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| **Order Decision** |
| Site visit made on 31 October 2022 |
| **by A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practicing)** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 30 November 2022** |

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| **Order Ref: ROW/3283869** |
| * This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as The Kent County Council (Bridleway EE427 at Ripple and Sutton) Definitive Map Modification Order 2021.
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| * The Order is dated 1 July 2021 and proposes to modify the Definitive Map and Statement for the area by upgrading Public Footpath EE427 to the status of Public Bridleway as shown in the Order plan and described in the Order Schedule.
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| * There was one objection outstanding when Kent County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.
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| **Summary of Decision: The Order is confirmed.** |
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Preliminary Matters

1. I made an unaccompanied site visit on 31 October 2022 when I was able to view the whole of the Order route.
2. The Order has been made following an Appeal Decision dated 15th June 2021 which directed Kent County Council, the Order Making Authority (the OMA), to modify the definitive map and statement to upgrade Public Footpath EE427 to bridleway status. The OMA does not support the confirmation of the Order as made and takes a neutral stance. Submissions have been made on behalf of the British Horse Society (the BHS) in support of the confirmation of the Order as made. An objection to the confirmation of the Order has been made by the current landowner.
3. The submissions before me included details of a route, known as Hangman’s Lane, located east of Point B on the Order map, that has recently been confirmed as a bridleway. Consistent with the Inspector’s findings in the abovementioned Appeal Decision of 15th June 2021, the submitted documentary evidence does not necessarily indicate that the Order route should be considered as part of a combined single route with the bridleway at Hangman’s Lane. I therefore consider that details relating to Hangman’s Lane concern a separate matter. Consequently, I have considered the status of the Order route on its own merits.

**The Main Issue**

1. The Order has been made under Section 53(3)(c)(ii) of the 1981 Act. Section 53(3)(c)(ii) provides that an order to modify the definitive map and statement (the DMS) should be made following the discovery of evidence which (when considered with all other relevant evidence available) shows that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description.
2. As regards to the documentary evidence adduced in this case, Section 32 of the Highways Act 1980 (the 1980 Act) requires that I 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. Therefore, I must consider whether or not the documentary evidence available to me, when considered as a whole, shows that bridleway rights have existed historically over the Order route. My decision is reached on the balance of probability.

**Reasons**

*Early Maps*

1. The Mudge-Faden map of 1801 appears to show part of the Order route from Point B on Winklands Oaks Lane connecting to Winkland Oaks Farm, as a minor road. No route is shown on that map, connecting Winkland Oaks Farm to Point A on the Order map.
2. Greenwood’s Map of Kent from 1819-1820 similarly shows a section of the Order route from Point B to Winkland Oaks Farm (shown on the map as Wingleton Oak). This map further appears to show a short section of the Order route heading southeast from Point A on the Order map. However, there is no connection between the two abovementioned sections of the Order route shown on this map.

*Tithe Maps*

1. I have been provided with a Kent County Archives copy and a National Archives copy of the Sutton Tithe maps. On the National Archives copy, part of the Order route from Point A to the boundary that separates Sutton Parish from Ripple Parish (the Parish Boundary) is shown by a pecked line running adjacent to a solid line depicting boundaries between individual parcels of land which are identified within the apportionment. The Kent Archives copy of the Sutton Tithe map does not include the pecked line markings as shown on the National Archives copy of the map.
2. The Ripple Tithe map shows part of the Order route from Point B to the Parish Boundary, and includes a short section of the Order route heading northwest from that parish boundary in the direction of Sutton. Both the section of the Order route within Ripple parish and the short section of the route to the northwest of the Parish Boundary, are depicted in a similar manner, appearing as an enclosed road.
3. On the Ripple Tithe map, the section of the Order route from Point B, past Point X, and into the farmyard at Winkland Oaks Farm is identified as parcel number 194, with the accompanying apportionment describing that parcel as being “Public Roads and Waste Lands”. The farmyard has been allocated parcel number 173 and appears separate from that part of the Order route shown between the farmyard and the Parish Boundary and that short section running northwest of the Parish Boundary for which no apportionment number has been included.
4. It has been put to me that the identification of part of the way shown on the Ripple Tithe map as “Public Roads and Waste Lands”, described above, appearing as an enclosed road, is good evidence for the status of the way as a public road rather than waste land. However, the current landowner maintains that it is uncertain whether the appointment describes a public road or waste land, contending that “Waste Land” refers to the unproductive land which would include a private farm track.
5. Further to the above, it has also been put to me that a significant portion of the ways shown on the National Archive copy of the Sutton Tithe map, and which are depicted in the same manner as the proposed Order route, are now recorded as public paths. However, it was not the purpose of Tithe documents to record public rights of way, but rather to identify tithable land that was capable of agricultural production. Nonetheless and whilst noting that the map is a second class map, the depiction of part of the Order route between Point B, past Point X, and to the farmyard as an enclosed road is evidence of what was believed to be its status at the time and is suggestive of that part of the route being a public road.

*Ordnance Survey (OS) Records*

1. The earliest OS map provided is dated 1831 and appears to have been based on the same survey as used for the Mudge-Faden map described above. The 1831 OS map similarly depicts part of the Order route from Point B to Winkland Oaks Farm as an enclosed trackway.
2. The twenty-five inch first edition OS map, published in 1872, shows the entirety of the Order route as an unenclosed track coloured sienna. Part of the Order route between Point A and the Parish Boundary are numbered as parcels 41 and 46 which are included in the accompanying book of reference, with each described as ‘Road’. Between Point B and the Parish Boundary, the Order route is shown by double pecked lines, and which is also coloured sienna. The sienna colouring of the continuous unenclosed trackway indicates that it had a metalled surface.
3. The second edition twenty five inch OS map, published 1898, shows all of the Order route as an unenclosed continuous track. There are no ‘B.R.’ or ‘F.P.’ annotations on route shown on that map.
4. The OS maps record the physical features present at the time of the survey, and the existence of the Order route itself is a physical feature. However, since the late 19th Century, OS maps have carried the disclaimer that tracks and paths shown provide no evidence of the existence of a public right of way. Nonetheless, the indication of the metalling of the route and its description as ‘Road’ within the abovementioned book of reference, is consistent with the Order route being a public bridleway, or route of higher status.

*Bartholomew’s Maps*

1. A series of maps from the 1904, 1922, 1941 and 1953 editions has been provided and which appears to show the entire Order route as an ‘indifferent road’ or ‘other roads and tracks’. However, these maps included a disclaimer to the effect that the representation of roads or footpaths on these maps is no evidence of the existence of a right of way. It has been decided in the Courts, that the disclaimer underlines the fact that one cannot place much weight on Bartholomew’s maps, or indeed any map which does not have the positive function of identifying public carriageways.

*Finance Act 1910*

1. The 1910 Act required that all land be valued. Where a route is shown uncoloured and unnumbered so that it is outside of hereditaments, it is indicative of a public highway.
2. The submitted Finance Act map sheets show the whole of the Order route which appears to have been recorded as being part of hereditament 407 which is also colour washed blue. I am informed that no deductions for rights of way were made in respect of hereditament 407.
3. The recording of public rights of way was not the primary purpose of the information gathering exercise in respect of the Finance Act. As such, no conclusion as to the status of the route shown on this map can be made.

*Eastry Rural District Council Records*

1. I have been provided with an extract of a highway surveyor’s report from 1911, which states that a letter had been received asking if the surveyor would meet a specific individual at Winkland Oaks Farm, and which referred to “the bad state of the road leading from Dover Hill Sutton past Winkland Farm to the road leading from Ripple school to Martin”. The report goes on to state that the surveyor met the individual “there last Thursday and pointed out to him that the road was only a bridle Rd”. Whilst that report identifies the individual who requested the meeting as being “of Folkstone”, I have also been provided with extracts from the East Kent Gazette dated June 1918, which indicate that that individual was a tenant at Winkland Oaks Farm.
2. A further surveyor’s report from 1913 states that a letter had been received which complained “about the condition of Bridle Rd leading from Winkland Oaks Cottages to Dover Hill Sutton”. That report goes on to refer to the abovementioned previous meeting in 1911 and concludes that “no repairs has ever been done to this Bridle RD”. Looking at the contemporary OS maps described above, the dwelling shown as ‘Oaklands’ located near to Point B on the Order map, was previously known as ‘Winkland Cottages’. The Eastry Rural District Council surveyor’s report dated February 1924 also identifies “the Bridle road leading from Dover Hill Sutton to Winkland Oaks Farm Ripple”.
3. The objection raised by the current landowner maintains that the route described by the surveyor was in fact another route. It has been put to me that the description “Dover Hill Sutton past Winkland Farm” as included in the 1911 surveyor’s report, identifies a route from Sutton Hill to a farm known as Winkland Farm, located north of Winkland Oaks Farm, which was shown on the OS map published in 1887.
4. However, it is apparent from the wording used by the surveyor that he was describing a location on Dover Hill Sutton, and not Sutton Hill as maintained by the objector. Furthermore, I have been provided with evidence that whilst there was a farm known as ‘Winkland Farm’, located north of the Order route, that farm appears to have changed its name to ‘Wingleton Farm’ by the time an OS map was published in 1905. Given that the initial surveyor’s report was dated after that time, it is likely that if the route did indeed pass through Wingleton Farm, then the surveyor would have identified it as such and not as Winkland Farm.
5. I acknowledge the current landowner’s submissions that the surveyor’s description of the Order route as a ‘Bridle Road’ contains no reference to whether that route was public or private. However, it is apparent that the abovementioned tenant farmer was reported as referring to “the bad state of the road” by the surveyor and, therefore, it is likely that the tenant farmer thought the Council should maintain that “road”, which in turn indicates that they believed that ‘road’ to be public. Whilst it appears that no public expenditure was authorised to maintain that ‘road’, there appears to be little evidence as to why that decision was made and the evidence provided by these records strongly suggests that the surveyor and the tenant farmer at the time considered the route to be a public route.

*Electricity (Supply) Acts*

1. I have been provided with a copy of a notice under the Electricity (Supply) Acts 1882 to 1922, published in the London Gazette and dated 1923, which confirms that an application by an electricity undertaker to the Electricity Commissioners for a Special Order had been made, and which sought authorisation to ‘break up’ identified ‘streets’ not repairable by local authorities and railways. That notice identifies one such street to be broken up as being “*Parish of Ripple – The road leading from Winkland Oaks Cottages Ripple to Dover Hill Sutton*”.
2. Section 13 of the Electric Lighting Act 1882 (the 1882 Act) provides that undertakers were not authorised to break up streets not repairable by a local authority without the consent of the body or landowner that owned those streets, unless notice had been given and that an opportunity had been given to such owners to state any objections they may have. Section 32 of the 1882 Act states that the expression ‘Street’ includes “any square, court, or alley, highway, lane, road, thoroughfare, or public passage, or place within the area in which the undertakers are authorised to supply electricity by this Act or any licence, order, or special Act”.
3. The current landowner has put it to me that there are no suggestions that the route was ever broken up to facilitate lighting of the route, that it was more likely that the notice related to the installation of cables to supply electricity to local homes and buildings, possibly including Winkland Oaks Farm, and that the definition of ‘Street’ included in section 32 of the 1882 Act would encompass both public and private areas. It is therefore maintained that the notice provides no indication of the status of the route.
4. However, in support of confirmation of the Order, the BHS contends that a significant portion of the streets identified on that notice are now recorded either as public bridleways or routes of a higher status, or are currently subject to applications to record those ways as having a higher status. The BHS further maintains that the streets listed in the notice are public highways and that no notice would have been required to install cables on private land as such matters would have relied on private arrangements between the undertaker and the owner of the land.
5. In my view, whilst I acknowledge that the notice under the Electricity (Supply) Acts 1882 to 1922 does not provide conformation of the status of the route, it is however suggestive that the route was not wholly private and was a route of a higher status than a footpath.

*Sales Particulars*

1. Between the Parish Boundary and Point B, the Order route is marked on the sales map as part of parcel numbers 90 and 107. Part of the Order route between Point A and the Parish Boundary was allocated parcel number 53 in sales particulars for a 1936 auction at Winkland Oaks Farm, and was described within the accompanying schedule as “Road”. The BHS contends that that description of that part of the Order route as a road is consistent with its use as a bridleway. However, the landowner believes that the term “Road” included in the schedule indicates nothing more than its physical characteristic as a road and that given its inclusion within the sale particulars, it is maintained that that road was regarded as being privately owned.
2. In my view, whilst I acknowledge the inclusion of the term “Road” within the schedule, if that road was public then it would have been reasonable to identify it as such within the particulars of sale given that it would have affected the value of that land. As such, whilst these particulars do not confirm the status of that road, they are somewhat supportive of the route being private and not public.

*National Farm Survey*

1. The National Farm Survey (1941-1943) appears to show part of the Order route between Point A and Point X coloured blue, with the rest of the farm holding being shown coloured pink. The BHS submits that the use of coloured wash indicates that the Order route was therefore regarded as unproductive land which was not in the control of the farmer. The BHS maintain that this shows that it was considered to be a bridle road in the survey. However, it is argued by the landowner that a private farm track would also be regarded as unproductive land.
2. Colour washing between that part of the Order route Point A to Point X, when compared to the colour washing between Point X and Point B, is inconsistent. However, with regards to that part of the Order route Point A to Point X, the National Farm Survey indicates that this was regarded to be a highway rather than a private farm track. Whilst I acknowledge that it was not the purpose of these surveys to record public rights of way, these records are supportive of the Order route between Point A and Point X being a public highway of higher status than a footpath.

*Parish Surveys*

1. The National Parks and Access to the Countryside Act 1949 required surveys to be undertaken and then prepare a draft map showing those routes that were considered to be public rights of way.
2. As part of the parish surveys 1952-1953, the Sutton parish map records a footpath, Footpath 20, shown as a straight line between the Parish Boundary and to a point located on Forge Lane. Evidence has been provided which shows that an objection was made to the depiction of Footpath 20. Subsequent to that objection, the alignment of the path was adjusted and added to the definitive map and statement as a footpath from Point A to the Parish Boundary. The BHS contends that, given a significant number of rights of way were recorded as footpaths in the survey but which have subsequently been reclassified as ways of a higher status, there is no confidence that the recording of this part of the Order route as a footpath was correct.
3. The Ripple parish survey does not record a public right of way of any status between Point B on the Order map and the Parish Boundary. The current landowner maintains the route was omitted from the Ripple parish survey as it was likely regarded as being a private drive to Winkland Oaks Farm. However, the Ripple parish statement describes a route from “Winklandoaks Cottages to Winklandoaks Farm” and “to link up with F.P. 20 in Sutton”, and subsequently was recorded as “CRF 37” (a cart road footpath) in the draft map. The definitive map then showed that route as a Road Used as a Public Path (RUPP).
4. In 1970 and as part of a Special Review, that RUPP was downgraded to a footpath. After this way had been reclassified to footpath status, the Court of Appeal decided in R v Secretary of State for the Environment ex parte Hood [1975] that, in the absence of new evidence to the contrary, designation of a way as a RUPP conferred a presumption of the existence of bridleway rights. The BHS has put it to me that that review was abandoned and the decision to downgrade the route from a RUPP to a footpath was unlawful. Whilst I acknowledge the submissions from the BHS, the Order route continues to be recorded as a footpath.

*Conclusions on the Evidence*

1. There does not appear to be any dispute between the objector to the Order and the BHS that there is no single piece of evidence which, on its own, strongly supports that the Order route was a public bridleway. I concur with that view. Nevertheless, there also does not appear to be any evidence which on its own indicates that the Order route, or part of the Order route, was a private farm track.
2. Whilst the definitive map and statement has, since 1970, recorded the way as a footpath, it was before that time recorded as a cart road footpath and then a RUPP. That supports other earlier evidence, in particular the description of the route as a bridle road by the surveyor in the Eastry Rural District Council Records, the reference to a road within the Electricity (Supply) Acts, the OS map of 1872 and its accompanying reference book which refer to a road, that the route was of a higher status than a footpath. The Tithe records and the National Farm Survey records are also supportive of part of the Order route having public rights and further suggests that the route had a higher status than a footpath.
3. Some of the evidence before me, such as the sales particulars, conflicts with the suggestion that the route was a bridleway or indeed a public right of way, whilst other evidence such as the early maps, Bartholomew’s maps and the Finance Act records are, in my view, neutral on the subject.
4. As noted above, I would agree that there is no single piece of evidence that strongly suggests that the Order route should be recorded as a public bridleway. However, considering the evidence together as a whole, I find that the evidence is sufficient to reach the conclusion, on the balance of probability, that the route shown on the definitive map and statement has a higher status than that of a footpath and ought to be shown as a public bridleway.

**Overall Conclusion**

1. Having regard to these and all other matters raised in the written representations, I conclude that the Orders should be confirmed.

**Formal Decision**

1. I confirm the Order.

Mr A Spencer-Peet INSPECTOR

ORDER MAP = COPY – NOT TO ORIGINAL SCALE

