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## Order Decision

Site visit made on 24 July 2017

**by Helen Slade MA FIPROW**

**an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs**

**Decision date: 04 August 2017**

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### **Order Ref: FPS/Q1770/7/85**

- This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 ('the 1981 Act') and is known as The Hampshire (Winchester District No. 57)(City of Winchester) Definitive Map Modification Order 2015.
- The Order is dated 19 November 2015 and proposes to modify the Definitive Map and Statement for the area by adding a bridleway as shown in the Order plan and described in the Order Schedule.
- There were three objections outstanding when Hampshire County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation, and a representation in support of the Order.

**Summary of Decision: The Order is proposed for confirmation subject to the modifications set out below in the Formal Decision.**

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### **Procedural Matters**

1. When Hampshire County Council ('the Council'), as the Order Making Authority, submitted the Order to the Planning Inspectorate, reference was made to four representations: one from Mr David Pickett, one from John Cleverley (Hampshire Constabulary and Thames Valley Police), Sue Coles (the applicant) and Helen Batty (Highways England). The objection from John Cleverley has not been addressed in the Council's statement of case or submissions. I note from other documentation amongst the appendices that Mr Cleverley has indicated that he does not wish to comment further but, as the objection has not been formally withdrawn, I have continued to treat Hampshire Constabulary and the Thames Valley Police as a statutory party to this matter.
2. The parties concerned have agreed to the matter being dealt with by way of written representations. I carried out an unaccompanied site visit between 10.00 and 11.00 on the morning of 24 July 2017, when the weather was dry but somewhat overcast. The conditions underfoot were slightly wet, but I was able to walk the Order route in its entirety without difficulty.
3. The Order was made by the Council following a committee decision which was not in accordance with the recommendation of its officers. As a consequence I have found some of the comments made in the Council's statement of case, and its response to the statements of case of other parties, to be a little ambivalent. Nevertheless I consider that the comments are accurate and even-handed and I have found them helpful in explaining the situation from the Council's perspective.
4. There are a number of issues relating to the drafting of the Order which I need to address before I look at the substance of the matter.

## ***The Drafting of the Order***

### *Status of the claimed route*

5. It is far from clear from the wording of the citation and from paragraphs 1, 2 and 3 of the actual Order as to its precise purpose. It does not make clear what status of right of way it proposes to add to the Definitive Map and Statement. The only types of public right of way which are explicitly mentioned are public path, a restricted byway and a byway open to all traffic. Whilst the legal definition of 'public path' encompasses bridleways I consider that the purpose of the Order is unclear and potentially misleading to the general public.
6. Turning to the Schedule to the Order, I accept that it is mentioned in Part I that the modification to the Definitive Map would be to add a new bridleway, and that the Order plan indicates a bridleway; but the proposed modifications to the Definitive Statement, shown in Part II, make no mention of the status of the path to be known as Winchester 518. I acknowledge that it is not essential to include such details in the Definitive Statement, but I do consider that it is helpful to do so, and in my experience it is normal to include the status of the route in such a description. The absence of this detail is not fatal to the Order, and I could modify Part II to include it, if I confirm the Order. However, there are other elements of the Schedule which cause me greater concern.

### *Width of the Order route*

7. Part I of the Schedule describes the new bridleway as varying in width between 1.6 metres and 2.5 metres. It also describes the various points along the route by reference to the letters A-G, as shown on the Order plan. Part II of the Schedule, however, refers to the width of the path varying between 1.6 metres and 3.3 metres; and it refers to the various points along the route only by way of grid references. There is no indication as to which grid reference relates to which lettered point, which is unhelpful when trying to interpret the Order and check its accuracy.
8. This is compounded by the fact that the Order plan shows only two grid lines; one northing and one easting. It is consequently difficult, if not impossible, to precisely identify the grid referenced points and relate them confidently to the lettered points. As an example of the potential for confusion, the first grid reference range is given as being between SU 4951:3032 and SU 4962:3056. The second range starts at SU 4963:3042, leaving a gap between the end of the first range and the start of the second. Reading on, it seems likely to me that the missing stretch is the underpass and that this is described in the third range, together with what I assume to be the description of the second underpass. However this is confusing and unhelpful, particularly for any member of the public not proficient at reading maps.
9. In order to avoid any possible confusion regarding the description of the path overall I intend to modify Part II of the Schedule to the Order to relate the grid references to the lettered points on the Order map, if I confirm it.
10. With reference to the discrepancy in the description of the width of the route, I take the view that the correct maximum width is that given in Part II of the Schedule (3.3 metres). If I confirm the Order I will therefore need to modify

Part I of the Schedule accordingly, depending upon any other modifications which I consider need to be made.

11. This latter modification would require the modified Order to be re-advertised due to the description of the extra width in Part II of the Schedule.

## **Main Issues**

12. The Order has been made under Section 53(2)(b) in consequence of an event set out in Section 53(3)(c)(i) of the 1981 Act, which provides that the Definitive Map and Statement should be modified where evidence has been discovered which shows that, when considered with all other relevant evidence available, a public right of way which is not currently shown in it subsists or is reasonably alleged to subsist over the land in question. At the confirmation stage of the Order I must be satisfied that the right of way subsists.
13. In this case, the application was made on the basis of long-standing use of the route, mainly by cyclists, and the claimed status of the route is a bridleway. There is no dispute between the parties that the route has been used for many years by cyclists. I have therefore not needed to examine the user evidence in any great detail.
14. The principal issue which I need to determine is whether such use is capable of giving rise to an inference of public rights, given the particular status of the land over which the route runs. Part of the land appears to be owned by a government department and is considered to be Crown Land, and some of the claimed route runs over paths described in the evidence as 'footways'.
15. The Order Making considers that, due to the status of the Crown Land, the matter must be determined by reference to the common law, since the relevant statutory provisions have not been shown to apply to the land in question.<sup>1</sup> This requires me to examine whether the use of the path by the public and the actions of the landowners have been of such a nature that dedication of a right of way can be shown to have occurred expressly or, alternatively, whether dedication can be inferred. No prescribed period of use is required at common law; the length of time required to allow such an inference to be drawn will depend on all the circumstances.
16. With regard to the footways, I will need to consider whether or not it is legally possible for bridleway rights to have been dedicated over them.
17. Section 32 of the Highways Act 1980 ('the 1980 Act') requires a court or tribunal to take into consideration any map, plan or history of the locality, or other relevant document which is tendered in evidence, giving it such weight as is appropriate, before determining whether or not a way has been dedicated as a highway.
18. I have had regard to the guidance provided by the Department for Environment, Food and Rural Affairs ('Defra') in Circular 1/09, and relevant legal judgements. The test I must apply is the balance of probabilities.

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<sup>1</sup> Section 327 of the 1980 Act

## **Reasons**

### ***Background***

19. The claimed route came into physical existence as a consequence of the construction of the M3 Motorway and the resultant obstruction of Easton Lane. A Side Roads Order ('SRO')<sup>2</sup> provided for the stopping up of part of Easton Lane. It also provided for the creation of a bridleway running from the western end of the remaining part of Easton Lane (on the east side of the motorway) to the north eastern edge of the new roundabout now known as Junction 9. The western section of Easton Lane leaves the roundabout in the south western quarter, between the A34 and the north-bound motorway exit slip road, and continues into Winchester.
20. Although not created as part of the SRO, the provision for a through route across the roundabout for pedestrians was recommended by the Inspector who conducted the inquiry into the matter in the early 1980s. It was a recommendation endorsed by the then Secretary of State for Environment and Transport in his decision letter, issued on 11 July 1980, and two subways were constructed to facilitate it, although these are not referred to in the SRO. The available evidence suggests that the route I am considering became available for use in 1985 and has been used ever since, predominantly by cyclists; a situation which is not in dispute.
21. In 2010 a site meeting was held to discuss the possibility of including the through route as part of the National Cycle Network (Route 23). This resulted in the Highways Agency ('HA') eventually writing to Winchester City Council ('WCC') in December 2010 rejecting the proposal on a number of grounds, mainly in relation to safety and the inability of the route to meet design standards for cycle tracks. This prompted an application for a bridleway being made in April 2011 by Ms Sue Coles on behalf of the Winchester Cyclists' Touring Club<sup>3</sup> ('WCTC') in an attempt to protect any cycling rights that may have been in existence by that time.
22. It is nevertheless indicated, from correspondence dating from 2002,<sup>4</sup> that earlier meetings had taken place at Junction 9 as a result of issues raised in a safety audit. The letter from the Council to the HA dated 13 February 2002 makes clear reference to the desire of the Council to provide a route through Junction 9 as part of the National Cycle Network. I have not been provided with any response from the HA to that letter.

### ***Description of the Order route at the time of the Site Visit***

23. Given the rather unusual circumstances of this route, I consider it would be helpful if I set out a description of the route, on the understanding that the situation now may not be quite the same as it was at the time of the application.
24. Commencing in a westerly direction from the part of Easton Lane to the east of the motorway, the route of the existing Bridleway 502 lies at approximately same level as the south-bound motorway exit slip road (which it parallels) until about 25 metres before the north-east underpass where it drops in level to

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<sup>2</sup> The M3 Motorway (Popham – Hockley Section) Side Roads (No.2) Order 1980

<sup>3</sup> Now part of Cycling UK

<sup>4</sup> Letter of 13 February 2002 from Phil Marshall at Hampshire County Council to Ted Hart at the Highways Agency

reach Point G, the start of the Order route. The Order route passes beneath the roundabout carriageway via the subway (Points G to F). Currently there is a blue and white advisory traffic sign at Point G stating 'Cyclists Dismount' which the evidence suggests was not erected until 2013.

25. The route then runs across the eastern half of the centre of roundabout passing through scrub and woodland by means of a well maintained tarmac path rising gradually to meet the carriageway on the southern motorway overbridge at Point E. A wooden fence runs along the western side of the path separating it from operational motorway land.
26. The claimed route then crosses the M3 via a designated path approximately 2 metres wide, separated from the carriageway by a slight kerb with a thick red line marking the outside edge, and a white line denoting the edge of the carriageway itself. A metal crash barrier divides the path from the motorway land at Point E, linking into the metal parapet of the overbridge. A similar situation pertains at Point D, with a wooden post and rail fence behind the crash barrier.
27. At Point D the path veers away from the carriageway into the western half of the central reservation, to descend to the level of the second (south-western) underpass. There is a centrally positioned black and white bollard at point D, and the path turns at right angles at point C to run beneath the carriageway to Point B. At Point C, on the wooden fence within the central reservation, and set several metres back from the metalled path, is a blue, white and red sign marking National Cycle Route 23 and pointing generally from C towards E.
28. The path emerges at Point B to run uphill along a tarmac path which curves to run alongside the road, being the south west continuation of Easton Lane, separated from the main carriageway by a grass verge of varying width. To the right of the exit from the subway at Point B is a blue and white traffic sign indicating that the path is a shared-use cycle and pedestrian route. In the reverse direction is a blue and white sign indicating the end of the cycle route, together with a separately mounted 'Cyclists Dismount' sign.
29. The grass verge narrows from Point B, where it is several metres wide and is also separated from the carriageway in height, to a width of between approximately 1.0 metres and 0.5 metres until it reaches the dropped kerb meeting the carriageway at Point A.

### ***Land ownership***

30. The land crossed by the claimed route appears to be in two ownerships. The Council, as the local Highway Authority, has provided a plan showing the extent of the highway maintained (by them) at public expense. Although it is not explicitly stated, I assume that the Council considers that it owns the land in question. The relevant part covers the western section of Easton Lane, including the splay where it meets the roundabout, which encompasses the section of the Order route between Points A and B, but no further.
31. The land crossed by the claimed route between Points B and G appears to be owned by the Department for Transport, although it has clearly been difficult for the Council to ascertain the precise nature of that land holding. It appears to have been equally difficult for the HA, their various agents and, latterly, Highways England ('HE') (the successor body to the Highways Agency) to

provide this information. However, no evidence has been produced to dispute that the land is Crown Land.

***Definition and effect of the term 'Footway'***

32. Section 329 of the 1980 Act describes a footway as follows:

“‘footway’ means a way comprised in a highway which also comprises a carriageway, being a way over which the public have a right of way on foot only’.

33. Section 72 of the Highway Act 1835, which is still in force, states that any person wilfully riding on any footpath or causeway by the side of any road made or set apart for the use or accommodation of foot passengers will be causing an offence and would be liable to a fine. This would seem to cover both the riding of horses and the riding of pedal cycles.

34. Both the Council and HE take the view that parts of the claimed route comprise a footway. The Council states that the section between Points A and B is a footway alongside Easton Lane. Although there are signs present indicating that it is a shared-use cycle track, and although these signs are acknowledged to have been in existence for several years, the Council has never made the requisite Cycle Tracks Order which would legally authorise such use. No evidence of such an Order has been produced and there does not appear to be any logical conclusion other than that no order exists.

35. At my site visit I was able to see clearly that this part of the claimed route runs, for the most part, immediately alongside Easton Lane, although it drops away to pass through the underpass. However, it clearly lies very adjacent to the carriageway and is within the highway managed at public expense by HCC. I am satisfied that it conforms to the definition of a footway as set out in the 1980 Act. Consequently, the use of the footway between these points on bicycles, although apparently encouraged by both the HCC and WCC, is unlawful. I agree with the view of the Council officers that such use cannot give rise to the dedication of public rights for cyclists.

36. The applicant appears to consider that the signs mean that the use of the path has been at the invitation of the Council or otherwise with their permission. This view overlooks the fact that her application is for a bridleway, based on dedication of a public right of way. Qualifying user in this respect must be user ‘as of right’ which requires the usage to have been open, without force and without permission. Use of the route by some form of permission or licence would defeat any claim to a public right of way.

37. Thus I consider that there are two clear reasons why I cannot confirm the Order with respect to the section between Points A and B as a bridleway.

38. With respect to the section between C and E, this length of the claimed route runs beside the overbridge carriageway, and HE asserts that this too is a footway. HE and its predecessors have stated clearly that they would not agree to the creation of a cycle track over this section.

39. From my observations on site it would appear that this section does conform to the definition of a footway set out in Section 329 of the 1980 Act, and thus my conclusion in respect of the possibility of the dedication of rights to cycle must be the same as that which I have expressed in relation to the section between



Points A and B. Despite the clearly evidenced use of this part of the route by cyclists, the use of Points C to E on bicycles is unlawful and I therefore cannot confirm the Order in this respect either.

40. The case for the section of the claimed route between Points E and G is, in my view, somewhat different. This route leaves the footway at right-angles at Point E and follows a route through the centre of the eastern half of the central reservation of the roundabout. There is a fence separating the claimed route from the land forming the motorway carriageway, and it is grade separated from the roundabout carriageway. I do not consider that this section of the Order route comprises a footway within the definition of Section 329 of the 1980 Act. Although I accept that this land is owned by the Department of Transport, and that it was purchased for the purposes of constructing the motorway, I have been provided with no evidence to demonstrate that this precludes its dedication as a public right of way.

### ***Section E – G of the Order route: Common Law dedication***

#### *Actions of users*

41. There is no dispute that the route between Point E and G has been used by cyclists as part of the use of the longer, through route. This section of the route runs between two highways: Bridleway 502 at one end and the southern overbridge carriageway at the other. Bridleway 502 itself links to Easton Lane towards the east. Use of the route between Points E and G by cyclists clearly provides a link from one highway to another.
42. In a report prepared by EnterpriseMouchel for the HA in 2012 there is an obvious acknowledgement that the path through Junction 9 on the line of the claimed route is a strong desire line for cyclists, although the report suggests that users have to dismount prior to entering the subways.<sup>5</sup> This is not borne out by the user evidence which suggests that most, if not all, users ride through the subways and along the entire Order route.
43. The evidence suggests user at levels of between once or twice a year, to once or twice a month. A few people indicate that they use it almost every day for work purposes, but the majority of use appears to be recreational use on a low-level but regular basis over a period starting with the construction of the route in 1985. Use of the route has increased over the years as more people have taken to using it, so that by the time of the application, 165 people were able to complete user evidence forms. Cycle use clearly outweighs the evidence of use by pedestrians.
44. None of the users reports being prevented or discouraged from using the route, until Ms Coles, the applicant, says that she was made aware, in 2010, that her use of the route was 'illegal'. I presume that she is referring to the site meeting held that year, the outcome of which prompted her application.
45. I am satisfied that the unchallenged user evidence demonstrates that use of the way on bicycles has taken place since 1985 until at least the time of the application in 2011, openly, without force and without permission, and there is evidence that the route continues to be used in the same way to the present day.

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<sup>5</sup> This report pre-dates the erection of the current advisory signs

### *Actions of the landowner*

46. The landowner of the section between Points E and G is the Department for Transport and its predecessors. I have no evidence of any actions taken by either the Department or its managing agents until the reference to a site meeting in 2002 (see paragraph 22 above). I do not have a copy of any response from the HA to the 2002 letter, but I do have a copy of a letter dating from 1998 from the HA in which John Timms reassures HCC that there is no plan to close the subways, and offering encouragement to them regarding the proposed cycle route. I have also been supplied with a copy of the correspondence<sup>6</sup> from John Grimshaw, of Sustrans, to Ms Coles which refers to an assurance in respect of cycle access across motorways in general, given to Sustrans by the HA.
47. I have no evidence that, during any of that time (i.e. 1985-2002) there were any signs or other indications to users that their use of the way on bicycles was unwelcome. The only signs that were in existence (on the approach to this part of the route from the south) were signs erected by either WCC or the Council (in about 2000) suggesting that the route was a cycle track. As far as I can ascertain, the HA expressed no opinion regarding those signs until the comments made by Wayne Moore in a letter to WCC in 2010, following the site visit earlier that year. The contents of that letter are important and so I quote the relevant extract here:
- "As I have mentioned briefly already, this route is currently designated as a 'footway' and therefore cyclists do not have the legal right to cycle along it. I would therefore suggest that this would not give cyclists the acquired rights you have mentioned. The use of footways and subways by cyclists at this location has not been challenged by the HA – we are not an enforcement agency; this role would need to be performed by the Police. Cyclists should dismount when using footways and subways that are not designated as a shared facility."*
48. Taking this paragraph as a whole, it confirms that the HA, as the managing agents for the landowner, took no action to challenge use by cyclists, and there is no evidence that the Police took any enforcement action. Although Mr Moore describes the path concerned as a 'footway' I have already concluded that, between Points E and G, it does not fit the definition of a footway given in the 1980 Act. He also talks about the 'acquiring' of cycle rights, which is not an accurate representation of how such rights arise in these circumstances. What I am examining is whether or not the dedication of public rights can be inferred (in the absence of an express dedication). He does indicate, however, that the route has not been formally designated by the HA as a shared facility.
49. This information is not entirely consistent with the information contained in an email of 2004 sent by a member of staff at Mott Macdonald, consulting engineers, to the applicant. It is not clear to me what initiated this email, but the response is interesting. The email is headed **'Re: Junction 9 M3/A34 Winchester'** and reads as follows:
- "I have had a call from the Highways Agency to confirm that the underpass has no specific designation as a footway, cyclepath, etc. This is because the underpass forms part of the M3 bridge structure and therefore is part of the*

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<sup>6</sup> Dating from 1999



*motorway. As I understand it you cannot have a footway, cycleway etc as part of a motorway system. Thus the foot [sic] of the underpass is simply available as an 'undesignated' access, maintained by the local Authority for public use."*

50. I have been presented with no evidence to show that, between 2004 and 2010, any formal designation had taken place to change the status of the underpass<sup>7</sup> or any part of the path between the two underpasses to that of a 'footway'. Whilst the email from Mott MacDonald suggests that footways and cycleways cannot form part of a motorway system (no explanation for the legal basis of this statement is given), it is clearly possible to have public access to this area, as it appears to have been specifically provided for by the construction of the subways and the path in between.
51. For the purposes of the part of the route I am now considering, the relevant subway is the one between Points F and G. The access to the eastern side of the subway is along a public bridleway, created by the 1980 SRO. The Council seeks to downplay the creation of the bridleway (with its attendant rights) by saying that it was the standard practice where roads were being stopped up, to retain the most diverse range of public rights. Whilst this may be true, it does not negate the fact that bridleways carry certain rights – rights of which the sponsoring authority (the Department of Transport) should have been fully aware at the time.
52. The creation of the bridleway has the effect of delivering to the start of the claimed route a variety of users, including cyclists. Given the particular construction of the roundabout, and the provision of the subway, it must have been obvious to anyone that the only onward route for cyclists and any other users was to follow the claimed route.
53. There is one curious element to this in that the applicant, Ms Coles, refers to the fact that the original intention of the SRO was to deliver users of the bridleway to the carriageway of the roundabout, but that once the subways had been agreed and were in place, the direct access to the carriageway was closed off and the bridleway extended to the subway. The Council considers that the extent of the bridleway on the Definitive Map is in accordance with the extent of the bridleway on the SRO, and rather dismisses Ms Coles comments.
54. Having examined the situation on site, and closely studied the SRO, I am more persuaded by Ms Coles version of events. I consider that the extent of the bridleway as shown on the SRO very evidently does not reach as far as the location of the subsequently constructed subway. Bearing in mind that the subway was not shown on the SRO as it did not form part of the original plans, the only way in which the bridleway could, at that time, have reached the carriageway was by joining the roundabout at the location indicated: the top of the motorway south-bound exit slip. I noted at my site visit that the bridleway and the carriageway are at the same level at this point. I am not surprised that the SRO inquiry Inspector suggested that subways might be a better idea. The idea of sending cyclists, walkers and, potentially, horse-riders onto the roundabout at this point, and expecting them to have to negotiate the motorway slip roads and the A34 junction, is beyond my comprehension.
55. However it came about, the Definitive Map now shows Bridleway 502 extending to the start of the subway, and I am happy to accept that this is conclusive

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<sup>7</sup> which one of the two underpasses the email refers to is not clear

- proof of its existence. Furthermore, the actions of the Department of Transport in extending (or agreeing to extend) the route to meet the subway are not inconsistent with the dedication of a bridleway under the circumstances.
56. The Council considers that the test for the dedication at common law requires that there be evidence of positive actions on the part of the landowner indicating dedication. I consider that this is taking things a little further than the case law supports. Such an approach would imply that express dedication was the only way in which rights were dedicated at common law, and would remove the possibility (however rare) of inferred dedication.
57. I consider that the interpretation of the situation is a little more subtle. I accept that establishing user is only one part of the equation and that, having established that aspect, it is necessary to look at all the evidence, in particular the actions of the landowner.<sup>8</sup> However, if the landowner does nothing, or at least nothing that is inconsistent with dedication, I consider that it could be reasonable to infer that dedication was intended.
58. It is certainly true that neither the Department for Transport, nor its predecessors in title or its managing agents, took any steps to disabuse the general public using the route from the belief that it had been dedicated for use by cyclists until very recently (the erection of the signs in 2013) and not until after Ms Coles' application had been made. The applicant has been able to supply evidence that the through route was shown on the relevant government department's own website as available for cycle use from about 2011 until approximately 2014. This is not an act inconsistent with dedication of the route as a bridleway.
59. However, since 2010 the HA and its successor, HE, have sought to prevent the making of a cycle tracks order, although they have not provided clear evidence, or consistent information, as to the status of either the land across which the Order route runs or the path itself.
60. I acknowledge that the all the land involved, between Points B and G, is land held for highway purposes and, more specifically, for motorway purposes. However the claimed route between Points E and G runs outside the land fenced off for use as the M3. Neither the HA nor HE have been able to provide me with any evidence of the legal basis on which they are relying to suggest that the current claimed route between these points is incapable of being dedicated as a public bridleway. It is not impossible for public rights of way to subsist across Crown Land.
61. I conclude that for up to 25 years, between 1985 and 2010, the landowning government department acquiesced in the use of the way by cyclists (the majority user as supported by the evidence of use) who used the way as an extension to the bridleway statutorily created by the relevant government department as part of the SRO. Subsequent to that time, due mainly to confusion amongst the various staff at the HA and its managing agents, attempts have been made with little success to exert control over such use by shedding doubt upon the legal status of the route. However, most of the arguments put forward focus upon the reasons why it would not have been possible to create a cycleway or cycle track, rather than address the question of dedication of a bridleway. There is no requirement for a bridleway to

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<sup>8</sup> As per Mann v Brodie HL [1885] and Folkstone Corporation v Brockman HL [1914]

conform to the standards adopted by the Design Manual for Roads and Bridges. Nevertheless these actions are not consistent with the dedication of a bridleway.

62. I consider that these latter actions on the part of the HA have come too late, and that the dedication as a bridleway of the route between Points E and G can be inferred at common law based on the usage between 1985 and at least 2002, and possibly until the time of the application, given the publicity on the departmental website. Although this is only one section of the claimed route, it is not a highway cul-de-sac. At Point E it is possible for cyclists to continue their journey on foot by wheeling their bicycles, being unable to lawfully cycle along the footway. I consider that, under the particular circumstances of this route, it would be reasonable to consider that a bicycle was a 'usual accompaniment'.

### **Subway B-C**

63. The consequence of my conclusions on the sections of the claimed route described in the preceding paragraphs results in the isolation of the subway at the south-western side of the roundabout from my conclusions so far. I have concluded that neither of the routes leading to it are capable of being dedicated as a bridleway due to their status as footways. It is not possible, at common law, to have an isolated highway that does not link to another highway at least at one end. The result is that, whatever status Subway B-C does have, I cannot confirm this section as a public bridleway.

### **Other Matters**

64. Many of the arguments put forward in this case by the objectors (and in some cases by the applicant) relate to issues of safety, design standards and desirability. These are not matters which I am able to take into account and I have not allowed them to influence my decision. The issues relating to the proposed cycle track (NCN Route 23) are likewise not matters which are relevant to my consideration of whether or not a public right of way has been dedicated.

### **Conclusions**

65. Having regard to these and all other matters raised in the written representations I conclude that the Order should be confirmed with modifications.

### **Formal Decision**

66. I propose to confirm the Order subject to the following modifications:

In Part I of the Schedule;

- in the first line of the description, delete the words 'grid reference' and the first grid reference, and substitute '*Point E*';
- In the first line of the description insert '*(Point G)*' after the word 'to' and put brackets round the reference to the second grid reference;
- In the first line of the body of the description delete the reference to the width being 2.5 metres and substitute '*3.0*';

- In the body of the description delete the description from and including the words at the end of the first line ('on the') up to and including the word 'footway' in the fifth line and substitute the words '*at Point E*';
- In the body of the description in the fifth line, after the words 'Junction 9' delete the words 'for 115 metres (C-D-E)';
- In the last line of the description delete the reference to '460' metres and substitute the figure '160';

In Part II of the Schedule;

- Insert at the beginning of the body of the description of the route the words '*A bridleway*' and substitute a lower case 'v' at the beginning of the word 'Varying';
- In the first line of the body of the description amend the reference to the maximum width from '3.3' metres to '3.0' metres;
- In the first line of the body of the description delete the grid reference 'SU 4951 3032' and substitute the words '*Point E*';
- In the first line of the body of the description after the word 'and' insert the words '*Point G*' and insert brackets round the grid reference 'SU 4979 3056';
- Delete the body of the description from and including the words 'on footway' in the second line, to and including the word 'footway' in the fourth line, substituting the words '*at Point E*';
- Delete the whole of the first entry relating to the width of the path;
- In the second entry relating to the width of the path delete the first grid reference and substitute the words '*Point E*';
- In the second entry relating to the width of the path after the word 'and' insert the words '*Point F*' and insert brackets round the grid reference 'SU 4978 3054';
- In the last entry relating to the width of the path delete the words and figures 'SU 4962 3040 and SU 4963 4963(*sic*) 3042 and between';
- In the last entry relating to the width of the path after the remaining word 'between' insert '*Point F*' and put brackets round the ensuing grid reference;
- In the last entry relating to the width of the path after the word 'and' insert the '*Point G*' and put brackets round the ensuing grid reference;

On the Order plan:

- Delete the bridleway to be added between Point A and Point E.

67. Since the confirmed Order would affect land not affected by the Order, and also not show a way shown in the Order as submitted, Paragraph 8 (2) of Schedule 15 to the Wildlife and Countryside Act 1981 requires that notice shall be given of the 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.

*Helen Slade*

**Inspector**





(REDUCED TO A4 FROM A3)

