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| **Order Decision** |
| Site visit made 10 August 2022 |
| **by Heidi Cruickshank BSc (Hons), MSc, MIPROW** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 22 June 2023** |

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| **Order Ref: ROW/3261678** |
| * This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as The Cornwall Council (Addition of a Footpath at Wheal Friendly in the Parish of St Agnes) Modification Order 2020. |
| * The Order is dated 13 February 2020 and proposes to add a footpath running from Footpath 1, St Agnes at Wheal Friendly to Road U6074, Rocky Lane, to the Definitive Map and Statement. Full details are set out in the Order Map and Schedule. |
| * There was one objection outstanding when Cornwall Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation. |
| **Summary of Decision: The Order is confirmed.** |

Preliminary Matters

*The objector*

1. The original objection to the Order, dated 31 March 2020, was made by the then owner of part of the land crossed by the Order route on behalf of himself and “…*the 54 members of Friends of Wheal Friendly Footpath who represent the footpath users*.”
2. It is understood that from 19 March 2021 some of the relevant land, Land Registry Title number CL297944, was sold to the neighbouring landowner, who was developing Wheal Friendly Engine House (WFEH), which lies south-east of point A, as identified on the Order map. The former lead objector indicated that, because of the sale, he was, as of that date, no longer leading in the matter but that his son would coordinate the objection on behalf of the group.
3. It is noted that Cornwall Council, the Order Making Authority (OMA), and others, believe that the group, which is variously referred to as ‘The Friends of Wheal Friendly Footpath’, ‘The Friends of Wheal Friendly Footpath User’ and ‘Wheal Friendly Footpath User’ Group, is a fiction. Whether there is a ‘group’ or only a single individual in objection is not relevant to the determination of this Order, which depends only on evidential matters. The acronym TFOWFF will be used.

*Background and scope of the decision*

1. The southern section of the Order route, A – B on the Order map, runs generally to the west of the eastern section of the recorded Footpath 1 St Agnes (FP1). From point B FP1 turns to the west, whilst the northern section of the Order route, B – C, continues downhill, crossing an access track, to join the unclassified road U6047, Rocky Lane.
2. The application for the Order was made by St Agnes Parish Council (the Parish Council) in 2013. The application was supported by a number of user evidence forms (UEFs). Whilst TFOWFF suggest that the Order route could be referenced with an additional point X between points A - B this does not assist in the analysis of the evidence.
3. In response to the pre-order consultation carried out in 2019 the Parish Council responded that the Order route was the only one used in living memory. The Ramblers Association (RA) suggested that the definitive line of FP1 was not walkable at least since the cessation of mining in the area in around the 1930s. It was suggested that the route of FP1 may have been incorrectly recorded in the 1950s.The OMA indicated that they had not investigated whether the alignment of FP1 was correct as that related to deletion, which was a different test from addition.
4. The current landowner and owner of WFEH had no objection to the recording of the Order route. He felt that other paths should be extinguished at the same time, as he said they were incorrectly mapped, or alternatively should be diverted onto the line of the Order route. No notification has been given of a formal application to extinguish, divert or delete any route or routes in this area.
5. On 28 February 2019 the former objector, on behalf of TFOWFF, applied to record an alternative route running generally north-east from point A and then north to rejoin the recorded FP1 within the WFEH site to the north-east of the ‘mine structure’ through which the recorded route of FP1 passes. The OMA said that this application was not recorded on the DMMO Register but returned to the applicant as the absence of evidence meant that it had not been properly made.

Procedural Matters

1. No-one requested to be heard in relation to this Order. I made an unaccompanied site inspection and dealt with the matter by way of the written representations procedure. I would like to apologise for the time that has been taken by a number of personal and professional matters, which have delayed this decision. I fully understand that people would wish for faster decisions on such issues and am sorry I have not been able to do so on this occasion.

Main issues

1. The Order was made under s53(3)(c)(i) of the Wildlife and Countryside Act 1981 (the 1981 Act) relating to whether there had been a discovery of evidence which, when considered with all other relevant available evidence, 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. There have been arguments regarding the historic use of a route or routes in this area. Where facts come to light which persuade an Inspector that the Definitive Map and Statement (DMS) should depart from an Order, then it should be modified accordingly with inclusion of the relevant event*.* For the deletion of a right of way recorded on the DMS the relevant event would be section 53(3)(c)(iii) of the 1981 Act; the discovery of evidence which shows that there is no public right of way over land shown in the DMS as a highway of any description, or any other particulars contained in the DMS require modification.
3. The evidence produced by those who believe that a different route or routes should be recorded or deleted will be examined to determine whether the DMS requires modification. The proposal of such modifications would require advertisement, providing further opportunity for the matter to be considered should objections and representations be made, and/or other new relevant evidence be produced. However, the evidence required to delete a right of way from the DMS must be of sufficient substance to displace the presumption that the DMS is correct.
4. Extinguishment, or diversion, of a right of way would be a separate process, undertaken by reference to the Highways Act 1980 (the 1980 Act), which is not a matter that can be considered in relation to the Order as made.
5. The user and documentary evidence will be considered by reference to the relevant event or events under the 1981 Act. Section 32 of the 1980 Act requires that before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, the Inspector shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as is considered justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced.
6. The OMA were satisfied that the evidence demonstrated that a route was reasonably alleged to subsist by reference to section 31 of the 1980 Act, the relevant sub-sections of which Act are set out below:

*(1) Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.*

*(2) The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice such as is mentioned in subsection (3) below or otherwise.*

*(3) Where the owner of the land over which any such way as aforesaid passes—*

*(a) has erected in such manner as to be visible to persons using the way a notice inconsistent with the dedication of the way as a highway, and*

*(b) has maintained the notice after the 1st January 1934, or any later date on which it was erected,*

*the notice, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway...*

1. The 1980 Act requires that the relevant period of use be calculated retrospectively from the date on which the status of the way is ‘brought into question’. To give rise to a presumption of dedication, it needs to be shown that there has been use, without interruption, as of right, that is without force, secrecy or permission, throughout the relevant twenty-year period. There needs to be consideration whether there is sufficient evidence to show the landowners did not intend to dedicate public rights during that period.
2. In relation to the section B – C those parties who have commented on the matter accept that it should be recorded. The main issue of debate relates to section A – B in relation to whether it should be recorded as shown on the Order map; whether another route should be recorded; and/or, whether the recorded route of FP1 should be deleted. Any relevant evidence provided by any party to the Order process will be taken into account as appropriate in considering these matters. The evidence must demonstrate on the balance of probabilities that any proposed additions to or deletions from the DMS should be made.

Reasons

*The documentary evidence*

1. Due to changes potentially arising from the development of the land following the cessation of mining an understanding of which route or routes were available will help in determining the matters. This will assist with regard to the reliability of the evidence as a whole.
2. The earliest available evidence is a 1946 aerial photograph which shows a route following, on the balance of probabilities, the alignment B – C. The alignment to around halfway between points B and A also appears on balance to follow the Order route but to the south of that the only clear line lies further east and passes to the east of the built structure in that area, which seems to be the mine structure shown on the Order map north-east of point A. The photograph is of very poor quality and it is possible that there are other routes that cannot be seen.
3. The National Parks and Access to the Countryside Act 1949 introduced the concept of the DMS, setting out the legal process for their production. The Parish Council produced a map, dated 22 February 1951, of the rights of way to be recorded for the parish. There should also be a survey, but this was not submitted. Although of small scale and poor quality this map appears to show a route passing to the south of the mine structure, continuing in a curve to the east and north.
4. The survey information will have led to the route recorded on the Draft Provisional Map, 1951. Unfortunately, this small-scale map joins at the point of interest and is offset making it impossible to determine the route shown in the area of the mine structure. However, it would be this sequence of mapping which led to FP1 being recorded on the alignment shown on the Order map generally to the east of the Order route between points A – B and then running west. Section B – C was not recorded. There was no objection to the alignment recorded at the time, nor to the omission of B – C.
5. The 1988 aerial photograph is of little evidential value as it is of poor quality with the shadows making it difficult to identify features. The most that can be seen is the wider area around point A from which either the Order route, FP1 or both routes could commence.
6. A copy of part of the 1994 version of a walks book, ‘AROUND ST AGNES & PERRANPORTH’ was provided and the Parish Council referred to a 1989 version but no copy was submitted. There is agreement that the description relates to the Order route. This provides evidence that from at least 1994 the author believed the Order route, described as, ‘*Continue down the narrow path which starts beside the entrance to a walled yard – in fact this was once the mines water reservoir*…’ to be ‘…*to the best of my knowledge…* [a] *public* [right] *of way*…’. Whilst it is fair to say that the plan shows the recorded line of FP1 this is at very small scale and users would be likely to follow the alignment as described.
7. The 2000 aerial photograph is a little clearer showing the start of the Order route from point A and the track which runs east to the WFEH, which was under development to a residential property at the time of the site visit. There is no indication of a physical route on the alignment of FP1 from point A but the tree canopy may be obscuring such detail. The section of FP1 running west from point B; a small part of the Order route south of point B; and section B – C, crossing the access track, can be seen by virtue of the separation of the tree canopy but it is denser to the south so that any route or routes are not visible.
8. The 2005 photograph is clear between point B – C and for a short distance south of B. From point A a feature on the Order route is visible as far as the south-eastern corner of the field alongside which boundary the Order route passes. FP1 from point A is not visible. There is a track, wide enough for vehicles, leading into the clearing east of point A.
9. Post-dating the bringing into question, a similar situation remains in the 2016 and 2019 aerial photographs, although the canopy over the section from point C to the access track means this cannot be seen. By 2019 the clearing east of point A is in use, with vehicles seen; this appears to be associated with the development of the WFEH for which the planning application seems to have been made in 2017.
10. A photograph, understood to date from May 2013, shows barbed wire across the Order route at a point north-west of point A with a notice ‘CLOSED FOR REPAIR PLEASE USE PUBLIC RIGHT OF WAY NEARER TO THE ENGINE HOUSE’.
11. A letter from the OMA of June 2013 to the former landowner referred to a survey, which has not been submitted, indicating that their surveyor had only found evidence of one well-defined walked route to the north of the mine structure. She “…*could not find any indication of any other route on the ground*.”
12. TFOWFF submitted photographs taken in 2013 which appear to relate to the route running east from A towards the clearing. An open gate can be seen and a parked vehicle. The vehicular access is clear and there is potentially a route through the grass passing into the trees northeast of the clearing and mine structure. Other photographs appear to show the Order route running south-west around the mine structure and the spoil to the south, which was noted on the site visit. This appears to be traversable at the time of the photograph.
13. The TFOWFF photographs from 2018 are more difficult to analyse. The numbering has been undertaken on what seems to be a planning application plan. Photograph number 1 shows a wall and so appears to be at one end of the mine structure, however, the ruins as marked on the base map lie further north than suggested by the orientation map marked ‘Exhibit 10’. The location is unclear and shadowing in the photograph means that a physical route cannot be seen in any event. Similar issues around identification of location arise with the other three photographs, although photograph 2 appears to look towards the clearing and a physical route can be seen in at least photos 2 and 4.
14. The OMA submitted other photographs of the Order route, dated 2019 and 2020, showing steps near point B and steps and a sign at point C, all of which were seen on the site visit. The sign is wooden, similar to those found on recorded public rights of way in the county, which says PUBLIC FOOTPATH TO THE VILLAGE, directing users towards Wheal Friendly. At some time, someone had placed something – apparently a metal plate – over the word PUBLIC but this was subsequently removed. Whilst this could take users along either the Order route or FP1 from point B it is clear that they were directed to continue south of the access track towards the village.
15. Photographs understood to date from 2022 show heras fencing with a sign in the background saying ‘FOOTPATH CLOSED’ on an old wall. TFOWFF believe this to be on the line of FP1 and the notice in the background appears likely to be a formal closure notice associated with the development works. However, it does not show a physical route on the alignment of FP1, which would run further north than this point, passing through the mine structure, not alongside it.
16. The OS base mapping, used for the Land Registry Official copy of title plan (LR), title number CL297944, edition date 01.05.2013 (2013) and the drawing up of the Order (2020), shows a feature, marked as ‘Path(um)’ on the larger scale mapping, following the Order route alignment. TFOWFF indicate that the OS say ‘*Unmade paths are those that are neither paved nor metalled. An unmade path is included in the Topography Layer when its entire length is evident on the ground and it starts at a road, track or path and finishes at a similar feature or a specific place of interest. Unmade paths are described by the annotation (um) in urban and rural areas*.’ The information source has not been copied but this is a fair understanding of the use of ‘(um)’ and provides weight to the existence of the Order route as recognisable physical feature on the ground from at least 2013. The alignment does not relate to the recorded route of FP1 or an undefined feature, such as a hedge or the edge of mine spoil.

*Summary*

1. The documentary evidence is sparse in terms of identifying a particular route on the alignment north from point A. Photographs, whether aerial or otherwise, can only provide a snapshot in time and in this case are limited by the tree canopy and the quality of the image. Like OS maps they also only show a physical feature and cannot indicate the status of any route which is identified.
2. Section B – C seems to have been in place as a feature on the ground from at least 1946. The section of the Order route immediately south of point B was also visible but it was not possible to discern a route following that alignment along the entire length. The earliest mapping showing that route appears to be the undated OS mapping base used in the LR from 2013.
3. The route of FP1, which is a quite smooth line, was not visible in its entirety as a defined feature in the submitted maps or photographs. If it physically existed it would pass through the mine structure, which seems unlikely.
4. There is some evidence of a feature to the south of the mine structure but this appears to arise from vehicular access, which would be presumed to be private access. Whilst there appears to be nothing to prevent walkers accessing this track there is very little evidence of it as a continuous route to the north, just a suggestion of a feature in photographs contemporaneous with, or post-dating, the application.

*The user and landowner evidence*

1. The former landowner indicated that he had erected the notice directing people off the route, see paragraph 27, on 23 April 2013 and believed this should be the date of bringing into question of the use of the route. The OMA believed that the date of application, 27 August 2013, may be more appropriate, relying on the provisions of the Natural Environment and Rural Communities Act 2006.
2. To bring use into question the action must be sufficient for the public to realise their right to use it was challenged. One UEF referred to this notice, indicating that in May 2013 that the path closed for repairs with a sign ‘diverting over private land’. In July 2013 the former landowner stopped this person, again apparently referring to repairing the path. The closure of a route for repairs would not necessarily be sufficient to show that a landowner was attempting to interrupt the use; it would be a reasonable assumption that repairing the path meant that it was public.
3. It is noted that TFOWFF apparently carried out a survey in a 3-month period over the spring/summer of 2013 asking users why they were using the route. None of the UEFs refer to being stopped and asked anything. No recorded survey data has been provided.
4. The UEFs associated with the application were completed in July 2013 and, therefore, it is clear that users were of the view that their use of the route was under challenge at this time. On balance the actions in the spring/summer of 2013 effectively brought the public use into question such that the relevant twenty-year period runs from spring/summer 1993 to spring/summer 2013.
5. The former landowner had indicated that in the first week of May 2013 and subsequently, he had closed the route on the advice of his solicitor, putting up a notice that use was permissive. This may have been confused with the notice referred to above as there is no other evidence to support the claim that there was a permissive notice on the route at any time.
6. The response on Landowner Evidence Form (LOEF) dated 11 March 2014 to the question ‘Have you ever erected any notices [;…] on or near the way?’ was ‘No’’ it would be expected that less than a year later information regarding a permissive notice would be mentioned in response to such a question. It is not accepted that the former landowner was unaware that the Order route was under consideration and, therefore, answered ‘no’ as he thought the route was nowhere near his property; if this were the case, a reasonable person would return an uncompleted LOEF explaining that it was not relevant to their land holding.
7. The application to record the route was supported by UEFs showing use from 1945. Some were completed in 2013 and submitted with the application whilst others dated from 2019, referring almost wholly to the section north of the access track, north of point B. The section B – C was not included by some of those who completed the initial UEFs but reading their UEFs as a whole at least two were using that route as they were walking to and from the beach. In relation to those completed in 2019 – at the invitation of the OMA to the applicant - it would be fair to find they were mostly using the whole of section B – C, rather than simply to the access track as shown on the plans, as they were also traversing between home, in St Agnes, and the beach, Trevaunance Cove. However, they did not specify whether they were using the Order route or FP1 between point B and A and so are not relied upon in relation to use of that section.
8. The number of UEFs is only one factor with the main issue relating to the quality of evidence. The UEFs have been analysed with care, taking account of the comments made by TFOWFF on individual forms and plans. The OMA say that people are not necessarily cartographers, and it is agreed that reasonable allowance should be made for the general public marking up such maps. Concerns that the Order route does not reflect the original application plan are noted but this is not unusual for the same reason.
9. Taking the descriptions and maps together as a whole – and bearing in mind that documentary evidence supports the physical existence of at least parts of this route within and throughout the relevant twenty-year period – on the balance of probabilities the UEFs refer to the Order route. None of them indicate use of other routes to suggest that they have wandered over the site. The UEFs are from local people, as would be expected, as they would use the route more often and be more affected by any potential closure. This is representative of the general public.
10. The frequency of the user evidence, which relates to this route throughout the relevant twenty-year period, does not show intermittent use; some people may have used it more or less frequently than others, but none indicate that they have used an alternative at other times. The overall frequency of use reported is sufficient to raise a presumption of dedication.
11. The argument that the UEFs were unreliable as those completing them had their own agenda, with residents living alongside the route south of point A trying to make the footpath unattractive, is nonsensical. The recording of a route on the Order route does not affect the right to walk on the footpath and right of way to the south in any way. If they were trying to prevent use they would not be likely to complete UEFs supporting the existence of a public footpath.
12. Whilst it is understood that when a route is blocked users may lawfully divert around the obstruction the caselaw referred to was not submitted. TFOWFF argue that the proper route lies south of the mine structure but provided only one UEF showing such use in a period 2005 - 2019. It is not agreed that this single UEF/witness statement can be “...*accepted on behalf of all 37 registered members of* [TFOWFF as] …*each separate form will likely…have similar content.*” A single UEF is insufficient to raise a presumption of a public right of way in this location or to show that this was the ‘usual’ route.
13. Whilst the documentary evidence is fragmented, such that only parts of the route are referenced on some documents, overall, they support the existence of a defined route on the ground in the period from at least 1994 – 2013 and beyond. In combination with the user evidence there is evidence of use throughout the relevant twenty-year period.
14. On the balance of probabilities, the UEFs show sufficient evidence of use of the Order route, as a whole, throughout the relevant twenty-year period. There is no indication that such use was by force or in secrecy. It was suggested that those living in Wheal Friendly Lane would have access rights to beach through a ‘specific personal use covenant’ but none indicated that they had such private rights and no evidence was produced to show that they did. No one has claimed to be using the route with permission.
15. On the balance of probabilities there has been use of the Order route sufficient to raise a presumption of dedication.

*Lack of intention to dedicate a right of way*

1. A Permissive Path Agreement dated 1st May 2013 suggested that the public had permission from that date to walk on a route approximating the southern part of the Order route from point A. The only verified record of this agreement arises from it being sent to the OMA in January 2020. It was also said that a sign had been placed from time to time on the adjoining fence saying that the route was not a public right of way but that use was by the express permission of the landowner.
2. There is no evidence that any users were aware of such an agreement. There is no evidence users were aware of such a sign. Neither the agreement nor sign were mentioned in the LOEF submitted to the OMA just ten months later. The document and any signs provide insufficient evidence to demonstrate to the public that there has been a lack of intention to dedicate a public right of way within the relevant twenty-year period.
3. A section 31(6) deposit, CC/327, was made in March 2019 acknowledging the only existing route of FP1 as a public right of way. This is after the date of bringing into question and so cannot show a lack of intention in the relevant twenty-year period.
4. The land over which the Order route crosses is understood to now be in the ownership of the owners of the WFEH and the Friends of Eddie’s Woodland Ltd, both of whom endorse the recording of the Order route on the DMS. The other affected landowner, who is understood to have formerly owned much, if not all if the relevant land, has not commented on the Order (see paragraph 68).

*Summary*

1. On the balance of probabilities, there has been a full period of twenty years use by the public, as of right and without interruption over the land crossed by the Order route from spring/summer 1993 – spring/summer 2013. The presumption of dedication in relation to the Order route is not disturbed by sufficient evidence of a lack of intention to dedicate the route within that relevant twenty-year period. The Order should be confirmed by reference to the statute.

*The other routes in the area*

1. The Parish Council and the Ramblers suggested that the Order route was the only route that had been available to the public and the current owner of WFEH believed that the route of FP1 was incorrectly recorded and should have shown the alignment on the Order route. TFOWFF suggested that use of the Order route had been intermittent with the former and current owners of the WFEH having blocked FP1, diverting users onto the Order route. When available it was claimed that the public reverted back to a route running south and east of the mine structure.
2. Whilst the entire DMMO report was not submitted it is noted that the OMA had said that “*The available evidence also appears to indicate that the currently recorded path which links to the application route between A - B on the report plan is incorrectly recorded on the definitive map and statement. In parallel therefore the Council intends to consult on a further proposal to modify the Definitive Map of Public Rights of way by showing this section of Footpath 1 St Agnes to the south of the derelict buildings*.”
3. Given that all these matters relate to the same area it is unfortunate that all the evidence was not considered together to determine whether the route recorded on the DMS required modification and, if so, where the route should have been recorded. This decision can only relate to the evidence that has been provided.
4. The Parish survey of 1951 suggests a route south of the mine structure and it would be nonsensical to think it went through the structure, which was shown clearly on the base mapping. However, the date of the OS base mapping was not provided, and it is possible that an alignment on the base mapping would be marked even if people might be using another route. The 1946 aerial photograph suggests that a route may have been available around the mine structure at that time, which was only a few years prior to the production of the DMS.
5. The suggestion that the Order route was the only route walked in living memory may be supported by the UEFs, which date back to prior to the production of the DMS but the focus of the original application for this Order related to this route and so evidence relating to any other route may not have been thought relevant. It is also possible that those completing UEFs now may be referring to use in the more recent history, perhaps not realising that they were using a different route than they had previously or understanding the implications of that. Only one UEF refers to a route south and east of the mine structure but that only dates from 2005 and so does not show that a route should have been recorded here in the 1950s. The owner of WFEH indicated that on purchase in 2008 the Order route was the open and used route with a route to the south-east only introduced by the former objector when diverting people with the temporary closure in May 2013.
6. Whilst it would be illogical for the route to run through the mine structure there is insufficient evidence, on the balance of probabilities, to suggest that either the Order route or a route to the south and east of the mine structure should be the route recorded instead of the alignment of FP1 as shown in the DMS. There is insufficient evidence to support the recording of an alternative to the Order route under statute or common law or for the deletion of the recorded alignment of FP1. However, as the focus of this application, and the OMA investigation, only related to the Order route there may well be other relevant evidence that could satisfactorily resolve these matters.

Other matters

1. The TFOWFF statement of case referred to an issue regarding the map coordinates in the Parish Council 2013 application, indicating they were misleading. However, the landowner was involved in objection to the Order, under TFOWFF, up to the sale of the land to WFEH. As noted by the Local Government & Social Care Ombudsman, in the response of 9 September 2020 to complaint reference 20 002 139, the complainant could make his objections to the Secretary of State; the consideration of the relevant objections is set out in this decision. The complainant withdrew his objection to the Order but any relevant evidence has been considered.
2. Whether the OMA has or has not met their duties in relation to any of the matters referred to by TFOWFF or others is not relevant to the determination of the Order. Matters relating to inconvenience, cost and delay cannot be taken into account.
3. Matters relating to the membership and decisions of the Parish Council, including allegations relating to relationships with other parties are not relevant to the determination of this Order.
4. The lack of reference to a right of way during searches undertaken in purchasing of the land in registered title CL297944 except the recorded route is unsurprising. The search would only refer to the DMS; the claim for the Order route was made after the purchaser himself brought the use into question and so would not have been referred to even had the relevant question been asked. This does not provide evidence that a right of way did not subsist at the time, only that it was not recorded, which is the point of the consideration of this Order. Matters between the vendor and purchaser in relation to this are not the remit of this determination.
5. There is no evidence that the Order has not been properly advertised as required by the Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993, SI 1993 No. 12. The OMA were granted dispensation by the Secretary of State concerning the service of notice on owners and occupiers on 14 February 2020. As a result, any interested party, including any landowner, registered or unregistered, has had the appropriate opportunity to present relevant evidence for consideration.

Conclusion

1. Having regard to these, and all other matters raised in the written representations, I conclude that the Order should be confirmed by reference to the evidence showing, on the balance of probabilities, that the tests under the statute for recording of the Order route have been met.

Formal Decision

1. I confirm the Order.

Heidi Cruickshank

**Inspector**

