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| **Appeal Decision** |
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| **by Alan Beckett BA MSc MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 1 March 2022** |

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| **Appeal Ref: FPS/G1440/14A/16** |
| |  | | --- | | * This Appeal is made under Section 53 (5) and Paragraph 4 (1) of Schedule 14 of the Wildlife and Countryside Act 1981 (‘the 1981 Act’) against the decision of East Sussex County Council (‘the Council’) not to make an Order under section 53 (2) of that Act. | | * The application dated 18 August 2018 was refused by the Council on 28 April 2021. | | * The Appellant claims that the definitive map and statement of public rights of way should be modified by:   (a) upgrading Lewes footpath 13b to bridleway (point A to point C on the plan appended to this decision);  (b) adding a bridleway between point C to Saxon Cross at point D;  (c) upgrading Glynde footpath 1 and Ringmer footpath 21c from Saxon Cross (point D) to New Road (point E). Summary of Decision: The Appeal is dismissed. | |
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Preliminary Matters

1. I have been directed by the Secretary of State for Environment, Food and Rural Affairs to determine this appeal under Section 53 (5) and Paragraph 4 (1) of Schedule 14 of the 1981 Act.
2. The appeal has been determined on the papers submitted.
3. In arriving at my conclusions, I have taken account of the evidence submitted by the parties, the relevant parts of the Wildlife and Countryside Act 1981 and the case of *R (ex parte Norton and Bagshaw) v Secretary of State for Environment [1994] 68 P & CR 402* (‘*Norton and Bagshaw’*).

**Background**

1. The claimed bridleway forms a continuous route running in a generally easterly direction from Lewes (point A on the plan appended to this decision) to a point on New Road, Glyndebourne (point E on the appended plan). Between points A and C, the claimed bridleway follows the course of public footpath Lewes 13b (‘FP 13b’) and between points D and E follows public footpath Glynde 1 (‘FP 1’) and public footpath Ringmer 21c (‘FP 21c’). There is no public right of way recorded over the downs between points C and D.

**Main Issue**

1. Whether the evidence discovered demonstrates that the appeal route is a public bridleway which should be recorded in the definitive map and statement.

**Legislative Framework**

1. The need for an Order to be considered when evidence is submitted in support of a claim that a public right of way which is not shown in the definitive map subsists, or where it is claimed that a way shown as a footpath ought to be shown as a bridleway is dealt with under section 53 of the 1981 Act.
2. Section 53 (3) (c) (i) provides that a modification order should be made on the discovery of evidence which, when considered with all other relevant evidence available, shows that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates.
3. As made clear by the High Court in *Norton and Bagshaw*, this involves two tests:

**Test A -** Does a right of way subsist on the balance of probabilities?

**Test B.** Is it reasonable to allege that a right of way subsists? For this possibility to exist, it will be necessary to show that a reasonable person, having considered all the relevant evidence available, could reasonably allege that a right of way subsists.

1. Section 53 (3) (c) (ii) provides that a modification order should be made on the discovery of evidence which, when considered with all other relevant evidence available, shows that a way shown in the definitive map and statement as a highway of one description ought to be shown as a highway of another description.
2. In relation to matters under section 53 (3) (c) (ii) only the test identified as ‘Test A’ above is applicable; that is, does the relevant available evidence demonstrate, on a balance of probabilities, that the claimed right of way subsists?
3. It is common ground that there is no evidence of recent use on horseback of the claimed bridleway. In support of the application, the Appellant only submitted documentary evidence. In such cases, section 32 of the Highways Act 1980 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.

Reasons

***Documentary evidence***

1. The small-scale map of Sussex by Overton and Bowles (1740) shows by means of a double peck line, a route crossing the downs which runs east from Lewes before tuning south to Glynde which the appellant contends corresponds with the Appeal route A – B – C – D. Whilst this map suggests the existence of an unfenced route across the downs at the time of publication, it is at too small a scale for conclusions to be drawn as to the alignment of that route. I attach little weight to this map as evidence in support of the Appeal route.
2. A plan of Lewes dated 1788 by James Lambert does not depict the downs to the east of the town and is of limited evidential value in regard of the Appeal route. A road leading east out of the town to point A is shown which is likely to be Chapel Hill, but any continuation from point A onto the downs is indistinct.
3. A plan of Lewes by James Edward dated 1799 shows a route south-east from ‘Cliff’ (presumably the current Cliffe High Street) annotated “*bridleway to Glynde*”. The scale of the plan is such that this route appears to correspond with Chapel Hill and A towards B. The extract submitted does not show much of the downs to the east of the town, so it is not possible from this map to determine the alignment of the continuation of the “*bridleway to Glynde*”.
4. Prior to the re-organisation of local government in 1974, the Appeal route would have commenced in Lewes, crossed part of South Malling (Without) and reached the parish boundary between Glynde, Ringmer and South Malling at or near Saxon Cross. Whilst a route described as ‘*bridleway to Glynde*’ could mean a route by which it was possible to travel to the parish of Glynde (as opposed to just the village of that name) via the Appeal route, equally, that description could apply to FP13b which runs south east to the village. Although the Edward map has limited evidential value as it only shows the western end of the Appeal route, it is supportive of the claim that in the late eighteenth century, Chapel Hill and that part of A – B shown had the reputation of a bridleway.
5. Baxter’s 1824 map of Lewes shows two routes over the downs branching out of Chapel Hill at or around point A. Whilst the map provides some evidence of the physical existence of a route or routes leading onto the downs to the east of the town, it does not provide evidence as to the alignment or status of the routes shown.
6. Figg’s 1824 map of Lewes shows a route from Chapel Hill continuing over the downs annotated “*to Glynde*”. Like the earlier maps considered this map supports the contention that a route existed over the downs to Glynde, but the map does not assist with the alignment or status of the route shown. In common with Edward’s 1799 map, this map does not appear to demonstrate the existence of the Appeal route other than from A towards B.
7. A plan which a manuscript annotation states was used “*for Charter of Incorporation 1881 originally drawn for Reform Bill 1837?*” but otherwise undated, shows by means of a double peck line a route extending over the downs from the eastern end of Chapel Hill in a south-easterly then north-easterly direction towards the former parish boundary between South Malling and Ringmer. Although it is difficult to align the route shown with the current OS map of the area, the route shown is to the east of A – B and then approximates to the current FP13b before turning south-east at the parish boundary. There is no key to the plan, so it is not known what was being depicted by double peck lines and the plan does not assist with the determination of either the existence or status of the Appeal route.
8. An “*Enlarged map of Lewes streets*” dated 1868 shows two routes running east from Chapel Hill with the more southerly route extending from A towards B. No continuation of the route beyond point B is shown. This map is of little assistance in the determination of the existence or status of the Appeal route.
9. Yeakell and Gardner’s map of Sussex published between 1778 and 1783 shows by means of double peck lines a route eastward over the downs from Lewes to Saxon Cross and then onwards towards Week Lane which generally corresponds with the Appeal route. This map suggests the existence of a route over the downs between Lewes and Week Lane via Saxon Cross on the relatively level upper parts of the down but does not indicate the status of the route being depicted. Gardner and Gream’s map of 1795 shows a similar route over the downs to that shown in the Yeakell and Gardner map. It is of note that the current line of FP14 provides such a connection although running directly from A eastwards over the upper parts of the downs and not over the rising ground crossed by the Appeal Route.
10. Greenwood’s 1825 map of Sussex depicts a route running east from Lewes across the downs to Saxon Cross and onwards to Week Lane and Glyndbourne. Unenclosed routes such as the one shown are identified in the key as “Cross roads” which in the early nineteenth century would have meant a road linking two other roads. As the key does not claim to depict footpaths on the map, the route shown is likely to have been considered (rightly or wrongly) to have been of a higher status. Whilst the route shown approximates to the Appeal route, it is shown as running in a more easterly direction from Lewes and may be a depiction of what is now FP14.
11. Mudge’s Map of 1813 and the first edition Ordnance Survey 1-inch to 1-mile map of the same date shows a route over the downs in a similar manner to that shown by Gardner and Gream. Mudge’s map shows the route commencing off Chapel Hill eastward of The Snowdrop public house; the route shown would therefore have commenced at a point midway between A and B before running north easterly over the downs. Although these maps show a route running across the downs from Lewes to Saxon Cross and Week Lane, the scale of the maps make it difficult to determine the alignment of the route shown, and they do not assist with the status of the route.
12. The Glynde and Ringmer tithe maps show D – E as a part enclosed, part unenclosed way to Saxon Cross which appears to be outwith any adjacent land which was subject to tithe. The parish boundary is shown as running along the centre of this route between D and the southern end of Week Lane. On the Ringmer tithe map the route shown to the east of Saxon Cross (now FP 1 / FP 21c) is annotated “*road from Lewes*”.
13. Immediately to the east of Saxon Down on the South Malling tithe map is the annotation “*Footpath and bridleway to Glynderbourne from Lewes*” and a short section of double peck lines indicates the existence of an unenclosed way over the downs immediately to the south of Saxon Down. Other than this short section there is no further annotation or marking on the tithe map to indicate the orientation and alignment of this route. It is highly likely that the continuation of this route eastwards to Glyndebourne followed the course of what is now FP 1 and FP 21c as shown on the Ringmer and Glynde tithe maps. However, the South Malling tithe map does not provide evidence that the Appeal route west of point D was the route over the downs identified by the annotation.
14. A map of Southeram Farm drawn in 1762 shows two routes crossing the downs to the north of the farm, one is annotated “*the foot path*” the other is annotated “*the horse way*”. The scale of the map and the absence of other features on the map to locate the position of these routes means that it is not possible to determine that the route shown as “*the horse way*” is the Appeal route.
15. The map of the Glyndebourne Estate dated 1846 shows Week Lane in the same way as the Ringmer to Glynde road which suggests that the Estate did not consider the land to be part of the estate at the time. That section of the Appeal route between the southern end of Week Lane and Saxon Cross is shown to be part of the Estate. Whilst this plan suggests that Week Lane may have been considered to be part of the ordinary road network of the area when the plan was drawn, it is of little evidential value with regard to the existence or orientation of a way over the downs west of Saxon Cross.
16. Ordnance Survey mapping at 6-inches to 1 mile and 25 inches to 1 mile show by means of double peck lines routes which correspond with FP 14, FP 1, and FP 21c and with FP 13b. None of the mapping considered depicts a route on the alignment C – D. The Appellant submits that the Appeal route is shown on the first edition 25-inch to 1 mile map. However, the route crossing the downs on this map is shown to commence east of The Snowdrop Inn and to the north of where the Golf Club clubhouse is currently located. This route commences to the north of point B and does not run to point D as it turns to the south-east without connecting to Saxon Cross.
17. Although it is claimed that the absence of C – D from OS maps would be due to it falling into disuse from the middle of the nineteenth century, the absence of this part of the route from any large-scale OS mapping does not support the existence of a public bridleway over the C – D alignment claimed.
18. OS boundary remark books made to assist with the accurate depiction of the boundary between Ringmer, Glynde and South Malling parishes annotates a route running between Week Lane and Saxon Cross as “*Old Horse Road*” with a double peck line track shown running westward from Saxon Cross. Although these documents suggest that the route between D and E was reputed to be of a higher status than footpath, they are of little assistance in determining the alignment which the “*old horse road*” may have followed westward from Saxon Cross. Consequently, the boundary remark books are of limited assistance in determining the existence or status of the Appeal route.
19. Under the survey of public rights of way under the National Parks and Access to the Countryside Act 1949 (‘the 1949 Act’), the claimed route along Week Lane (now FP 21c) was identified by Ringmer parish council as a bridleway, with the continuation route to Saxon Cross (now FP 1) as a footpath. Glynde parish council also claimed a public right of way along Week Lane but as a footpath. South Malling parish council identified two routes as crossing the downs from Lewes; route 4 (now FP 14) was claimed to be a bridleway, with route 5 (now FP 13b) identified as either footpath or a bridleway. Lewes Borough Council identified two routes crossing the downs as 13 (now FP 13b) and 14 (now FP 14) with route 13 being described as a carriage road used as a footway (CRF) and 14 being a footpath. Lewes Borough Council also considered that route 13 continued as a bridleway past the Club House and across the golf course (then situated in South Malling).
20. At the time of the parish survey, Week Lane was considered to be a bridleway by one parish council, but only a footpath by another and that the continuation of this route to Saxon Cross was a footpath. South Malling parish council considered that a bridleway ran west from Saxon Cross towards Lewes. Whilst part of this route is aligned with D – E, reference to a bridleway by South Malling parish council is in relation to the claimed path 4 (now FP 14) and not to the Appeal route C – D. Although Lewes Borough Council considered route 13 to be a CRF which then continued as a bridleway past the golf course club house and over the course, this appears to relate to A – B – C of the Appeal route. South Malling parish council identified the continuation over the golf course (route 5) as a footpath and bridleway. Neither the claim made by Lewes Borough Council nor South Malling parish council related to C – D of the Appeal route.
21. All routes were recorded in the first definitive map and statement as public footpaths with the exception of that part of FP 13b in Lewes which was recorded as a CRF. CRF 13b appears to have been reclassified as footpath as part of a review conducted under the provisions of the Countryside Act 1968.
22. The surveying authority of the day considered the conflicting submissions as to the claimed status of the routes and concluded on the evidence then before them that the routes at issue were public footpaths. The section of the Appeal route C – D is not shown or referred to in any of the parish survey records. No evidence has been submitted to support the Appellant’s contention that those undertaking the survey had been aware of the existence of a bridleway over the downs but were unaware of its exact location or mistakenly claimed parts of FP 14 and FP 13b as bridleways.

**Conclusions**

1. Figg’s map shows the western end of a route leading up to the downs from the eastern end of Chapel Hill. Edwards described this route as a ‘*bridleway to Glynde*’ but does not show much of the route beyond point A, and it cannot be concluded that what was being described was the Appeal route as opposed to some other route (such as FP13b).
2. Of those maps for which a key is available, none of the small-scale maps depict footpaths which suggests that the route being depicted were considered to be of a higher status. The small-scale maps depict a route crossing the downs from Lewes in an easterly direction to Week Lane via Saxon Cross but are drawn at too small a scale to determine whether the route being depicted is the Appeal route or an approximation or amalgamation of those routes which are currently recorded as FP14 and FP13b. In sum, the small-scale maps show the existence of a route between Lewes and Week Lane, but the location of that route and its status is unclear.
3. Although the tithe documents suggest that Week Lane was untithed with the route east of Saxon Cross being described as “*road from Lewes*” and “*footpath and bridleway to Glynderbourne from Lewes*”, these documents do not demonstrate the alignment of any such route to the west of point D. Consequently, the tithe documents do not support the contention that a bridleway ran over the downs on the claimed alignment C - D.
4. Ordnance Survey mapping shows the existence of a route over the downs between Lewes and Week Lane but generally on the current alignment of FP 14 / FP 1 / FP 21c. Whilst a track or path is consistently shown on the A – B – C alignment, the maps do not show C – D; the absence of C – D from OS mapping does not support its claimed existence as a bridleway.
5. The parish survey evidence generated under the provisions of the 1949 Act also does not support the claim that a bridleway existed on the alignment C – D. Whilst the parish councils considered that parts of other routes between Lewes and Glyndbourne were bridleways, all the routes surveyed were recorded in the definitive map as footpaths.
6. The tests to be applied when considering the Appeal are set out in paragraph 8 above. Whilst there is a body of evidence to demonstrate the existence through time of a route between Lewes and Glyndbourne, there is a lack of evidence of the existence of a route on the claimed alignment C – D for it to be reasonable for the Appellant to allege that a public right of way on horseback subsists. I conclude that the appeal does not satisfy Test B in relation to C – D.
7. The test in relation to A – B – C and D – E is that the evidence should demonstrate that the claimed bridleway subsists, as these parts of the appeal route are already recorded in the definitive map and statement. There is evidence from the parish surveys of public rights of way that parts of the Appeal route had been considered to be public bridleways, but which were subsequently recorded as public footpaths. However, the reappraisal of this material would not warrant the reconsideration of the decisions regarding the status of the routes which were taken some 70 years previously. Taken as a whole, the evidence adduced does not demonstrate that a public bridleway subsists over A – B – C nor D – E.
8. It follows that as neither Test A nor Test B set out in paragraph 8 above is satisfied, I conclude that the Appeal should be dismissed.

**Formal Decision**

1. I dismiss the appeal.

Alan Beckett

Inspector

APPENDIX – Location plan (not to scale)

