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| **Interim Order Decision** |
| Inquiry opened on 4 April 2023Site visits made on 3 and 6 April 2023 |
| **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: 05 June 2023** |

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| **Order Ref: ROW/3291419** |
| * This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the West Sussex County Council (Chichester No1: Bognor Regis and Felpham (Addition of Public Footpaths)) Definitive Map Modification Order 2019.
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| * The Order is dated 21 October 2021 and proposes to modify the Definitive Map and Statement for the area by adding three footpaths as shown in the Order plan and described in the Order Schedule.
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| * There was one objection outstanding at the commencement of the Inquiry.
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| **Summary of Decision: The Order is proposed for confirmation subject to modifications set out below in the Formal Decision.** |
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Preliminary Matters

1. A public Inquiry into the Order was held on 4 and 5 April 2023 at County Hall Chichester. The Inquiry was held as a blended event with some interested parties joining the Inquiry by Microsoft Teams platform. Whilst none of those who attended virtually spoke at the Inquiry, each person was able to confirm that they could hear the proceedings and were able to speak if they so wished.
2. I made an unaccompanied visit to the claimed routes on 3 April 2023, and I revisited part of the site, again unaccompanied, following the close of the Inquiry.
3. Applications for awards of costs were made at the inquiry and these will be the subject of separate decisions that will be issued with the final Order Decision.

**Background and Procedural Matters**

1. An application was made under Section 53 of the 1981 Act in May 2019, which sought to add to the Definitive Map and Statement (the DMS) three footpaths located within the parishes of Bognor Regis and Felpham. Following recommendation by Officers that the Order be made, the West Sussex County Council Rights of Way Committee resolved to approve the application on
the 21 October 2021.
2. At the Inquiry, West Sussex County Council, the Order Making Authority (the OMA), took a neutral stance. The case in support of the Order was led by a representative on behalf of the Applicant.
3. The Order concerns three claimed routes. Whilst Order Making Authorities will usually provide an Order plan which includes reference points so that all parties can easily understand and reference relevant points, in this instance the Order plan provided did not include any such reference points. Consequently, in the interests of clarity and for use in describing the claimed routes, I have marked several points on an attached proposed modified Order plan for reference. At the Inquiry, a version of the proposed modified Order plan was used by attending parties and witnesses to identify certain points along the claimed routes.
4. The first claimed route (Claimed Route 1) runs from Brooks Lane, at point A on the proposed modified Order plan, in a generally northeast direction, crosses a watercourse known as the Aldingbourne Rife via a bridge to point B, and then proceeds in a northeast direction to point C, before crossing a ditch at point C1, crosses a field to point C2, before proceeding across an area of land with trees and scrub and on towards Downview School at point D on the proposed modified Order plan.
5. The second claimed route (Claimed Route 2) runs from the eastern side of the abovementioned watercourse and bridge at point B on the proposed modified Order plan, in a south-easterly direction to point F, then in north-easterly direction, crossing a ditch at point F1, towards all weather playing pitches located at Arun Leisure Centre, Felpham, at point G, where the claimed route turns in a southerly direction to point H on the proposed modified Order plan where it reaches the leisure centre.
6. The third claimed route (Claimed Route 3) runs from the eastern side of the abovementioned watercourse and bridge at point B on the proposed modified Order plan, and forms a circular route around the field known locally as Rabbit Island and which is bounded by the Aldingbourne Rife and Lidsey Rife watercourses and the abovementioned ditch. The entirety of Claimed Route 3 is shown on the proposed modified Order plan between points B-E-F-C-I-B.
7. Prior to commencement of the Inquiry, it was noted that some of the grid references included within Part I and Part II of the Schedule to the Order did not reflect those grid references as included on the Order plan. In advance of the Inquiry, the OMA provided written clarification of the relevant grid references and proposed modifications to correct the errors contained within Part I and Part II of the Schedule to the Order. However, these amended grid references provided by the OMA are not in the standard format. Nonetheless, for this decision I have relied on the grid references provided by the OMA, albeit I have included the appropriate prefix to those references.

The Main Issues

1. The Order is made under Section 53(3)(c)(i) of the 1981 Act which provides that an Order should be made to modify the DMS 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, being a right of way such that land over which the right subsists is a public path.
2. Section 32 of the Highways Act 1980 (the 1980 Act) 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.
3. Dedication through public use arises either by presumed dedication as set out in Section 31 of the 1980 Act, or by implied dedication under common law. The 1980 Act requires consideration of whether there has been use of a way by the public, as of right and without interruption, for a period of not less than 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 that period, to dedicate a public right of way.
4. If the matter fails under the statute, then I will need to consider whether there is sufficient evidence of dedication at common law. At common law a right of way may be created through express or implied dedication and acceptance. Dedication may be presumed if there is sufficient evidence, from which it could reasonably be inferred, that the landowner has dedicated a right of way and the public has accepted that dedication. No minimum or fixed user period is required for the dedication of a public right of way at common law.
5. As such, the main issue is whether, on the balance of probabilities, the evidence shows that public footpaths subsist over the Order routes.

Reasons

**Documentary Evidence**

*Photographs*

1. I have been provided with a number of aerial photographs from both the Objector and from those in support of the Order. The images primarily focus on the area known as Rabbit Island, which is bounded by the watercourses and ditches as described above.
2. A series of aerial images from 1998 through to 2019, appear to show a number of trackways crossing Rabbit Island and the field to the east. These images were obtained at various times of the year and do not appear to show any significant amounts of surface water on Rabbit Island or the adjacent fields.
3. Further photographs submitted include images taken between November 2010 and August 2012, showing the Aldingbourne Rife and persons, with or without accompanying dogs, walking on various areas which comprise Rabbit Island. These images appear to have been taken at various times of the year and include images where snow is seen on the ground. Digital street view images have also been supplied showing a bollard and field gate entrance onto claimed Route 1 taken from Brooks Lane and at point A on the proposed modified Order plan.
4. Photographic evidence provided as part of the objections to the Order, include images from 2020 to up to December 2022. Images from 2020 show the bridge over the Aldingbourne Rife and which shows, at that time, some fencing and a muddy area located immediately on the eastern side of that bridge. Photographs from December 2021 includes images of vegetation close to the abovementioned ditches which separate Rabbit Island from the field to the east, as well as areas of Rabbit Island itself. The photographs from the winter of 2021 do not appear to show any areas of surface water flooding on Rabbit Island.
5. More recent photographs taken in December 2022 and those additional images obtained on 3 April 2023 supplied at the Inquiry, show shed structures and areas of Rabbit Island having been fenced off into a number of horse paddocks, and which show significant amounts of surface water. These images reflected observations made at the time of my site visits to the area.

*Other Information*

1. A newspaper article from the Bognor Regis Post and dated November 2018 has been provided which shows a photograph of a group of walkers, some with dogs, gathered at the western end of the bridge over the Aldingbourne Rife watercourse. The article is titled “Walkers’ anger as paths are blocked” and the attached photograph shows fencing at both ends of the aforementioned bridge.
2. A range of documents has been provided by the Objector which concern, or refer to, water flooding on Rabbit Island. Estate agent particulars from March 2020 advises potential purchasers that the site is in Flood Zone 3 and this flood zone designation is supported by information obtained from the Government website. Details from a website containing local information regarding flood alerts issued along the Aldingbourne Rife watercourse during December 2019 have also been provided. Further details have been submitted from an article dated January 2022 with regards to flood warning along that watercourse. Additionally, the Groundsure Agricultural report commissioned by the Objector concludes that Rabbit Island is at high risk of flooding from both surface water and from ground water arising from the adjacent Aldingbourne Rife watercourse.

*Conclusions on Documentary Evidence*

1. Photographs may show the existence of features on the ground, and particular use by persons, at the time they were obtained. While they may assist me in building a picture of the situation on the ground at the time they were taken, these images do not provide evidence of the status of any of the claimed routes. Nonetheless, the image from the November 2018 newspaper article provides some supporting evidence of the date that the use of the claimed routes were brought into question. That is a matter that I shall return to below in this decision.
2. The information regarding flooding generally concerns periods of time after November 2018. Concerns regarding the safety implications of using the claimed routes within an area designated as Flood Zone 3, are not matters that I can consider in respect of whether to confirm or not confirm the Order. Nonetheless, and whilst the details provided do not confirm the status of any of the claimed routes, they may provide supporting evidence that the claimed use of the ways was not without interruption. I shall also return to consider that position further below in this decision.

**Section 31 of the 1980 Act**

*The relevant twenty-year period*

1. It is necessary to determine when the alleged rights of way were brought into question, and so that the statutory period of twenty years can be calculated up to that date in accordance with section 31(2) of the 1980 Act.
2. As noted above, the application to add the claimed routes to the DMS was made in May 2019. The submissions from those in support of the Order indicate that the application was made following the erection, in November 2018, of fencing at either end of the bridge over the Aldingbourne Rife watercourse, as shown in the accompanying photograph from the Bognor Regis Post newspaper article.
3. The Objector has put to me that whilst the fencing was erected in November 2018, evidence from previous landowners and a tenant farmer who was making use of the adjacent field to the east of Rabbit Island, suggests that some fencing and signs were erected prior to 2018 and that challenges were issued to some who had been seen walking across the field located east of Rabbit Island.
4. However, none of those persons who have provided evidence of use of the routes, claim to have been challenged or turned away prior to November 2018 or that they saw signage which would bring into question use of the routes prior to that date. In oral evidence, a previous landowner indicated that he could not recall exactly when initial fencing and signs were erected, but believed that it occurred after a significant period of time was spent clearing the land of refuse following their purchase of the land in 2016. In terms of challenges, it was not clear from the evidence that those who it was claimed were turned away were using the claimed routes located in the field east of Rabbit Island, or rather were pupils from Downview School or children using the facilities at the Arun Leisure Centre, Felpham, who had wandered into those fields.
5. In terms of possible prior interruptions of use of the claimed routes which cross over Rabbit Island, as noted above substantial amounts of information has been provided regarding flood zone designation, as well as information concerning flood alerts within the area and the condition of the land post 2018. Whilst it was noted on my visits that much of claimed Route 1 on Rabbit Island east of the bridge was impassable on foot by reason of surface water, as were some parts of claimed Routes 2 and 3 which crossed Rabbit Island, from the photographic evidence submitted it does not appear that prior to 2020 there were periods where the land was flooded. Indeed, during oral evidence a previous landowner confirmed that the ground conditions and level of surface water on Rabbit Island was worsened only after 2017 when he allowed friends to keep horses on that land.
6. Further to the above, it was put to me that piles of cut vegetation, posts and barbed wire were put in place, at point C1 on the proposed modified Order plan, to prevent access onto Rabbit Island from the adjacent field located to the east, by a tenant farmer of that land. That tenant farmer additionally maintained that a post and wire fence was erected, at point C2 on the proposed modified Order plan.
7. Nonetheless, whilst I shall return below to consider the position with regards to fencing at points C1 and C2 on the proposed modified Order plan, it appears from the evidence provided in support of the Order that users of the claimed routes were able to cross over those obstacles without them being perceived as being barriers to onward progress along the claimed routes or that they overtly brought into question their use of those routes.
8. In respect of the above matters, I am satisfied that, on the balance of probability, the use of claimed routes was brought into question in 2018 when fencing was erected on the bridge over the Aldingbourne Rife. There is insufficient evidence which confirms that prior to that date, conditions were such that flooding caused interruption of use. Consequently, the relevant twenty-year period is from 1998 to 2018.

*Evidence of use*

1. Evidence of use of the claimed routes arises from statements and oral evidence given at Inquiry and from user evidence forms (UEFs) submitted in connection with the application. The Objector maintains that the user evidence is unreliable having been generated and exaggerated by a few individuals, and for their own purposes, to have the claimed routes recorded as footpaths. The Objector has further put it to me that the claimed routes are located within a suburban area, and that there is insufficient evidence as to the amount and frequency of use, made by the public as of right, on the alignments of the claimed routes shown on the Order plan, during the relevant twenty-year period.
2. One hundred and seven UEFs, representing one hundred and ten individuals, have been submitted in support of the claimed routes. The UEFs are dated between 2018 and 2021, and testify to use of the claimed routes between 1964 and 2021. All of the UEFs report use on foot, with seventeen UEFs also having claimed to have used claimed routes by bicycle. All UEFs report seeing others on foot using the claimed routes.
3. More than ninety of the UEFs claim to have used all three of the claimed routes, with a small number of users claiming use of one or two of the claimed routes. None of the users report having seen any notices or that they have been stopped or turned back whilst using the claimed routes. Two users confirm that permission was provided to access part of Claimed Route 1 between points C2-D on the proposed modified Order plan.
4. A substantial number of the users report use over the claimed routes for significant periods prior to 1998. For those who have claimed use of all three routes, frequency of use varies from twice a year in one case up to twice daily in some cases. A majority of users report use daily up to weekly use of the claimed routes.
5. At the Inquiry I heard from eight people in support of the Order who claimed use of some or all three of the claimed routes during the relevant period. Most of those who I heard from, completed and submitted their UEFs during 2021. Under cross-examination, it was conceded that some of those users had not used the claimed routes as frequently as had been reported on their UEFs and that they had not in fact used all of the routes as shown on the plans that accompanied their UEFs. Furthermore, a number of those users confirmed that the alignment and position of parts of the claimed routes differed from those details as provided on the plans that accompanied their UEFs and that they had been mistaken in claiming use up to 2021 when such use could not have occurred by reason of the fencing placed on the bridge over the Aldingbourne Rife in November 2018.
6. The Objector suggested that those who had completed UEFs had not understood the routes being claimed and that, by reason of the manner in which evidence was collected by supporters of the Order, details of alleged use was completed by the Applicant and their supporters, rather than having been completed by the users themselves. In that regard, a significant portion of the submitted UEFs were accompanied with a plan which included pre-printed dotted lines along all three of the claimed routes and which included pre-stamped wording, where users could sign and date the plan, that says “All footpaths shown as dotted lines used: (strike out places not relevant) Circular paths and route from Brooks Lane to and from Wroxham Way and Arun Leisure Centre, Downview School and Felpham College”.
7. In terms of the exact alignment of the claimed routes, there appears to be some differences in the submitted evidence. However, it appears that use of the claimed routes was very close to that as indicated on the plans which accompanied the UEFs, and such anomalies are likely to have resulted from the scale of the plan. I therefore do not consider that those who completed and submitted UEFs were confused as to the routes that were being claimed.
8. With regards to the pre-stamped wording used on the plans accompanying the UEFs, whilst a majority of users did colour in all three routes as shown on those plans, a portion of users clearly indicated use of only one or two of the claimed routes. A very few number of UEFs also include additional routes near to Rabbit Island which it was claimed were used during the relevant period, but which had not formed part of the original application. In those respects, I am satisfied that the evidence had not been engineered on behalf of the Applicant, but rather that those completing UEFs did so from their own recollections of use.
9. I recognise that some of the oral evidence provided by those who spoke at the Inquiry in support of the Order, differed from the details provided on their UEFs with regards to frequency and in terms of which of the claimed routes had in fact been used. Nearly all of the submitted UEFs include a signed declaration by those who have completed them, to the effect that they believe the facts stated are true. Furthermore, the completed and signed forms includes a confirmation that it is important that those who complete such forms know that they may be requested to attend a Public Inquiry so that such evidence can be tested.
10. Whilst I found that those who spoke in support of the Order did so fairly in the face of cross-examination, it cannot be ignored that there were some substantial differences in the oral evidence when compared to that provided on their UEFs as described above. In that regard, while I have placed less weight on that evidence in the determination of this matter, I do not consider that the UEFs as a whole cannot be taken at face value or that no realistic weight can be attached to them as has been put to me by the Objector.
11. The claimed routes are located in an area of predominately open land, situated outside of a town centre and between residential areas. I would concur with the Objector that, in such a location, it would be expected that the numbers and frequency of use might be expected to be greater than that for a sparsely populated rural area. I acknowledge that only a small portion of those who submitted UEFs, were present for cross-examination at the Inquiry. However, by reason of the numbers of UEFs completed and submitted in evidence which appear to have been provided in good faith, even when taking into account that frequency of use and exact dates of when use occurred may not have been remembered correctly when completing UEFS and potentially includes some exaggeration of use, I am satisfied, on the balance of probabilities, that there were sufficient numbers of users and frequency of use between 1998 and 2018, to support confirmation of the Order.
12. It is noted that a number of UEFs claim use over the routes by bicycle. However, it is not clear whether that use was over the entirety of the claimed routes, with some evidence pointing towards users walking across the fields and leading their bicycles whilst on foot. In any event, I do not consider that the evidence shows that use on bicycle was of such a level that the claimed routes should have any higher status than footpaths.

*Use as of right*

1. Notwithstanding the above, in order for any use of the claimed routes to give rise to a presumption of dedication, it is also necessary to consider whether or not that use was ‘as of right’. The use as of right requires that the use be without force, without secrecy and without permission.

*Without Secrecy*

1. As noted above, all of the submitted UEFs confirm that others were seen whilst using the claimed routes. No submissions have been made that any use of the claimed routes during the relevant period was done so, secretly. As such, I am satisfied that use of the claimed routes was made without secrecy.

*Without Permission*

1. For the period between 2005 and 2016, a previous co-owner of the land at Rabbit Island confirms that no permission was given to anyone to walk their dogs on that land.
2. Two of the users who have submitted UEFs, confirm that they had permission to use that part of the Claimed Route 1 between points C2-D on the proposed modified Order plan. One user reported that workers on Rabbit Island had previously stated that it was allowable to use that field.
3. A previous owner of the land at Rabbit Island between 2016 and 2021, maintained that they had a discussion “in or about 2018” with a Felpham Parish Councillor concerning allowing the public to use Claimed Route 1 across that field. Whilst recollection of the date upon which such a discussion took place was not clear, a letter from that landowner dated December 2021 refers to having been liaising with the aforementioned Councillor “for nearly 2 years now”. As such, it appears that any discussion regarding allowing or providing permission for the public to make use of the route, occurred after the date upon which the use of the routes was brought into question.

*Without Force*

1. As noted above, some of the UEFs claim use of Claimed Route 1 further to the erection of fencing across the Aldingbourne Rife and after 2018. Whilst the Objector maintains that such use must have been by force, those incidents occurred after the date on which the ways were brought into question. Such actions therefore fall outside the relevant period and have no bearing on whether the rights of way were enjoyed by the public for the period up to 2018.
2. Notwithstanding the above, at the Inquiry the tenant farmer of the field to the east of Rabbit Island confirmed that wire and post fences at point C1 and C2 on the proposed modified Order plan existed at least since 1983 when he started working for his father who was the previous tenant farmer. At the Inquiry, the tenant farmer confirmed that he maintained such fences from the time he took over the tenancy in 1999, with the fence at point C2 on the proposed modified Order plan having been cut and repaired four or five times up to the early 2000s. Furthermore, the fence at point C1 on the proposed modified Order plan was reported as being damaged and repaired on numerous occasions up until around 2008. The tenant farmer confirmed to the Inquiry that he gave up carrying on with repairs to those fences at the abovementioned dates, as they were broken down again within a short period of time.
3. Nonetheless, the tenant farmer further confirmed that no efforts to fence off or block off the Claimed Route 2 at point F1 on the proposed modified Order plan had been made at any time.

*Conclusions on use as of right*

1. I am satisfied that the evidence demonstrates that use of the claimed routes was made without secrecy. It appears that, in terms of permission, access to Claimed Route 1 between points C2-D on the proposed modified Order plan was given to a very few number of persons who had been allowed onto that land in order to support and help maintain the area of trees and scrub as an informal nature conservation area.
2. However, I found that the evidence provided by the tenant farmer at the Inquiry was robust and compelling, and that there was clear recollection of when fences had been erected and details of when maintenance of those obstructions had been made following damage.
3. As such, I conclude that, on the balance of probabilities, fences were erected at points C1 and C2 on the proposed modified Order plan, and that those fences had been repaired several times during the relevant twenty-year period. Although I note and accept that users who have submitted UEFs, including those who spoke at the Inquiry, did not find their use of Claimed Route 1 obstructed by fencing, I consider that there is sufficient evidence that fencing at those points had been cut and damaged by persons unknown, and that further use must have been contentious and by force. However, it is also apparent that no fencing or obstruction to use was in place at point F1 on the proposed modified Order plan, and that therefore use of Claimed Route 2 was without force. I further conclude that use of Claimed Route 3 was without secrecy, force or permission and, consequently, I am satisfied that use of Claimed Route 3 was as of right.

*Lack of Intention to Dedicate*

1. The owner of the land at Rabbit Island between 2016 and 2021 claimed that signs and fencing was erected some time in 2017 at the bridge over the Aldingbourne Rife. Whilst that previous landowner strongly maintained that a group of locals including some of those who have submitted UEFs and support the Order, broke down fencing and signage at the bridge over the Aldingbourne Rife at night, there is no substantive supporting evidence before me which confirms if or when such signage or fences were erected.
2. On the contrary, there is a substantial amount of evidence from users that state that no signs or fencing was seen prior to 2018 when use of the routes was brought into question, and which subsequently resulted in the application being made. Even in the event that fencing had been erected in 2017 at the bridge and which would have brought into question use of the claimed routes at that earlier date, I am satisfied that there was sufficient use by the public in the earlier twenty year period up to 2017.
3. On the balance of probabilities, I do not find that there is sufficient evidence of a lack of intention to dedicate rights of way by the relevant landowners over the claimed routes.

*Conclusions*

1. I shall consider each of the claimed routes separately. For Claimed Route 1 between points A-B on the proposed modified Order plan, I am satisfied that, on the balance of probabilities, there is sufficient evidence of use by the public, as of right and without interruption throughout the relevant twenty-year period, and given the frequency of use, there is sufficient evidence to raise the presumption that that part of the claimed route has been dedicated as a footpath.
2. Between points C-C1-C2-D whilst there is evidence of use over the twenty-year period, such use was not as of right, and I therefore do not propose to confirm that part of Claimed Route 1 shown between points C-C1-C2-D on the proposed modified Order plan. Furthermore, while there is evidence of use of part of Claimed Route 1 between points B-C during the relevant period, there is insufficient evidence that use of that part of the claimed route was for the purposes of connecting with the circular Claimed Route 3 around Rabbit Island. The evidence that is before me, indicates that use between points B-C was for the purposes of connecting with part of Claimed Route 1 between C-C1-C2-D which, as above, was use not as of right. As such, and to conclude on this particular claimed route, I do not propose to confirm that part of Claimed Route 1 shown between points B-C-C1-C2-D on the proposed modified Order plan.
3. For Claimed Route 2, I am satisfied that, on the balance of probabilities, there is sufficient evidence of use by the public, as of right and without interruption throughout the relevant twenty-year period. As such and by reason of the frequency of use, there is sufficient evidence to raise the presumption that that claimed route has been dedicated as a footpath. I do not find that there is sufficient evidence of a lack of intention to dedicate rights of way by the relevant landowners over Claimed Route 2.
4. In terms of Claimed Route 3, I am again satisfied that, on the balance of probabilities, there is sufficient evidence of use by the public, as of right and without interruption throughout the relevant twenty-year period. As such and by reason of the frequency of use, there is sufficient evidence to raise the presumption that that claimed route has been dedicated as a footpath. Furthermore, I do not find that there is sufficient evidence of a lack of intention to dedicate rights of way by the relevant landowners over Claimed Route 3.

**Common Law**

1. In respect of part of Claimed Route 1 between points C-C1-C2-D on the proposed modified Order plan, fences were erected by the tenant farmer at points C1 and C2 in 1983. The earliest user claims use of that route from 1964. Consequently, the evidence is insufficient to show twenty years use. As such, at Common Law it would be necessary to show that that right of way had been created through express or implied dedication by the landowner, and that the public had accepted that dedication. There is insufficient evidence before me to reach the conclusion that a right of way between points C-C1-C2-D had been dedicated and accepted at Common Law.

**Other Matters**

1. The OMA has indicated that part of the land over which the claimed routes run, is in the ownership of Downview School. No substantive evidence has been provided that identifies which areas of land fall under that ownership. Nonetheless, the Objector has put it to me that it is likely to be an area of land close to the school buildings and close to point D on the proposed modified Order plan. In that regard, the Objector maintains that it is more probable than not that that land was held for educational purposes, and that any claimed use as of right, for a public right of way over that land is incompatible with such a purpose with reference to the Supreme Court judgement in R (on the application of Lancashire County Council) v Secretary of State for the Environment, Food and Rural Affairs and another (Respondents) R (on the application of NHS Property Services Ltd) (Appellant) v Surrey County Council and another (Respondents) [2019] UKSC 58.
2. Whilst I have noted the submissions in that respect, I have little information before me regarding which parcels of land close to the school were in its ownership. However, given the above findings, it has not been necessary for me to consider that matter further as there is insufficient evidence that use of Claimed Route 1 between points C-C1-C2-D on the proposed modified Order plan was without force.
3. The Objector raised further concerns regarding the effect of public footpaths across their land at Rabbit Island, and in respect of; devaluation of land, that the bridge over the Aldingbourne Rife was unsafe for walkers to use, and that by having footpaths across that land in close proximity to horses and livestock it would incite dog walkers to commit offences under the Dogs (Protection of Livestock) Act 1953. The Objector further contends that there are other public footpaths within the wider surrounding area that could be used and that security, in particular protection of children visiting the land in association with equestrian use, would be compromised.
4. Whilst I acknowledge all of those additional concerns raised by the Objector, the law is clear that matters such as desirability or otherwise of routes is not a consideration before me in terms of a Definitive Map Modification. Furthermore, I cannot consider matters of privacy, health and safety or security.
5. At the Inquiry, an interested local resident who spoke in objection to the Order, put to me that use of the claimed routes by dog walkers was causing a nuisance to local residents. However, as above, matters such as the desirability of the route fall outside the criteria set out in the relevant legislation with regards to Definitive Map Modification Orders. Accordingly, whilst I acknowledge the concerns raised, these matters cannot be taken into account in reaching my decision.

Overall Conclusions

1. Having regard to the above and all other matters raised at the Inquiry and in the written representations, I conclude that the Order should be confirmed subject to modifications.

**Formal Decision**

1. I propose to confirm the Order subject to the following modifications:
* Delete the text after “*A footpath commencing from Brooks Lane*” at paragraph (1) in Part I of the Order Schedule and insert:

“*(grid reference SU 4942, 1003) and proceeding in a north-east direction with a width of 1.5 metres to grid reference SU 4943, 1003 as shown on the attached plan numbered 01800.*”

* Delete the text after “*A footpath commencing from grid reference*” at paragraph (2) in Part I of the Order Schedule and insert:

“*SU* *4943, 1003 and proceeding diagonally across the field in a south-east direction with a width of 1.5 metres to grid reference SU 4945, 1003 and then proceeding in a north-east direction to grid reference SU 4946, 1003 and then proceeding south to Felpham Leisure Centre (grid reference SU 4946, 1002) as shown on the attached plan numbered 01800.*”

* Delete the text after “*A footpath commencing from grid reference*” at paragraph (3) in Part I of the Order Schedule and insert:

“*SU 4943, 1003 and forming a circular walk around the field with a width of 1.5 metres until it terminates at grid reference SU 4943, 1003 as shown on the attached plan numbered 01800*.”

* Delete the text “*A footpath commencing from Brooks Lane (grid reference 4942,1003) and proceeding diagonally across the field in a north-east direction with a width of 1.5 metres to Downview School (grid reference 4948, 1006)”* in Part II of the Order Schedule and insert:

“*A footpath commencing from Brooks Lane (grid reference SU 4942,1003) and proceeding in a north-east direction with a width of 1.5 metres to grid reference SU 4943, 1003”.*

* Delete the text “*A footpath commencing from grid reference 4943, 1004 and proceeding diagonally across the field in a south-east direction with a width of 1.5 metres to grid reference 4945, 1003 and then proceeding in a north-east direction to grid reference 4946, 1004 and then proceeding south to Felpham Leisure Centre (grid reference 4946, 1003)”* in Part II of the Order Schedule and insert:

“*A footpath commencing from grid reference SU 4943, 1003 and proceeding diagonally across the field in a south-east direction with a width of 1.5 metres to grid reference SU 4945, 1003 and then proceeding in a north-east direction to grid reference SU 4946, 1003 and then proceeding south to Felpham Leisure Centre (grid reference SU 4946, 1002)”.*

* Delete the text “*A footpath commencing from grid reference 4943, 1004 and forming a circular walk around the field with a width of 1.5 metres until it terminates at grid reference 4943, 1004”* in Part II of the Order Schedule and insert:

“*A footpath commencing from grid reference SU 4943, 1003 and forming a circular walk around the field with a width of 1.5 metres until it terminates at grid reference SU 4943, 1003”.*

* On the Order plan add points A, B, C, E, F, F1, G, H and I.
* On the Order plan delete the section B-C-C1-C2-D.
1. Since the confirmed Order would not show any way shown in the order, I am required, by reason of Paragraph 8(2) of Schedule 15 to the 1981 Act to give notice of the proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modifications. A letter will be sent to interested persons about the advertisement procedure.

Mr A Spencer-Peet

INSPECTOR

**APPEARANCES**

**In Support of the Order:**

Mr S Brown

*who called*:

Ms R Searle

Mrs G Gallagher

Mr S Wild

Mrs J Wild

Mr D Payne

Mr J Watling

Mr P King

Mr A Barker

**In Objection to the Order:**

Mr T Ward of Counsel *instructed by* Wannops LLP *on behalf of* C W Bikes Limited

*who called*:

Mr C Wood

Mr B Brooks

Mr R Hocking

**Interested parties speaking in objection to the Order**

Mr Gatenby

**For the Order Making Authority:**

Miss G Hickland Chartered Legal Executive, West Sussex County Council

**Documents Submitted at Inquiry:**

1. Site photographs dated 3 April 2023 supplied by Objector
2. Opening submissions submitted by Mr T Ward
3. Opening submissions submitted by Mr S Brown
4. Closing submissions submitted by Mr T Ward
5. Closing submissions submitted by Mr S Brown
6. Costs Application on behalf of Objector

COPY - NOT TO SCALE

