2017 Heras fencing and a “private” sign had prevented any use of A-A1 and this was still in place at 23 March 2017.
14. From this photographic evidence alone, I reach some very broad conclusions as a framework for my assessment of the evidence of use from the claimants.
15. I find there to be physical evidence of a track between points C, C1, C2 and E as far back as 1976 and consistently since then. The evidence for a route between C2 and F is less clear in the 1970s, but from 1996 onwards the photographs confirm only a worn path between C2 and F1, a point on a new (non-definitive) path parallel to PURL/8/1.
16. Photographic evidence for the Spring Farm paths is less consistent. The farm track A1-A2-B appears to a greater or lesser extent in all photos and a worn path between A2 and C becomes gradually more apparent from 1986 onwards. On none of the aerial photos is there clear-cut evidence of a trampled route between A and A1.
17. Having examined all the photographic evidence I am not satisfied that the diagonal cross-field lines that appear on the 1999 aerial photograph[[7]](#footnote-7) represent routes trampled by pedestrians taking short-cuts. I therefore do not intend to consider that argument further.

***Presumed dedication under statute***

1. The case in support of the Order is based on the presumed dedication of public rights of way under statute, the requirements for which are set out in section 31 of the Highways Act 1980 (the 1980 Act). For this to have occurred, there must have been use of the claimed route(s) by the public on foot, as of right and without interruption over the period of 20 years immediately prior to their status being brought into question so as to raise a presumption that they had been dedicated as public footpaths. This may be rebutted if there is sufficient evidence that there was no intention on the part of the relevant landowner(s) during this period to dedicate the ways for use by the public; if not, public footpaths will be deemed to subsist.

*When was the status of the way brought into question?*

1. When considering the evidence in relation to section 31 of the 1980 Act, the first matter to be established is when the public’s rights were brought into question so as to define the relevant retrospective twenty-year period.
2. WBDC considered three possibilities: the point in time when these paths were physically blocked, the date of the subsequent applications to record them as public rights of way, and the date of a deposit made on behalf of the landowner under section 31(6) of the 1980 Act. I shall deal with these in reverse order.
3. WBDC rejected the statement and plan from the landowner submitted on 16 February 2017 as a possible challenge to the public’s rights over the various claimed footpaths. In my view it is possible that this action *could* have brought into question the paths’ status but, given the undisputed evidence of physical obstruction of the routes some weeks before, any claim for presumed dedication based on twenty years user ending in February 2017 would most likely fail.
4. The application(s) made by Mr Szegota were first submitted on 14 February 2017 but the formalities were not fully completed until 28 February 2017. Although the latter can serve as an event bringing into question the rights of the public, again it is unlikely that such a case would succeed, given the lack of intention to dedicate the paths demonstrated by the landowner within the previous two months, relying on both the physical obstructions and the section 31(6) deposit.
5. It was the physical interference with these routes that prompted the applications to WBDC and it is these events that the authority accepted had brought the status of the way into question.
6. For Order B, a series of actions began with the section A-A1-A2 being deliberately ploughed up at the start of November 2016. Then followed Heras fencing, erected on 19 November 2016 at point C, preventing the use of C-A. Similar fences were installed at points A and B on 17 December 2016 together with a notice placed at A stating: “PRIVATE no public access or right of way”.
7. For Order A, this relied upon the blockage caused by Heras fencing across the route at point C1, said to have been erected a few days after the disruption started on the Order B routes. WBDC established this to have been on or before 17 December 2016.
8. For convenience, WBDC concluded that the challenge to the public’s rights should be taken to have occurred in November/December 2016 for the Spring Farm paths and on December 17 for those at Saltney Mead. The applicant submits simply that this happened in both cases in November 2016 and Mr Booth identified this as 1 November 2016.
9. At the inquiry the precise date of action for each element of what seems to have been an incremental process of disruption was not explored in any further detail. It is not disputed that these actions brought into question the extent of the public’s rights during that period. Whilst I am inclined to regard the dates as mid-December for Order A and mid-November for Order B, in fact nothing turns on the precise date when local path users were alerted to the challenge.
10. In summary the 20-year period which requires closer examination is 1996-2016, from and to mid-December in the case of Order A, and from and to mid-November for Order B.

 *Evidence of use by the public (1996-2016)*

1. If a presumption of dedication is to be raised, qualifying use by the public during the relevant period must be shown to have been “*actually enjoyed by the public as of right and without interruption for a full period of twenty years*”[[8]](#footnote-8). Use ‘as of right’ is interpreted as being use by the public that does not take place in secret, is not by force or otherwise contentious, and is not on the basis of permission.
2. Before I consider the user evidence for these paths, I will note the three main grounds of objection advanced on behalf of the landowner. The first is that the extent of user during the relevant period was not sufficient to bring home to a reasonable owner that the claimed rights were being asserted. Secondly, the user prior to 2002 was contentious in so far as a locked gate prevented use ‘as of right’ and therefore such claimed use cannot qualify. Thirdly, having regard to the restrictions imposed during the Foot and Mouth outbreak in 2001 where all connecting rights of way were closed for a period of at least three months, user during the twenty years prior to the challenge to the status of the paths cannot be said to be continuous and ‘without interruption’.

*Sufficiency of user*

1. I have examined the user evidence thoroughly and read the detailed assessments contained in the reports prepared by WBDC for both the Order A and Order B routes. I do not intend to set out this evidence in any detail here.
2. In support of Order A is written evidence from a total of 22 people and 49 for Order B. Many of the individuals concerned completed standard user evidence forms but then responded to requests by WBDC for further information in response to specific questions. However only two of these users attended the inquiry, one being the applicant himself.
3. Whilst I accord greater weight to the evidence of these two witnesses[[9]](#footnote-9) who gave evidence in person (virtually) and submitted to cross-examination, the written statements and other material from the remaining claimants are altogether consistent with this oral evidence. It is specific; it is personal; it is not a tick-box exercise and I am not persuaded that it should be disregarded simply because the claimants did not present themselves for further questioning. In almost all cases it is clear which routes are being described and the claimants have particular family stories that help to date their recollections. In addition, the subsequent questions put to them in writing by WBDC sought to tease out details relevant to the legal tests that are to be applied here.
4. Mr Booth was correct to point out that evidence which has not been subject to testing through cross-examination cannot weigh as heavily as evidence that has. I acknowledge that and apply the principle to my analysis. Yet I still consider there to be cogent evidence of a significant number of people who have collectively made a considerable number of journeys on foot along the Order routes during the relevant period (and before that).
5. It is the objector’s case that the degree of use was not sufficient to satisfy the statutory test. Mr Booth submitted that the judgment in the case *Hollins v Verney (1884) 13 QBD 304* makes plain that the law of prescription is concerned with ‘how matters would have appeared to the landowner’; in that case Lindley LJ observed that “*No user can be sufficient which does not raise a reasonable inference of such a continuous enjoyment. Moreover, as the enjoyment which is pointed out by the statute is an enjoyment which is open as well as of right, it seems to follow that no actual user can be sufficient to satisfy the statute, unless … the user is enough at any rate to carry to the mind of a reasonable person who is in possession of the servient tenement, the fact that a continuous right to enjoyment is being asserted[[10]](#footnote-10), and ought to be resisted if such right is not recognised…*”[[11]](#footnote-11).
6. More recently that position was endorsed in the Supreme Court case of *R (on the application of Lewis) v Redcar and Cleveland Borough Council [2010] UKSC 11* in which Lord Walker observed that he had[[12]](#footnote-12): “*no difficulty in accepting that Lord Hoffmann was absolutely right, in Sunningwell [2000] 1 AC 335, to say that the English theory of prescription is concerned with “how the matter would have appeared to the owner of the land” (or if there was an absentee owner, to a reasonable owner who was on the spot*)”[[13]](#footnote-13)
7. I will add to this judicial authority a further case*[[14]](#footnote-14)*, that of *Mann v Brodie in 1885* which established that the number of users must be such as might reasonably have been expected if the way had been unquestionably a public highway.
8. There is no hard or fast rule which sets out the level of user required in order to reach a threshold sufficient to represent use by the public so as to establish a public right of way. It is true that various cases pre-dating the current statute have considered the point in the context of prescription arising under the common law and these certainly do offer some guidance.
9. Yet it is also clear that, when it comes to consideration of the factors necessary to establish presumed dedication under section 31 of the 1980 Act, there is no separate requirement to take account of ‘*how the matter would have appeared to the landowner*’[[15]](#footnote-15). All that is required is evidence to show that the claimed ways were *actually enjoyed by the public,* as of right and without interruption for a full period of twenty years.
10. I take full account of the evidence highlighted on behalf of the landowner in relation to this point, in particular the statements of Mr Larkin and Mr Archbold. Mr Larkin farmed the land between 1996 and 2002 and, in brief, recalled only very infrequent use of the claimed routes by the public. Mr Archbold gave evidence personally to the inquiry, explaining his work training dogs at Springs Farm from February 2015 onwards. During the four hours a day he generally spent in the field immediately to the east of A-A1, five days a week, he recalled only 2 or 3 times in his first two years when people walked alongside the boundary fence, thereby causing the dogs to react aggressively.
11. However, I also accept the point made by Mr Szegota that neither Mr Larkin nor Mr Archbold were present on the land at all times of the day, week or year. Mr Larkin did not live at Springs Farm and does not give any firm indication as to how often he was working on the land there. Mr Archbold did live on site but was not in the relevant field all day and may have missed people walking dogs via the claimed routes early in the morning before work, later in the evening or at weekends. It is quite possible that the claimed use did take place but was not generally seen by these two men.
12. Weighing this evidence alongside my findings from examination of the aerial photographs leads me to the conclusion that the written material supplied by the claimants relating to the routes included in Order A is supported by the physical evidence apparent from the series of photographs but with one exception. People claim to have walked C-C1-C2-E (and in reverse) throughout the twenty-year period and this is borne out by the appearance of a worn path on the ground. However, with the development of an unofficial path parallel to the riverside Footpath PURL/8/1 sometime between 1991 and 1996, it seems that most people ceased to walk the connected section F1-F.
13. Whilst I am satisfied there is cogent evidence of use by the public of C-C1-C2-E, I find only use of C2-F1 during the relevant period. Since F1 does not lie on a recognised public right of way (albeit a path clearly in use today) the recording of C2-F1 would effectively establish a cul-de-sac. I have no information to enable me to make any assessment of the extent of the public’s rights over this connecting route (and it is not the purpose of either Order A or B to determine it). I must therefore conclude that there is no legitimate ‘place of public resort’ at point F1 that might support a cul-de-sac in this location or establish a connecting highway.
14. In relation to the routes included in Order B, the aerial photographs are more equivocal and do not offer the same degree of support with physical evidence of the claimed use. As I noted above, the old farm access track A1-A2-B is apparent in all photos and a worn path becomes discernible between A2 and C from 1986 onwards. However, there is no explicit photographic evidence to offer support for a similar worn route from A to A1.
15. Yet there is a logical argument made by Mr Szegota that if people walked between A2 and C (as the photographs infer), then clearly those same people must have got to or from point A2 somehow. It was his evidence (and that of Mr MacDonald) that they did so via A-A1-A2, even though this is not obvious from the photographs. Use of this section of the claimed route is also supported by the credible written evidence of 49 claimants in total.
16. As a background to this, Mr Szegota drew my attention to the written statement of Ms Westall, formerly Administrator and Estate Manager for the previous owners of Springs and Westbury Farm from 1989 to 2014. In this she explains that the security fencing (including that beside A-A1) was installed in 1987, severing the farm track (B-A2-A1) from the inner farm area and that “*instruction was given for a path to be created running southwards* (from A1*) to join public footpath PURL/1/1*” (at point A). She continued: “*That path running south from “A1” was maintained over all the years I worked at Springs & Westbury. It was grass and was mown, I believe by the farm assistant*”[[16]](#footnote-16) and the farmer planted up to edge of the path.
17. She herself was office-based and was “*therefore not aware of how often, if ever, the claimed paths were used by members of the public. As far as (she) was aware, the farm track and path was a permitted route for walkers outside the domestic curtilage*”.
18. I will address the issue of ‘permission’ separately but here I take from this evidence that pre-2014 there had been an active intention to allow people to use A-A1 and a mown path maintained to enable this use to take place. This is not easily discernible from the aerial photographs, possibly because of its close proximity to the boundary fence and the thick hedge that grew up alongside it. Thus, I am inclined to place more weight on the wider recollections of Ms Westall and less on the ambiguous photographs in terms of support for the use claimed by numerous individuals both during this period and to the end of 2016.
19. There is no evidence that the behaviour of users changed at all once ownership changed in 2014. Mr Szegota drew attention to the instruction given to Mr Metcalfe to plough up the path to prevent usage in preparation for the planned change in land use to equestrianism. He argued that the existence of the Order routes was confirmed by the need to plough up pathways and erect barriers across these routes in November 2016 to deter public use.
20. On balance this leads me to conclude that the quantity of use demonstrated by the evidence provided by the 22 and 49 claimants respectively is sufficient to represent actual enjoyment by ‘the public’ of the routes in Orders A and B (excluding C2-F).

*‘As of right’*

1. Turning next to consider whether this use was ‘as of right’, I firstly note that there is no evidence to suggest that any of the claimed use was undertaken in secret. However the landowner contends that any claimed use of the Order A routes was ‘by force’ on the basis that it must have involved negotiating a locked gate and, as I have noted above, that use of the Order B route (A-A1) was ‘with permission’.
2. On the question of whether the claimed use of the Saltney Mead paths was contentious, I have examined carefully the evidence of Mr Larkin who farmed the land as tenant from 1965 until 2002. He erected a gate at point C1 early in his tenure which was soon vandalised, causing him to erect a second gate which was kept locked.
3. Mr Larkin explains that from 1965 onwards “*the water meadows were in use for permanent pasture and were cut and carted regularly by me, or occasionally grazed, right up to 2002.*” I can well understand that whilst the Saltney Mead land was being grazed, there would have been a need for a gate at C1 to contain Mr Larkin’s stock, one that was at least closed if not locked. The early aerial photographs are not especially clear but from 1991 onwards each available photo appears to show the land in pasture with no obvious sign of being grazed. Thus, that imperative for a closed or locked gate seems to have gone although the desire to stop the public walking through may still have existed.
4. Although Mr Larkin considered that the gate at C1 had “*effectively stopped the public from walking across the water meadows from E to C1*”, that is not borne out by the aerial photographs, or the evidence from users, none of which refer to an encounter with a locked gate at C1. Only one claimant (whose use began in 1978) has even a vague recollection of a gate here.
5. Mr Metcalfe took over the tenancy from Mr Larkin. He states that “*when we first started farming this field in 2003, there was a gate on the bridge at C1 which was kept locked. We cropped the field each year for hay and were only aware of the claimed tracks across the field in more recent years*.”
6. As neither Mr Larkin or Mr Metcalfe were able to give evidence in person at the inquiry, I place less weight on their untested evidence whilst acknowledging the clear recollection of Mr Szegota of there being no barrier at C1 to prevent his use of the claimed path at any time during the relevant twenty years.
7. On balance I find it entirely possible that in the early years of Mr Larkin’s tenancy, a locked gate was in place at point C1 but the evidence leads me to the conclusion that it was not locked at any material time during the period now at issue. Consequently, I conclude that the claimed use was not ‘by force’.
8. The landowner submitted that use of the Order B route was with permission[[17]](#footnote-17) and therefore not ‘as of right’. It is acknowledged that a mown path was provided between A and A1 as described by Ms Weston. Further, Mr Metcalfe also commented that section A-A1 “*was mowed regularly (several times a year) and kept in good condition by the estate as a service to the community, as were all the public footpaths and the permissive path running* (beside the railway line)”. However, it is submitted that A-A1 was used with implied permission.
9. The previous landowner is said to have expressly permitted members of the public to use the Order B route; the path between A and A1 was maintained specifically for that purpose. It was submitted that all pedestrians using the route A-A1 (from 2002 to 2014 at least) should have been aware that the mowing and maintenance were carried out for the purpose of enabling walkers to traverse that section with safety and convenience, and consequently inferred that, their use of this path was with Mr Metcalfe’s implied permission.
10. Further, between 2006 and 2009 Mr Metcalfe drew attention to works carried out to provide safety barriers at either side of a narrow bridge at point A2 for the benefit of pedestrians. It was argued that these actions, separately or in combination, sufficed to bring home to the public that their use of the Order route was with implied permission and so not as of right.
11. However, there is no evidence to support the submission that express permission was granted to the public at large or to any individuals. As for the inference to be drawn from the various maintenance works carried out along the Order B route, these might equally be taken as consistent with the provision of a public right of way, not necessarily a permissive path. Although those people with an interest in the estate, whether as owners, tenants or employees, may have regarded the route as a permissive one, this message does not appear to have been clearly communicated to the public at any time and I do not regard the works described as sufficient to imply ‘permission’ for public use.
12. This analysis leads me to the conclusion that the claimed pedestrian use was not secretive, was not by force in any sense and did not benefit from the express or implied permission of the landowner; it was therefore ‘as of right’.

*Interruption*

1. If the claimed use by the public is to raise a presumption that the way had been dedicated as a highway, sub-section 31(1) of the 1980 Act requires that use to have continued “*without interruption for a full period of twenty years”.* Sub-section 31(2) makes clear that this twenty-year period “*is to be calculated retrospectively from the date when the right of the public to use the way is brought into question*”.
2. Although I have noted above that the public’s rights over the routes in Orders A and B were brought into question at slightly different times, in broad terms the twenty-year periods for both extend from the end of 2016 back to the end of 1996. I have found the claimed use sufficient in terms of quantity to represent use by the public and I have concluded that use was ‘as of right’.
3. However, it is the landowner’s submission that, irrespective of those findings, the claimed use simply cannot be described as ‘without interruption’ throughout those 20 years when, for a period of months in 2001 that use undeniably ceased. Indeed it is not disputed by WBDC or by the applicant that people could not walk any part of the Order routes, particularly since all connecting public rights of way were formally closed as a result of restrictions brought in to deal with the Foot and Mouth outbreak.
4. In his closing submissions, Mr Booth helpfully summarised the facts which are common ground between the parties as follows:

A declaration was made by the Council in late February 2001 under Article 35B of the Foot and Mouth Order 1983 Order (as amended[[18]](#footnote-18)). This declaration prohibited access (notwithstanding the existence of any public rights of way) onto all land in the area including the Order routes.

The landowner’s predecessor (the then owner) erected the required notices publicising the existence of the declaration, and the closure of access to the land on which the claimed routes lay. The notices further indicated that contravention was punishable by a fine of up to £5,000.

Following the declaration, in the event that any user of the claimed routes had taken place, that user would have been illegal[[19]](#footnote-19) whether or not the notices were erected[[20]](#footnote-20).

In fact, and as a consequence of the declaration and the notices, user of the claimed routes identified in Orders A and B effectively ceased “for 3 months or so”.[[21]](#footnote-21)

1. The applicant Mr Szegota fully acknowledged there had been periods of non-use during the relevant period, not only because of the Foot and Mouth restrictions but also due to occasional flooding. However, he argued that these do not constitute interruptions within the meaning of section 31 of the 1980 Act.
2. The legislation does not expressly state how “*without interruption*” should be interpreted when specifying a full 20-year period of use. Mr Szegota submitted that an interruption in this context can only be made by the landowner; events causing an interruption to the user’s enjoyment such as actions by a third party (as in this case, the local authority) or for that matter, acts of God (such as flooding, landslides, fallen trees etc), are not interruptions within the intended meaning of this Act.
3. He submitted that the text now found in section 31 of the 1980 Act could be traced back to the Rights of Way Act 1932 which in turn was derived from the Prescription Act 1832. All these Acts contained near identical wording concerning uninterrupted use and, in his view, it would be reasonable to give the words the same contextual meaning.
4. Paragraph 4 of the 1832 Act states: “*Each of the respective periods of years herein-before mentioned shall be deemed and taken to be the period next before some suit or action wherein the claim or matter to which such period may relate shall have been or shall be brought into question and that* *no act or other matter shall be deemed to be an interruption, within the meaning of this statute, unless the same shall have been or shall be submitted to or acquiesced in for one year after the party interrupted shall have had or shall have notice thereof, and of the person making or authorising the same to be made.[[22]](#footnote-22)*”
5. In support of his proposition, Mr Szegota referred to a contemporary commentary on the 1932 Act by Humphrey Baker, MA, Barrister-at-Law who wrote:

*“(b) Occasional closing of a path has always been recognised as a means by which the owner of land can make it clear that though he has no objection to the public using a path by courtesy, he does not intend to grant them a legal right to do so; and this continues to be the case under the Act. The public use must have been free from interruption (that is to say, interruption by or with the authority of the owner[[23]](#footnote-23)) during the twenty years; but whereas formerly it was often necessary to prove much more than twenty years' uninterrupted use, under the Act this is all that is required, where the other conditions of the sub-sect. are complied with*.”

1. Mr Szegota referred to the case of *R v Oxfordshire County Council, ex parte Sunningwell Parish Council [2000] 1 AC 335*. Since, in that case, Lord Hoffman had been content to accept that ‘as of right’ should have the same meaning as similar terms used in the Prescription Act 1832, then it should follow that ‘interruption’ as used in the 1932 and 1980 Acts should also be given the same meaning as the 1832 Act.
2. Further, in the case of *R (on the application of Godmanchester Town Council v Secretary of State for the Environment, Food and Rural Affairs [2007] UKHL 28* Lord Hope had referred to “…  *use of the phrase "actually enjoyed by the public as of right and without interruption", which can only be understood by referring to what is required for this purpose by the common law. As for the proviso, the essential point is that the presumption of dedication at common law involves a dialogue between the landowner and the public*.”
3. Mr Szegota contended that to accept an interruption could be instigated by a third party would be an historic first in denying prescriptive rights of way and not supported by precedent or case law.
4. In his written submission, Mr Hatcher had pursued similar arguments but relied on the case of *Merstham Manor v Coulsdon and Purley Rural District Council [1937] 2 KB 77* in support of his contention that the kind of interruption anticipated by the 1980 Act was one for the specific purpose of preventing its dedication as a right of way.
5. In his summary, Mr Szegota postulated that if the 1980 Act had actively provided for natural events such as flooding, closures for reasons of utilities and the need for bio-security measures, all of which could interrupt the user’s enjoyment of a path, then it might have been possible for the prescribed period to have run from November 1995 to November 2016 – a period of 21 years.
6. Responding on behalf of the landowner, Mr Booth submitted that it is a fundamental and incontestable legal principle that for a prescriptive right to accrue under section 31 of the 1980 Act there must be a full period of 20 years’ user, as required by statute. In support of that position he too relied on the words of Lord Hope in the *Godmanchester* case, at paragraph 52:

“*For the statutory presumption to apply …* ***a full period of 20 years is required****: section 31(1). Unlike the period which is needed for prescription, which can be measured between any dates however long ago for which evidence is available, this period must be calculated retrospectively from the date when the right of the public is brought into question: section 31(2)*”[[24]](#footnote-24).

1. Mr Booth pointed out that the applicant himself accepts there was a break of around 3 months in 2001 when the claimed routes were not used. He submitted that to disregard this would be in direct contradiction of the House of Lords’ decision in *the Godmanchester case*.
2. He was fortified in his position by the comments of Mr Justice Kerr in *R (on the application of Roxlena Ltd) v Cumbria County Council [2017] EWHC 2651*. In that case, commenting on the relevant guidance published by the Planning Inspectorate, Kerr J stated:

“*I do not agree with the proposition in the Advice Note[[25]](#footnote-25), … that an interruption which is more than de minimis but caused by measures taken against Foot and Mouth disease, is incapable in law of amounting to an interruption in use of a footpath or other way. I see no basis for that proposition.* ***Use or non-use is a question of fact; the cause of any non-use is not the issue***.”[[26]](#footnote-26).

1. Although acknowledged as *obiter dicta* and not central to that case, these words were, in Mr Booth’s opinion, “nevertheless manifestly correct”. It was significant that the 1932 and 1980 Acts had not defined ‘interruption’; it served to emphasise that the word was *not* to be interpreted in the same way as earlier legislation.
2. In his submission, to accept that use was not interrupted by the three-month closure could only lead to one of two things: that the Order routes might be confirmed as rights of way either on the basis of only 19 years and 9 months (being the relevant twenty year period less the three months of the Foot & Mouth closure), or on the basis of two shorter periods, one being 1996-2001 and the other from 2001 to 2016, being separated by the 3 month closure. In his view both would be manifestly unlawful.
3. Mr Booth accepted the Courts recognise that use of any right of way will be intermittent to some extent insofar as the public would not be expected to be walking a path around the clock. However, he argued that what *must* be continuous is (a) the opportunity for people to lawfully assert the right to walk the claimed routes and (b) the opportunity for the landowner to intervene and prevent the assertion of that right. Where, as here, neither party was able to do so, then the period of 20 years required by statute was very definitely disrupted and there can have been no continuous period of qualifying user.
4. Earlier submissions made on behalf of the current landowner had sought to promote the proposition that the landowner in 2002 had acted to interrupt enjoyment of the claimed routes by the public insofar as he had physically erected the notices issued by the local authority pursuant to the declaration in February 2001. That point was challenged by Mr Szegota and it was not pursued at the inquiry, in my view wisely.
5. However, the proposition put forward by the applicant that only interruptions effected by the landowner are capable of affecting the otherwise continuous enjoyment of a way by the public was challenged. The case of *Betterment Properties (Weymouth) Ltd v Dorset County Council [2010] EWHC 3045* was cited in support of the objector’s contention that third-party actions are capable of interrupting a period of use. Thus, the closure in 2001 may not have been instigated by the landowner but it nonetheless interrupted use of the Order routes such that public user cannot be said to be continuous.

*My conclusions*

1. In reaching my conclusions on this issue I have found it important to return to the exact wording of sub-section 31(1): “*Where a way over any land …[[27]](#footnote-27) 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.”*
2. As I read this, the public user is required to satisfy two tests: (a) it must be ‘as of right’ and (b) it must have been actually enjoyed ‘without interruption for a full period of 20 years’. The lack of interruption is associated with the length of time the use must continue.
3. I find nothing in the wording of the sub-section to compel the interruption to have been caused deliberately or otherwise; neither is it required that it be instigated by any particular person or for any specific reason. I am therefore inclined to the view that ‘without interruption’ means quite simply that use must be continuous, not intermittent, and has taken place for the required twenty years prior to a challenge which brought the status of the way into question.
4. An examination of the authorities put to me in this case includes a reference in the *Lewis* case to what was described as ‘a Prescription Act claim’: *Hollins v Verney [1884] 13 QBD 304*. A passage from the judgment of Lindley LJ quoted by Lord Justice Dyson at paragraph 35 is helpful. In this, Lindley LJ considered whether somewhat intermittent user could be sufficient to satisfy the statute. Whilst I bear in mind that this was a case under the 1832 Act and one which related to a private right not a public one, I find his comments pertinent: he states: “*No use can be sufficient which does not raise a reasonable inference of such a continuous enjoyment*”. He concluded in that particular case that the regularity of the claimed use was not sufficient to represent the assertion of “*a continuous right to enjoy*” and added: “*Without therefore professing to be able to draw the line sharply between long and short periods of non-user, …[[28]](#footnote-28) without attempting to define that which the statute has left indefinite, we are of the opinion that no jury can properly find that the right claimed by the defendant in this case has been established by evidence of such limited user*".
5. The frequency of user required to demonstrate continuous use would appear to be a matter of fact and degree in each case but the essential question is whether it is sufficient to raise a reasonable inference of continuous use.
6. In the case of Orders A and B, I have already concluded that the claimed use is sufficient in terms of its quantity and regularity but that has left aside the accepted 3-months of no use during the Foot and Mouth outbreak in 2001.
7. Like Lindley LJ, I would not wish to determine whether a 3-month cessation amounts to a long or short period of non-use but it is clearly not *de minimis* and neither is it a length of time that might ordinarily pass without any use at all of the routes at issue. In normal circumstances, it could be significant enough to appear that the use previously enjoyed by the public had ceased then subsequently re-started and therefore was not continuous.
8. However, the declaration in February 2001 unilaterally prohibited public access to all land in the area of the claimed routes. Whilst in force, there could have been no reasonable expectation that any rights could be asserted nor any resisted, and I agree with Mr Booth that during this period neither the landowner nor the public had any opportunity at all to act.
9. In fact, no reasonable observer could have expected to see any use from which to infer that enjoyment by the public was continuing or had ceased. The movement of any person into or out of the affected area was prohibited so there was simply no activity on the land by order. In these exceptional circumstances it seems to me that the lack of use could have had no significance in terms of the inference to be drawn in relation to the otherwise continuous use by the public.
10. Whilst Mr Booth argued this enforced cessation in use was fatal in the sense that it stopped the clock running in 2001 and brought to an end the previous period of continuous use, I am more inclined to view it as a temporary intercession, effectively suspending the usual rules of engagement until the declaration ceased to have effect and the clock resumed where it left off.
11. Returning to the requirements of section 31 of the 1980 Act, as emphasised in the *Godmanchester* case, “*a full period of 20 years is required*” and specifically “*this period must be calculated retrospectively from the date when the right of the public is brought into question”.* That use must be ‘without interruption’.
12. Quite clearly in this case the period which runs retrospectively back from mid-November 2016 to mid-November 1996 would encompass the three-month period when no use could take place by law. Although it is my view that this did not affect any inference that might be drawn from the regular pattern of use by the public, should this cessation in use nonetheless constitute an interruption that interferes with that unbroken chain of user?
13. To answer that question, I have carefully examined all the arguments put to me and the authorities quoted in support.
14. I acknowledge the opinion of Kerr J in the *Roxlena* case but, with respect, he was not addressed in detail on the interpretation of ‘interruption’ and was not required to decide the point. In the subsequent Court of Appeal judgment, the Judge’s view was noted without comment[[29]](#footnote-29) but this was not the point at issue; it was concerned with the processing of the application by the local authority.
15. I have considered the argument raised by the *Betterment* case in which part of a claimed village green site was temporarily fenced off by a drainage contractor. The Courts accepted that this physically ousted the local inhabitants from the land and was sufficient to disrupt the 20 years user. However, it is important to recognise that this was a village green case and one where a public right of way had been diverted to accommodate pedestrians. There was a physical barrier put in place by contractors to prevent use of the enclosed area by the public but the landowner had been content to assist with ‘certain community uses of the land’, apparently including the Weymouth drainage scheme. Very clearly this was not a restriction imposed by a statutory body with legislative force with severe penalties imposed for contravention.
16. A physical obstruction might not only interrupt use if it prevented passage but at the same time would bring into question the status of the way. It might also serve to demonstrate a lack of intention to dedicate on the part of the landowner. Depending on the circumstances, the same may be said for notices intended to prohibit access or to grant permission for use.
17. Here, it has not been argued that a declaration by the local authority imposing Foot and Mouth restrictions might bring into question the status of an unrecorded potentially public path. Whilst in force, there is no potential for either the public to challenge the closure or the landowner to express any opposition to the accrual of a public right. It removes from both parties any ability to influence what Lord Hope referred to in *Godmanchester* as the “*dialogue between the landowner and the public”* that might potentially lead to dedication. It is an enforced cessation that is not within the control of either.
18. These circumstances differ substantially from the usual mechanisms employed to physically prevent use or alter the legal basis on which it occurs such as to interrupt the otherwise continuous enjoyment of a way.
19. Over a period of 20 years or more there may well be periods when, for a variety of reasons, a way has not been used to a greater or lesser degree. In these cases, there has been a cessation of the public use for some 3 months arising through statutory intervention. Submissions were made as to the possible implications for the application of section 31. Mr Booth set out two possible scenarios[[30]](#footnote-30) and quite rightly argued that user spread over 19 years and 9 months is not a full period of 20 years’ use. A further proposition was aired at the inquiry[[31]](#footnote-31), the rationale being that to complete a full period of 20 years the user would simply need to extend backwards a further 3 months so as to compensate for the period in 2001 during which all movement was prohibited.
20. I am drawn to this latter explanation although I fully acknowledge there is no precedent for this approach that has been brought to my attention. Mr Booth submitted that this would be manifestly unlawful, and yet it seems to me to be the most logical and fair means on which to rationalise this exceptional situation.
21. In terms of use of the routes in Order A and Order B, nothing would turn on the user evidence if three additional months in 1996 were included in the analysis. My conclusion remains that the claimed user is as of right and I am satisfied that, by following the reasoning I have set out above, the use by the public was ‘without (*any relevant*) interruption for a full period of 20 years’.
22. I therefore conclude that the evidence before me is sufficient to raise a presumption of dedication in relation to the claimed public rights of way as shown in Orders A and B but with the exclusion of the route between points C2 and F in Order A.

*The intentions of the relevant landowner(s)*

1. On 16 February 2017 a declaration under S31(6) of the 1980 Act was lodged with WBDC on behalf of the landowner acknowledging public rights of way but rebutting the existence of any others. That made clear, at that point in time, that the landowner had no intention of dedicating the Order routes as public rights of way. However, this declaration can have no retrospective effect and therefore does not offer evidence of a lack of intention during the relevant period.
2. There are no reports of any interference with access between 1996 and 2016 until section A-A1-A2 was deliberately ploughed on the instruction of the landowner and fences were subsequently erected, these being the actions which define the end of the twenty-year period. Neither were there any notices erected at any material time to deter people from using the claimed footpaths, or to identify these paths as available for use with the permission of the landowner.
3. There is written evidence from Mr Metcalfe that a previous owner was content to allow the public to use the claimed routes. However, the present owner (who purchased the estate in 2014 but visited previously) understood that A to A1 had been expressly permitted by his predecessor. Yet there is no evidence to indicate that this message was communicated to those who used these routes.
4. Mr Radu, Site Manager since May 2014, wrote that he had challenged people he had found wandering on the estate but none of these had been walking A-A1-A2-B or A2-C so cannot rebut any presumption of dedication. As far as Order A is concerned, he regularly stopped “*people who are in the meadows sunbathing, having picnics, BBQs, smoking and drinking*”, not those who specifically walked the claimed routes.
5. The present owner stated in writing that, since 2014, he had regularly walked or ridden on horseback the paths surrounding the estate and had always warned people off the Order B route, explaining that it is private land. Later he recalls that it was rare to meet members of the public on this route and he had seen only two people walking it. Whilst there is no evidence to corroborate this, it is nevertheless some evidence of a lack of intention on his part to dedicate the way as a public path. However, it falls a long way short of the clear message required to rebut the strong presumption of dedication, given that in previous years, parts of the route had been specially mown to facilitate use by the public.
6. In fact, there is very little evidence from which to draw a conclusion that the Order routes were not intended to mature into public rights of way. It is therefore my conclusion that insufficient steps were taken during the 20-year period 1996-2016 to rebut the presumption of dedication raised by public use of the paths identified in Order A and Order B.

*Summary*

1. **Order A**: On the basis of the information provided, I am satisfied that the relevant statutory test is met: that, use by the public of the route C-C1-C2-E (but not C2-F) was used by the public as of right and without interruption for a full period of 20 years extending back from November 2016, thereby raising a presumption of dedication. I have found insufficient evidence that the landowner(s) during this period demonstrated a clear lack of intention to dedicate the way as a public path and that therefore, on the balance of probability, a public right of way on foot has been shown to subsist over the route in question. Consequently, I conclude that the Order should be confirmed with a modification to the Order to remove the route shown between points C2 and F.
2. **Order B:** On the basis of the information provided, I am satisfied that the relevant statutory test is met: that, use by the public of the routes A-A1-A2-B and A2-C were used by the public as of right and without interruption for a full period of 20 years extending back from November 2016, thereby raising a presumption of dedication. I have found insufficient evidence that the landowner(s) during this period demonstrated a lack of intention to dedicate the ways as public paths and that therefore, on the balance of probability, public rights of way on foot have been shown to subsist over the routes in question. Consequently, I conclude that the Order should be confirmed.

*Other matters*

1. In his written evidence, the present owner outlined various works being undertaken across the estate which are to the public benefit. The widespread planting of native trees and shrubs, sponsorship of works along the Thames Path and the sensitive positioning of fencing are to be commended and may be much appreciated by local people but they have no influence on the outcome of these Orders and I have not taken this into account in reaching my decision.

Conclusion

1. Having regard to the above and all other matters raised at the inquiry and in the written representations, I propose to confirm Order A with modifications to remove reference to section C2-F and to confirm Order B as made.

Formal Decision

1. **Order A:** I propose to confirm the Order subject to the following modifications:

In the Order schedule

In **Part I: Modification of Definitive map:** Description of path or way to be added: **Public Footpath Pangbourne 24**

* In line 3, delete “285 metres to point F (Grid reference 464341 177060) via” and substitute “160 metres to”;
* In line 4 delete “and F1 (Grid Reference 464363 177046);

In **Part II: Modification of Definitive Statement:** Variation of particulars of path or way – **Public Footpath Pangbourne 24:**

* In line 2, delete “FP9 (Thames Path)” and substitute “FP24a”;

 On the Order map

* Amend the line of “Public Footpath to be added” to remove the section between points C2 and F as shown.
1. **Order B:** The Order is confirmed.
2. Since the confirmed Order A would (if modified as proposed) not show a way as it is shown in the Order as made, I am required by virtue of Paragraph 8(2) of Schedule 15 to the Wildlife and Countryside Act 1981 to give notice of my proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modifications. A letter will be sent to interested persons about the advertisement procedure.

 Sue Arnott

 **Inspector**

**APPEARANCES**

**In support of the Orders**

Mr J N Szegota Applicant

Mr R McDonald

Mr S Pike

**Opposing the Orders**

Mr A Booth Of Counsel, instructed by Forsters LLP representing the landowner

*Who called:*

Mr T Archbold

**Taking a neutral stance in relation to the Orders**

Mr S Higgins Definitive Map Officer, West Berkshire District Council

**DOCUMENTS**

1. Copy of the statutory objections and representations

2. WBDC’s statement of case together with associated documents

3. WBDC’s comments on objections and representations

4. WBDC’s neutral stance statement/s

5. Indexed collation of all core inquiry documents held WBDC’s website

6. Statement of case of Mr J Szegota

7. User evidence form of Mr R McDonald

8. Statement of Mr C Hatcher on behalf of Pang Valley Group of the Ramblers’ Association

9. Statement of case for Springs Farm Ltd with attachments

10. Summary Legal Submissions on behalf of the landowner

11. Witness statement of Tom Archbold

12. WBDC Springs Farm site meeting notes 23/7/2001

13. Email to the Planning Inspectorate from Mr Pike sent 16 March 2021 concerning ‘References to legislation on interruption and Foot and Mouth’

14. Email to the Planning Inspectorate from Mr Chapman sent 16 March 2021

15. Email to the Planning Inspectorate from Mr Jones sent 16 March 2021

 



1. Decision reference FPS/W0340/14A/5 & 6 issued on 5 December 2018 [↑](#footnote-ref-1)
2. Mr Szegota suggested that farmer Mr Larkin had confused these two gates in his statement. [↑](#footnote-ref-2)
3. As explained in detail below, this extends from 1996 to 2016. [↑](#footnote-ref-3)
4. Excluding F1-F [↑](#footnote-ref-4)
5. Documents listed in the core bundle as SM A25 and SF A25. These clearly pre-date the fencing erected in late 2016 but cannot otherwise be identified. [↑](#footnote-ref-5)
6. Photos at SF D41-43 [↑](#footnote-ref-6)
7. At SF A20 in the core bundle [↑](#footnote-ref-7)
8. Highways Act 1980 sub-section 31(1) [↑](#footnote-ref-8)
9. Mr Szegota’s evidence related to both Orders whilst Mr MacDonald’s evidence related primarily to Order B. [↑](#footnote-ref-9)
10. The emphasis added by Mr Booth. [↑](#footnote-ref-10)
11. Page 315 [↑](#footnote-ref-11)
12. At paragraph 36 [↑](#footnote-ref-12)
13. Again, the emphasis added by Mr Booth. [↑](#footnote-ref-13)
14. Referred to in the *Sunningwell* judgment mentioned in the previous paragraph. [↑](#footnote-ref-14)
15. This was clarified in 2014 in the case *R (Powell and Irani) v SSEFRA* [2014] EWHC 4009 (Admin) in which Dove J confirmed that the judgment in *Lewis* was not authority for an additional test beyond the tripartite ‘*as of right*’ test. [↑](#footnote-ref-15)
16. This is also endorsed in the evidence of Mr Metcalfe, a farm tenant from 2002 onwards. [↑](#footnote-ref-16)
17. This point was not pursued further at the inquiry but nonetheless needs to be addressed. [↑](#footnote-ref-17)
18. The relevant amendment was made by the Foot and Mouth (Amendment) (England) Order 2001 (2001/571). [↑](#footnote-ref-18)
19. Contravention of a declaration made pursuant to the Order would have constituted an offence under Section 73 of the Animal Health Act 1981, by virtue of Article 45 of the 1983 Order. [↑](#footnote-ref-19)
20. During cross-examination Mr Szegota confirmed that although he did not himself remember notices as having been erected, he accepted that they had been, given that Council records and other local people recalled them having been erected. [↑](#footnote-ref-20)
21. The notices were erected at some point prior to 22 March 2001, that being the date stamp on the Return Form provided to the Council. The declaration was not lifted until 1st June 2001, and the notices in the vicinity of the claimed routes were taken down under the Council’s supervision during a site visit by a Council Officer on 6th July 2001. In these circumstances the landowner is content to agree the applicant’s assessment of the position that user ceased “for 3 months or so”. [↑](#footnote-ref-21)
22. Mr Szegota’s emphasis [↑](#footnote-ref-22)
23. Emphasis added by Mr Szegota [↑](#footnote-ref-23)
24. Emphasis and underlining of Mr Booth added. [↑](#footnote-ref-24)
25. Public Advice Note 15 [↑](#footnote-ref-25)
26. Also the emphasis of Mr Booth [↑](#footnote-ref-26)
27. … 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 … [↑](#footnote-ref-27)
28. The omitted text *(“without holding that non-user for a year or even more is necessarily fatal in all cases”)* is a specific reference to Section 4 of the Prescription Act 1832 (see paragraph 89 above) which is not relevant here. [↑](#footnote-ref-28)
29. At paragraph 50 [↑](#footnote-ref-29)
30. Noted at paragraph 100 above [↑](#footnote-ref-30)
31. I raised this with the parties at the inquiry and invited comment. [↑](#footnote-ref-31)