



Order Decision

Inquiry held on 14-16 January 2020

Accompanied site visit undertaken on 16 January 2020

by Mark Yates BA(Hons) MIPROW

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

Decision date: 26 February 2020

Order Ref: ROW/3201496

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the 1981 Act") and is known as the Wiltshire Council Parish of Pewsey Path No. 82 and Path No.82A and the Parish of Milton Lilbourne Path No. 34 and Path No. 34A Definitive Map and Statement Modification Order 2017.
- The Order was made by the Wiltshire Council ("the Council") on 7 November 2017 and proposes to add sections of footpath to the definitive map and statement.
- There was one objection¹ and one representation² outstanding at the commencement of the inquiry.

Summary of Decision: The Order is confirmed subject to the modification set out below in the Formal Decision.

Preliminary Matters

1. The alleged footpaths ("the claimed routes") comprise of three distinct sections within the parishes of Pewsey and Milton Lilbourne. They are represented on the Order Map as follows:
 - Commencing from the junction with Pewsey Footpath 37 (point A) it follows the edge of a field to a culvert over the stream known as the 'Hurley Lake'. The route continues beyond the culvert and crosses Pewsey Footpath 36 where it generally proceeds adjacent to the stream through to the junction with Pewsey Bridleway 38 (point C).
 - At point C, one route follows the northern and southern sides of the stream and crosses over Milton Lilbourne Bridleway 18A (point B). It continues through to the junction with Milton Lilbourne Bridleway 18 at point E.
 - Another route continues from point C and runs predominantly along the southern side of a branch of the stream. It crosses over Milton Lilbourne Bridleway 18A (point D) and terminates at the junction with Milton Lilbourne Bridleway 18 at point F.

Main Issues

2. The Order relies on the occurrence of an event specified in Section 53(3)(c)(i) of the 1981 Act. Therefore, for me to confirm the Order, I must be satisfied on the balance of probabilities that the evidence shows in each case that a footpath which is not shown in the definitive map and statement subsists.
3. It is not asserted by the Council that the claimed routes are historical public rights of way and reliance is placed on evidence of relatively recent public use

¹ Submitted on behalf of three landowners (J M Strong and Partners, Mrs Ingram-Hill and Mr A. Newbigging).

² From Milton Lilbourne Parish Council in support of the Order.

of the routes. The relevant statutory provision, in relation to the dedication of a public right of way, is found in Section 31 of the Highways Act 1980 ("the 1980 Act"). This requires consideration of whether there has been use of a way by the public, as of right³ and without interruption, for a period of twenty years prior to its status being brought into question and, if so, whether there is evidence that any landowner demonstrated a lack of intention during this period to dedicate a public right of way.

4. If statutory dedication is not applicable, I shall consider whether an implication of dedication can be shown at common law. Dedication at common law requires consideration of three main issues: whether the owner of the land had the capacity to dedicate a highway, whether there was express or implied dedication by the landowner and whether there has been acceptance of the dedication by the public. Evidence of the use of a way by the public as of right may support an inference of dedication and may also show acceptance of the dedication by the public.

Reasons

Statutory Dedication

When the status of the claimed routes was brought into question

5. The Council's position is that the claimed routes were brought into question by the erection of signage and fencing to deter access in 2016. In contrast, the objectors assert that it occurred when signs were erected on behalf of the previous landowner (Mr Pelham) in 2008. In considering this issue, I have had regard to the House of Lords judgment in the *Godmanchester* case⁴. The obiter dictum⁵ comments of Lord Hoffman at paragraph 37 of *Godmanchester* are supportive of there being symmetry between acts that are sufficient to bring the status of the way into question and those that demonstrate a lack of intention to dedicate.
6. It is not disputed that the action undertaken in 2016 was sufficient to bring the status of the claimed routes into question. The issue I need to resolve is whether the same is applicable to the signs that were erected in 2008. None of the users were aware of any signage on the routes prior to the more recent signs. The evidence regarding the 2008 signs has primarily been provided by Mr Hooper who was a contractor for Mr Pelham. Mr Hooper and his staff were involved with the land crossed by the claimed routes for the period of 2001-2016.
7. Section 31(3) of the 1980 Act specifically refers to the erection and maintenance of suitably worded notices visible to persons using the way being a means to demonstrate a lack of intention to dedicate. A notice does not need to remain for any particular period of time and there may be instances where a notice in place for a relatively short period could be sufficient to inform the public that the status of the way is disputed. In this case, the routes are situated in a rural location and the period involved would need to be sufficient to alert the public that their use was being challenged.

³ Without force, secrecy or permission

⁴ *Godmanchester Town Council and Drain v Secretary of State for Environment, Food and Rural Affairs* [2007] UKHL 28

⁵ An opinion given in the judgment that is not essential to the decision and therefore not legally binding as a precedent.

8. The evidence of Mr Hooper is that a decision was reached that appropriate signs would be erected in an attempt to deter people using the 6 metres wide strips created in 2007 for an entry level environmental stewardship scheme to encourage wildlife. Aside from a section that runs southwards from point A, these strips of land encompassed the claimed routes.
9. Minutes for the Baset Farms meeting of 22 January 2008 record that the land agent had provided Mr Hooper with signs to be erected in order to deter people from using the margins. Whilst reference is made to a map showing where the signs were to be placed being attached, no such plan is included with the minutes. The minutes also state that a photographic inventory would be undertaken to record the position and date of the erection of the signs, but this information is not available. The minutes of the meeting of 9 April 2008 record that Mr Hooper had not erected the signs but it would be done as a matter of urgency.
10. Mr Hooper says he first erected the A4 size signs in around June 2008. When he went back to the site a couple of signs had been removed and these were replaced. All of the signs had been removed when he subsequently visited the site. It cannot be determined how long the signs remained in place, but Mr Hooper's evidence indicates that these disappeared soon after they were erected. The Baset Farms minutes for the meeting of 1 July 2008 record that the signs had been quickly removed.
11. A map has been provided by the objectors with the aim of showing the location of various features⁶, including where it is understood that signs were placed in 2008. This map appears to be generally consistent with a map of February 2004 in terms of the siting of the signs. These maps vary to some extent from the plan provided by Mr Hooper on which he has plotted where he recalls the signs were located. These variations create a little uncertainty in determining where they were all actually placed.
12. Mr Hooper believes the signs generally contained the wording more recently supplied to him, namely: "*THESE GRASS MARGINS HAVE BEEN CREATED TO BENEFIT WILDLIFE INCLUDING GROUND NESTING BIRDS. THEY ARE NOT A PUBLIC RIGHT OF WAY AND NO PUBLIC ACCESS IS ALLOWED*". They were erected in the middle of the strips at points where the claimed routes met existing public rights of way. Nonetheless, it is acknowledged that signs were not placed at all of the intersections with rights of way and the wording was only visible when travelling in one direction.
13. I cannot be certain that the signs contained the wording outlined above. However, the evidence of Mr Hooper and the farm minutes indicate it is likely that notices were placed on site to outline that no public right of way existed. Although it is apparent that the signs were not visible to walkers on all sections of the claimed routes.
14. The crucial issue in terms of the signs is whether the landowner did enough to make some members of the public aware that their use of the claimed routes was being brought into question. Mr Hooper's evidence indicates that a couple of signs were replaced on one occasion. His evidence is also suggestive of the signs being in place for only a very limited period of time. The failure of the users to recall any previous signage is also supportive of the signs not being

⁶ Referred to at the inquiry as the 'Main Map'.

sufficient in term of their duration or placement to alert the public that their use was being challenged.

15. I take the view on balance that the signage briefly in place in 2008 was not sufficient to bring it home to the public that the status of the claimed routes was being called into question. It follows that I conclude it was the action taken in 2016 that brought the status of the routes into question. The relevant twenty-year period ("the relevant period") for the purpose of statutory dedication is therefore 1996-2016.

Evidence of use by the public

16. Forty-six user evidence forms ("UEFs") were completed in support of use of the claimed routes by forty-seven people. Eleven people gave evidence at the inquiry in relation to their use of the routes on foot, two of whom have not completed a UEF. One additional person provided some oral evidence regarding use on horseback. In reaching my conclusions, I give particular weight to the evidence of those users who spoke at the inquiry, which was subjected to cross-examination by the objectors' representative (Mr Farthing). This evidence is generally consistent with the information contained in the UEFs and additional written submissions from some of the users in support of the application.
17. I attach much less weight to the letters from other people who refer to use of the claimed routes due to the limited information provided. The same is applicable to the evidence of use referred to by representatives of Milton Lilbourne and Easton Royal Parish Councils. Nonetheless, these submissions are suggestive of the UEFs not being fully reflective of the use of the claimed routes or particular sections. This is further supported by the evidence of use of the A-F section in 2014 by a local running club.
18. A recent letter from one of the people who completed a UEF outlines that the form she completed does not reflect the route she used. I have to accept her written evidence that she did not use the claimed routes and discount this form accordingly. In terms of the distribution of the UEFs, the co-ordinator for the application (Mr Haddock) confirms that these were circulated along with a map showing the routes claimed and a blank map for people to mark the routes they used. Overall, there is nothing to suggest that people were unduly influenced when providing evidence in support of use of the claimed routes.
19. I found the oral evidence of the users provided a good insight into the use of the routes. This was on the whole for recreational purposes, particularly in relation to dog walking. It is apparent that sections of the claimed routes were used in conjunction with the network of existing public rights of way. There is also evidence of some use by residents of other parishes to access Pewsey via point F.
20. Bridges were missing from three connecting public rights of way for seemingly significant periods of time prior to new bridges being installed in 2015 and 2017. The absence of crossing points at these locations meant that sections of the existing paths could not be used, and this is one factor cited for people using the claimed routes. This appears to be particularly relevant in terms of Pewsey 36 and Milton Lilbourne 18A.
21. Witnesses who gave evidence on behalf of the objectors at the inquiry refer to not seeing people using the claimed routes when working on the land crossed

- by the routes or from the surrounding land. I note that some of these witnesses were no longer involved with the land by the onset of the relevant period and others worked on the land for only part of this period. It is further evident that the farming contractors were on site for limited periods of time for the planting, spraying and harvesting of crops and other works. Some of these witnesses accepted that people tend to not use rights of way during the times that agricultural works are taking place on the land. It is apparent from the evidence of the users themselves that they did not see other people using the routes at times.
22. It is stated by those involved in farming operations that the fields were ploughed close to the edge prior to the creation of the 6 metres wide margins. The objectors assert that there was previously no path around the edge of the fields or signs of use by the public. Additional responses to this point from a number of the users' state that they were able to walk around the edge of the fields. This was supported by the oral evidence from the supporters at the inquiry. One of the witnesses called for the objectors, Sir David Newbigging conceded that he has been able to walk along the edge of the fields since 1984. It is also evident that it was not practical to plough right up to the edge of the stream.
23. One of the supporters (Mrs Warry) draws attention to signs of wear visible on some of the available aerial photographs. She outlined why she considers particular features are reflective of public use. Some of the photographs concerned were taken during the 1940s, which is well before the onset of the relevant period. However, I do not find that the more recent aerial photographs provide any assistance in determining whether people were using the claimed routes. The worn areas could correspond to other activities carried out on the land. Nor can it be determined from the aerial photographs whether it was possible to walk around the edge of the cultivated fields.
24. A number of the witnesses were asked to give their view on a photograph taken on the C-D section in around 1995/6. This photograph shows stubble in the field which indicates it was taken during the autumn or winter. It is reflective of the nature of the land at one particular moment in time which may fall just within the relevant period. Whilst it appears that there is some space beyond the stubble, I do not consider that this photograph is sufficient to conclude whether it was previously possible to walk along the edge of the field.
25. There is clear evidence in support of people walking along the edge of the fields throughout the relevant period. I do not necessarily find that there is a conflict between this evidence and the evidence of the people who were involved with agricultural operations. Ploughing as close as possible to the edge of the fields does not mean there was no space available to walk to the side of the crops. This particularly applies to the sections that run close to the edge of the stream. Whilst certain crops such as rapeseed may pose problems generally for walkers, there is no actual evidence to show that it hindered the users in respect of their use of the claimed routes.
26. The nature of the land changed following the creation of the field margins. This may reflect the varying responses to Question 5 in the UEFs regarding the estimated width of the route used. These forms provide no encouragement to record any variations in the available width of the route used during different periods of time. The oral evidence of the users is supportive of a lesser width being available at the onset of the relevant period.

27. A new access was created at point E in 2013. The letter from Mr Brennan who undertook the relevant works states that there had previously been no gaps in the hedge and access could not be gained at this point. However, the evidence of the witnesses at the inquiry is supportive of it being possible for pedestrians to gain access at this point despite the presence of a bank and vegetation. It is noteworthy that point E was identified as one of the entry points where a sign was briefly erected in 2008.
28. Two of the witnesses recalled a Wiltshire gate near to point C. None of the other witnesses remembered this structure and it may not have been in place for much of the relevant period. In any event, it is apparent that this gate was not locked. The damage to the culvert to the south of point A, during the relevant period, did not prevent people passing over it on foot. This incident is distinct from the much earlier damage caused by American troops in 1944.
29. The objectors draw attention to areas crossed by the claimed routes that are susceptible to flooding. There will be invariably be times when the surface of countryside paths may become muddy or covered in water. Some of the users also drew attention to the poor condition of recorded public rights of way in the area. My visit to the site took place after a period of heavy rainfall and it was possible to walk the claimed routes without difficulty.
30. One of the supporters (Mr Burton) was a beater for shoots held on land in the locality of the claimed routes. He says these took place on around 4-5 days in total during the course of a year. Signs were erected on existing rights of way to warn the public that shooting was taking place. There is nothing to suggest that this activity served to interrupt use for the purpose of Section 31 of the 1980 Act. Although it may have been the case that people avoided walking in the area generally when the shoots were taking place.
31. Two of the users appear to have enjoyed permissive access, but this had ceased by 1968 on the sale of the land in question. The persistent removal of signs by users could constitute use by force. However, the evidence of Mr Hooper does not support this being the case. Nor is it evident who removed the signs on a couple of occasions. The fact that the signs were only in place for a limited period of time and were not seen by the users means their use of the routes is unlikely to have been contentious.
32. It follows from the above that I find there is evidence of use, as of right and without interruption, throughout the relevant period. I agree with Mr Farthing that there is a need to carefully consider the user evidence. It is not simply a question of looking at the number of users during each year of the relevant period. In terms of the frequency of the use, this is generally stated to have occurred on a regular basis.
33. A small number of the users acknowledge in their UEF that they did not use the C-B-E section. There is no breakdown given in the forms for the other users to indicate the extent of their use for the different sections. The witnesses at the inquiry were able to give some clarity on this matter, which generally points to greater use of the A-C and C-D-F sections in comparison to the C-B-E section. Nonetheless, there still appears to be fairly significant use of the different sections when considered in the context of the rural setting of the claimed routes and the prime use being for recreational purposes. The use gradually increases during the relevant period. This could relate to the provision of the field margins. However, it could equally reflect the increased population of the

village or that some more longstanding users are no longer available to provide evidence.

34. Some limited evidence of use by horse riders was presented to the inquiry. However, I consider it falls well short of what would be expected to support the route being recorded as a bridleway both in terms of the extent of the alleged use and the quality of the evidence.
35. I find on balance that the user evidence is sufficient to raise a presumption of the dedication of the sections of public footpath included in the Order. It would have been sufficient to make a reasonable landowner aware that the public were using these routes. This means the first part of the statutory test is satisfied. However, I do not consider that the width specified in the Order for the claimed routes can be justified given the evidence of the witnesses regarding the limited width previously available at the edge of the cultivated fields. Therefore, if confirmed, a width of 1.2 metres would be more reasonable given the lesser width that was likely to have been available at the beginning of the relevant period.

Whether the landowner demonstrated a lack of intention to dedicate any public footpaths

36. I have addressed the signs erected by Mr Hooper in paragraphs 6-15 above. For the same reason that the signs erected in 2008 failed to bring the status of the claimed routes into question they would not have been sufficient to demonstrate a lack of intention to dedicate the routes.
37. Despite the assertions that people would have been challenged when not on the designated public rights of way, there is no evidence of any challenges to people using the claimed routes during the relevant period. The oral evidence of the people who were actively involved with farming the land was that they did not see people in order to challenge them. Although I have concluded that the use was sufficient to raise the presumption of the dedication of the sections of footpath.
38. Overall, the evidence is not supportive of the landowner taking sufficient action to communicate to the public that there was a lack of intention to dedicate the claimed routes during the relevant period.

Conclusions

39. I have concluded on balance that the evidence of use is sufficient to raise a presumption that the claimed routes have been dedicated as public footpaths. In addition, I consider that the landowners did not take sufficient action to demonstrate to the public that there was a lack of intention to dedicate these routes during the relevant period. Therefore, I conclude on the balance of probabilities that sections of public footpath subsist. In light of this conclusion, there is no need for me to address the user evidence in the context of common law dedication.

Overall Conclusion

40. Having regard to these and all other matters raised at the inquiry and in the written representations I conclude that the Order should be confirmed with a modification.

Formal Decision

41. I confirm the Order subject to the following modification:

- Delete all references in the Order to "2 metres" and insert "1.2 metres".

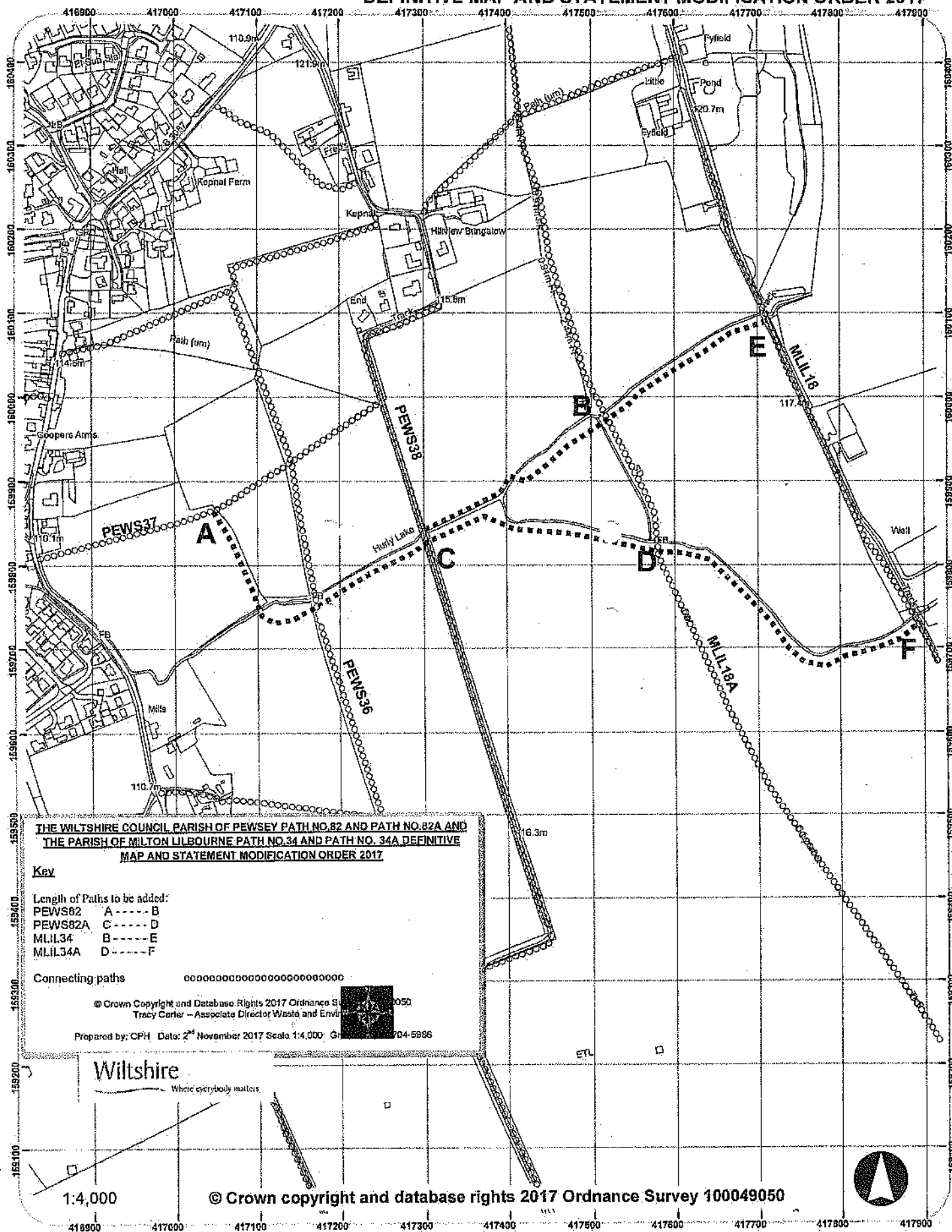
Mark Yates

Inspector

DOCUMENTS

1. Background information provided by Mrs Warry
2. Letter to the inquiry from Ms Cooke
3. Letter to the inquiry from Mrs Asher
4. Letter to the inquiry from Mrs Pope
5. Letter to the inquiry from Ms Stephens
6. Letter to the inquiry from Mr Amor
7. Letter to the inquiry from Easton Royal Parish Council
8. Statement of Mrs Twisk
9. Statement of Mrs Helps
10. Statement of Mr Parry
11. Statement of Mr Haddock
12. Photograph supplied by Mrs Roberts
13. Statement for Milton Lilbourne Parish Council
14. Email exchange involving Mr Bradshaw
15. Running club route
16. Letter to the inquiry from Mr Lavis
17. Submissions on behalf of the objectors
18. Closing submissions on behalf of the Council

THE WILTSHIRE COUNCIL
 PARISH OF PEWSEY PATH NO.82 AND PATH NO.82A
 AND THE PARISH OF MILTON LILBOURNE PATH NO.34 AND PATH NO. 34A
 DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2017



THE WILTSHIRE COUNCIL, PARISH OF PEWSEY PATH NO.82 AND PATH NO.82A AND THE PARISH OF MILTON LILBOURNE PATH NO.34 AND PATH NO. 34A DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2017

Key
 Length of Paths to be added:
 PEWS82 A - - - - B
 PEWS82A C - - - - D
 MLIL34 B - - - - E
 MLIL34A D - - - - F

Connecting paths 00000000000000000000000000000000

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