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| **Appeal Decision** |
| **by C Beeby BA (Hons) MIPROW** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 20 June 2022** |

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| **Appeal Ref: FPS/G1440/14A/17** |
| * The appeal is made under Section 53 (5) and Paragraph 4(1) of the Wildlife and Countryside Act 1981 (the 1981 Act) against the decision of East Sussex County Council (the Council) not to make a definitive map modification order (DMMO) under s53(2) of that Act. |
| * The Application dated 3 May 2018 was refused by the Council on 16 September 2021. |
| * The Appellant claims that the definitive map and statement (DM&S) of public rights of way should be modified by adding a footpath (shown as A-B on the attached plan) between Public Footpath Little Horsted 5 and the Lewes to Uckfield road, in Little Horsted parish. |
| **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 to the 1981 Act.
2. The appeal is based on the papers submitted. I have not visited the site, however I am satisfied that I can make my decision without such a visit.

**Background**

1. The application relies on documentary evidence.

Main Issue

1. Section 53(3)(c)(i) of the 1981 Act states that a DMMO 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.
2. The main issue is consequently whether 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. If I consider that a DMMO should be made, paragraph 4(2) of Schedule 14 enables me on behalf of the Secretary of State to “give to the authority such directions as appear to him necessary for the purpose”.

Reasons

1. Quarter sessions records of 1793 are submitted. These record the proposed diversion of a footpath, and include a map showing an old and new route. The new route approximately corresponds to part of the application route. The records refer to the path having been diverted on the ground.
2. The appellant provides extracts from Tithe mapping and apportionments. These do not show a path in the vicinity of the application route. They indicate that ownership of the land crossed by the majority of the route changed between the date of the quarter sessions documents of 1793 and the Tithe documents, which were produced in response to the Tithe Commutation Act 1836. The appellant submits that the new owner would have been less likely to maintain a right of way created by their predecessor.
3. A first edition 25” to the mile Ordnance Survey (OS) map of 1874 does not depict the application route but shows an apparent bridge crossing a lake on the approximate line of the route. A path is shown to the south of the application route’s location. A 6” to the mile OS map of around 1900 marks a footbridge by the annotation “F.B.” at the same location. The bridge forms the termination point of a path through woodland which does not reflect the application route. The appellant submits that the presence of the bridge supports the existence of the application route having been maintained at the time of the bridge’s construction.
4. Documents held by the Council are submitted. Survey notes from a month prior to the relevant date of the draft DM&S refer to the 1793 quarter sessions records. A memo concerning the drawing up of the draft documents additionally refers to the same records and describes one path having been diverted. The memo is annotated “no action unless objections rec’d”. The application route does not subsequently appear in the documents produced in the drawing up of the DM&S. Evidence of the reasons which led to the route’s exclusion from the DM&S is not before me.
5. Comments received from the public in response to the Council’s consultation refer to the application route as a footpath. They submit that the path was blocked by the owner of Horsted Place, a nearby house, in the past due to visits to the property by the royal family. They state that an alternative route was consequently used. The appellant provides an extract from the modern-day Horsted Place hotel website which suggests that members of the royal family “often” stayed at the house.
6. There is consensus amongst the parties that the quarter sessions evidence diverted a path and was considered when the DM&S was first drawn up, and I see no reason to depart from that view. The question before me is consequently whether an unrecorded right of way is reasonably alleged to subsist on the basis of the discovery of the evidence before me, including any new evidence. This can include the finding out of information which was not known to the surveying authority when the DM&S was prepared, such as a new evaluation of the significance of evidence which was already in the authority’s possession.
7. The available evidence from the process of drawing up the draft DM&S refers to the diversion of a route through the quarter sessions. The later interpretation of this evidence by the Council and the appellant is similar. As a result, no new evaluation of the significance of the quarter sessions evidence since the drawing up of the draft DM&S is before me. The quarter sessions comments within the application and appeal consequently do not form the finding out of new information.
8. I acknowledge the change in landownership identified by the appellant to have occurred between the date of the quarter sessions and Tithe, and the submission that this may explain the lack of recording of the application route in the Tithe documents. Whilst a short section of path shown on the Tithe map to the north of a lake is approximately consistent with the application route, it is not depicted elsewhere. It is unlikely that a tithe map will show public footpaths, as their effect on the tithe payable was likely to be negligible. Nevertheless, no assumption in this regard can be made and the Tithe documents consequently do not support a reasonable allegation that an unrecorded right of way exists over the application route.
9. There is nothing before me to confirm that the submitted OS evidence was considered during the drawing up of the DM&S. Whilst a track is shown on the maps, it does not reflect the application route, and the route is not marked. A bridge across the corner of a lake is shown in the approximate location of the route. However, there could be other reasons for the bridge’s presence than to carry a public right of way.
10. Furthermore, OS maps carried a disclaimer to the effect that the representation of a track or way on the map was not evidence of the existence of a public right of way from 1888. Thus, whilst the depiction of the footbridge on the later map shows its physical existence, it does not support its use as part of the application route at the time, particularly as no other part of the route is shown.
11. The consultation response is brief and refers to the existence of a route, but does not record use of the application route in person. Even if access in the area was prevented for periods in the past, this evidence does not clearly indicate public use of the application route. The response consequently forms limited evidence of the application route’s reputation but no clear evidence of the existence of an unrecorded public right of way.
12. Whilst the quarter sessions documents record the diversion of a highway and the physical existence of the new route, this evidence was considered at the time of drawing up the DM&S and the route was then excluded from these documents. It must be presumed that the surveying authority acted lawfully and in accordance with its duty in doing so. These matters, when considered with the other evidence submitted with the application and appeal, do not support a reasonable allegation of the existence of unrecorded public rights over the application route.
13. Thus, taken as a whole, the available evidence does not demonstrate 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.

**Other Matters**

1. An interested party raises concerns relating to health and safety and the effect of the application on land crossed by the alleged footpath. I acknowledge these concerns, however, as they lie outside the criteria set out within the relevant legislation, I cannot give them weight in reaching my decision.

Conclusion

1. Having regard to the above considerations, I conclude that the appeal should be dismissed.

**Formal Decision**

1. I dismiss the appeal.

C Beeby

INSPECTOR