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| **Order Decision** |
| Inquiry Held on 16 May 2023  Site visits made on 15 and 17 May 2023 |
| **by A Behn Dip MS MIPROW** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 13 September 2023** |

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| **Order Ref: ROW/3288040** |
| * This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as The East Sussex County Council (Public Bridleway Hamsey 32) Definitive Map Modification Order 2021. |
| * The Order is dated 17 May 2021 and proposes to modify the Definitive Map and Statement (DMS) for the area by adding a public bridleway in the district of Lewes, as shown on the Order plan, and described in the Order Schedule. |
| * There were 5 objections outstanding at the commencement of the Inquiry. |
| **Summary of Decision: The Order is confirmed subject to the modifications set out in the Formal Decision below.** |
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Preliminary Matters

1. I held a public Inquiry into the above Order on Tuesday 16 May 2023 at County Hall, Lewes. I conducted an unaccompanied site visit on Monday 15 May 2023 when I was able to observe the Order route, as well as familiarise myself with the area. I made a further accompanied visit on Wednesday 17 May 2023 with representatives of East Sussex County Council (the Council) and a landowner.
2. Five objections were received following the making of the Order.
3. Two objections concerned the decision of the Council to only make an Order for two out of the three routes claimed, however as explained in my Pre-Inquiry note, I am unable to consider the third route B-D-E-F as the Order map does not include the entirety of the land to which this route relates.
4. In writing this decision I have found it convenient to refer to points marked on the map that accompanies the application. I therefore attach a copy of this map. For reference I have also attached a copy of the Order map.
5. There are variances between the application map, the map the Council produced when investigating the claim, and the Order map, which could lead to confusion. For clarification, the two routes Mr Smith claimed that are relevant to this decision, are routes A-B (via H), and B-C on the application map. The Order map records these two routes as one, labelled Hamsey BR32 and denoted by A-B on the Order map.
6. The Council also created their own map for use in investigating the claim and for sending out to some users to further clarify evidence. This map showed two separate routes. Route A, coloured blue, which aligns to routes A-B and B-C on the application map, and denoted on the Order Map as A-B. The Council also added another route; Route B, coloured orange, which indicated a separate path running from points A-D-E (via I) on the application map. This route was not claimed by Mr Smith on his application form, albeit he used points H, I and D when referencing the widths of his application route A-B. When concluding their investigation, the Council found there to be only one route A-B-C, with A-D-E supporting the width of the route used. This was acknowledged by the applicant in his statement of case.
7. For the avoidance of doubt, in their Proof of Evidence the Council stated that the Order made was in support of route A-D-E, but at the Inquiry the Council confirmed that this should have read route A-B-C.
8. The claimed route affects 2 landowners, Mr Cheyney for the section A-B and Mr Marsh for section B-C. Mr Harmer is the owner of land to the east of the Order route.
9. Mr Smith considers that the path provided by Mr Cheyney since 2016 has also become a right of way under common law. He feels that as the widths he is claiming on the application are situate within 3 metres of Mr Harmers land, the Order route should be confirmed adding the path Mr Cheyney has created, which also runs next to the boundary fencing of Mr Harmer’s land.
10. In relation to this, I do note that Mr Marsh has stated that access to the path Mr Cheyney provided runs across his property from point B, and that he advised the Council in 2016 that use of this access was permissive.
11. I acknowledge that there is potential for rights being established under common law for the route provided by Mr Cheyney since 2016. Mr Cheyney has acknowledged that he wishes the public to use this strip of land, rather than the Order route, which does infer dedication by the landowner. However apart from a small number of user evidence forms that refer to use of this strip of land, there is little other evidence before me to sufficiently illustrate acceptance by the public. I acknowledge that Mr Cheyney has referred to the hunt using this strip of land as well as training horses, but this does not amount to use by the general public, as the hunt are required to seek permission to cross land and there are a number of horses based at the former racecourse. Although I do have the power to modify an Order to include the route provided by Mr Cheyney, I do not find there is sufficient evidence of use in the papers before me to do so.

The Main Issues

1. The Council made the Definitive Map Modification Order (DMMO) under Section 53(2)(b) of the 1981 Act on the occurrence of an event specified in sub-section 53(3)(c)(i). Accordingly, the main issue is whether the evidence discovered (when considered with all other evidence available) is sufficient to show, on the balance of probabilities, that a public right of way which is not shown on the DMS, subsists over land to which the map relates.
2. The evidence in support of this case contains User Evidence Forms (UEFs). As a result, the statutory requirements of Section 31 of the Highways Act 1980 (the 1980 Act) are relevant. This sets out that where a way has been enjoyed by the public as of right and without interruption for a full period of twenty 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. The period of twenty years referred to, is to be calculated retrospectively from the date when the right of the public to use the way was brought into question.
3. A range of documents, aerial imagery and photographs were also submitted in evidence. As regards the documentary evidence adduced, Section 32 of the 1980 Act requires a court or tribunal to take into consideration any map, plan or history of the locality, or other relevant document provided as evidence, giving it such weight as is appropriate, before determining whether a way has been dedicated as a highway.
4. If statutory dedication is not applicable, I shall consider whether an implication of dedication has been shown at common law. Common law requires me to consider whether the actions of the landowner have been of such a nature that the dedication of the path by the landowner can be inferred, and whether evidence of use of the path is such that acceptance can be inferred by the public.

**Reasoning**

***Statutory dedication***

*When the status of the claimed route was brought into question*

1. The Council consider that the status of the Order route was first brought into question in 2009, by the statutory deposit and statement made by Mr and Mrs Marsh, under S31(6) of the 1980 Act. The documents acknowledged their belief that section B-C as shown on the application map and which runs across their land, was a bridleway, albeit they were of the belief that it was part of an adjoining bridleway.
2. An adjoining landowner Mr Harmer also submitted a S31(6) deposit in 2014, on which he had drawn a route approximately corresponding to the claimed route. However, as he does not own the land upon which the Order route sits, any potential rights of way he drew on his maps that sat outside of his land boundary, would have not constituted a challenge.
3. Albeit S31(6) deposits can be used as a date for bringing the rights of the public into question, the above documents did not form an actual challenge to use of the claimed route as they accepted the existence of part of the route and gave a possible inference of the existence of the other section. Ultimately the S31(6) deposit will only have effect in relation to the land owned.
4. Another event that I considered may have served to bring the right to use the route into question was when a user, Mrs Carroll, wrote to the Council in 2013 advising that temporary fencing had been erected on Mr Cheyney’s land and that it was gradually being moved across the claimed route. However, this was a single challenge that was not followed up by any other user.
5. The UEF’s suggest that there were some challenges to use. One user stated that jockeys had shouted at them that it was not a public right of way but could not remember where or when this was. Another said that the racecourse owner would drive up and remonstrate with walkers, and another stated that Farmer Harmer who owns adjacent land to the east of the Order route, had stated his land was private when erecting fencing around his land. Ultimately there is not sufficient information in the papers before me to show that any of the above events would have formed a bringing into question or a lack of intention to dedicate.
6. The most significant event that physically alerted users to a challenge was in 2016 when the section of the claimed route from A-B was completely obstructed and users were diverted onto an alternative route by the landowner Mr Cheyney. UEF’s mostly indicated use up ‘to the date of signature’ and were predominantly signed in November 2016. November 2016 is also the date of the application for a modification order submitted by Mr Smith. Accordingly for the purposes of statutory dedication, I consider the 20-year relevant period to be 1996-2016.

*Documentary Evidence*

1. The Council examined several county maps along with the definitive mapping records and surveys. From these documents the claimed route appears to be shown as a physical entity from the early 1950’s.
2. Mr Smith also submitted various maps as part of his submission. The 1930 Ordnance Survey map 1:2500 shows that most of the local area was open land at that time, with the definitive line of Bridleway 18b (BR18b) clearly shown.

*Aerial imagery*

1. Extensive aerial photos were submitted in evidence dating back to 1999. Mr Marsh, when in correspondence with the Council in 2016, also submitted aerial photos from the 1940’s and 1950’s. The claimed route is clearly visible on the 1940 and 1999 imagery, although between points A-B it is narrower in width than BR18b north west of point A and also narrower than section B-C.
2. By 2006, the aerial photos depict what appears to be fencing on a triangular shaped section of land within the southernmost section of Mr Cheyney’s land, possibly blocking part of the definitive line of BR18b, which is no longer visible on the ground. The Order route remains clearly defined and there are numerous other faint lines to the north east of the route and across Mr Harmer’s land.
3. The 2008 and 2009 photos show the Order route as a clear and narrow feature between points A-B, with a multitude of lines crossing Mr Harmers land.
4. A 2010 image shows the Order route with many narrow lines close by, but with no defined tracks on Mr Harmers land. Mr Marsh commented that the steeplechase jumps and hurdle flights depicted on the 2009 and 2010 images are a maximum of 24 feet in width. This width is much wider than that of the defined chalk track of the claimed route, appearing to be a similar width to the route plus all the fainter tracks alongside.
5. Aerial images from 2013, 2014 and 2015 show the Order route again but narrower in width than the previous images, with little sign of any other track lines alongside the route.
6. An aerial photo from Bing was also submitted by Mr Smith, which clearly shows the Order route as a defined feature. A zoomed in image of the aerial photo shows faint lines to the north east of the track. Mr Smith did not know the date this image was taken.
7. At the Inquiry Mr Smith referred to the aerial imagery provided in evidence and asserted correctly that the Order route was clearly shown throughout. When asked to comment on why the worn route of A-B was narrower than BR18b at Point A or section B-C of the claimed route, he asserted that the fainter lines shown in some of the images were evidence of alternative routes taken on grass. Mr Smith felt that the multitude of lines shown on Mr Harmers land were evidence of a separate circular route. Albeit this looks to be the case for some of the lines, in the 2009 image there is a clear entry and exit point to and from the Order route and also from the northern end of the existing BR18b onto Mr Harmers land.

*Photos*

1. Several photos were submitted in evidence by all parties. They consistently show a track along the line of the claimed route A-B-C, albeit generally appearing fairly narrow between points A-B in comparison to points B-C. Mrs Carroll’s photos show the line of a path partly obstructed by temporary fencing which appears to be approximately one metre in width with a further 3 metres of shorter grass to the eastern side. Photos from the Council’s site visit in 2016 show a worn narrow track of possibly about 2-3 metres in width at the southern end of the claimed route, and a photo taken from the northern end of the route which shows a worn track of approximately one metre wide.
2. Mr Smith felt that a photo showing a horse rider dated 2005 and provided by Mr Marsh at page 7 of his statement of case, was limited in providing evidence and that it was only clear that wherever the photo was taken, it was rideable on horseback. However, I consider that the photo provided by Mr Marsh is helpful. It is quite clear that the rider is on Mr Cheyney’s land. A chalk path can be seen to the west of the rider and scrubland to the east. The curve of Mr Harmers land can also be observed to the east where it is appears that his land has been cultivated rather than being covered in long grass, like Mr Cheyney’s.

*Conclusions on documentary evidence*

1. The claimed route appears as a physical entity from the 1940’s and is clearly depicted throughout all documentary evidence from this date. The route between section A-B is invariably shown as a worn narrow chalk track, and in most images, it is much narrower than the BR18b at point A, or section B-C.
2. Between 2006 and 2009 there are fine lines to be found adjacent to the claimed route, but also across the adjoining land belonging to Mr Harmer. From 2010 the lines seem to increase around the claimed route but decrease on the adjoining land. From 2013 the lines diminish considerably around the chalk track.
3. The patterns and chronology of the lines shown on aerial imagery may correspond with later evidence that suggests that the public used routes all over the land until Mr Harmer fenced and closed off his land. The lines briefly increase in the vicinity of the chalk route following this event but then decrease. I accept that there is potential for some of these lines to be attributable to users, but there is also potential for the lines to have been created as a result of traffic or events other than public use.
4. Evidence clearly shows the physical existence of a narrow route, albeit existence is not proof of public status. The numerous lines that can be seen on some of the aerial imagery may be suggestive of public use of a wider area but on their own do not carry great weight.

*Evidence of use by the public*

1. Thirty-three UEFs were provided in support of use of the claimed route, with many forms stating use in excess of the required twenty-year period. The earliest use was recorded as 1967. Use was on foot, bicycle, or horseback, with many stating daily or weekly use and the rest fortnightly, monthly or less often. No users had ever asked permission to use the route.
2. The majority of users stated they never encountered gates or stiles on the route, although a few mentioned the existence of a gate at point B. Some users mentioned signs but it was unclear where they were and when they were erected, and a few users mentioned a fingerpost at point B of the claimed route.
3. The Council sent questionnaires to some of the users to further clarify their usage of the Order route. The questions varied according to the specific user and evidence they had stated in their original form. Only one user stated that the Order route had remained on the same line, with some referencing the gradual movement of the fence line. Width of the Order route was not a question asked on the original evidence forms submitted; however, the questionnaires returned to the Council mentioned several widths varying between 6 feet and 20 metres.
4. More than half of the UEF’s answered ‘can’t remember;’ or ‘no’ to a question asking about changes to fencing. A number of users commented that there was fencing along the Order route in more recent years, some saying that the fencing gradually moved north eastwards over a period of time. Others did not recall any fencing until 2016 and a few users referred to the fencing of Mr Harmer’s land.
5. Mr Smith seemed to recall that there was fencing on both sides of the Order route for the entire of the 20-year relevant period and stated that he had spoken to a park ranger who told him that there had always been a fence in situ at the edge of Mr Harmers land but that it had fallen into disrepair. Later in his statement of case Mr Smith acknowledges that the placement of the fingerpost on Mr Cheyney’s land might indicate that there was no fencing to the southwest of the Order route other than boundary fencing, and several of the earliest users indicated that all of the land in the area was open and unfenced prior to the 1990’s.
6. Mr Marsh’s recollection was that there was no fencing on either side of section A-B of the claimed route until approximately 2008. He recalled that in 1998 a small section of the southern part of Mr Cheyney’s land was fenced which I noted in the aerial imagery and that over the years the fencing on this land was extended.
7. Some users recalled a fingerpost at point B of the claimed route and photos of the sign have been submitted by the parties. Mr Marsh believed the sign was erected in approximately 2010. Mr Cheyney at the Inquiry, however, insisted that the sign was present when he purchased the land in 1998. He referred to Mr Marsh’s photos of 2002 and 2007 where a wooden post can be seen in photos at the same location as the fingerpost. Although not a fingerpost, I consider it is possible that this post was a waymarking post, which then may have been replaced by the fingerpost in approximately 2010 -2012. The Council believe the sign may have been erected by the South Downs Joint Committee which held delegated powers for rights of way at that time and they felt it was likely that the finger post would have been erected where they found a route on the ground.
8. None of the users who submitted UEF’s, apart from the applicant, gave evidence at the Inquiry and as such it is difficult to clarify any inconsistencies. Their evidence accordingly holds less weight as a result of it being unable to be tested.

*Whether use was as of right*

1. Mr Cheyney advised that he purchased the land over which section A-B of the claimed route crosses, in 1998. He was aware of the narrow track running across his land and also knew that there was a bridleway running across the land. He stated that there was a finger post situate at point B, when he purchased the land and consequently, he assumed that this track was the bridleway.
2. When wanting to re-unify his land, he approached the Council who advised him that the track was not a bridleway and accordingly he moved the route to the edge of his land, to allow continued access, but enable better management of his land.
3. This action culminated in the claim by Mr Smith to add the Order route to the DMS as a bridleway. Mr Cheyney feels disenfranchised by the incorrect positioning of the bridleway sign, as he acquiesced to use prior to 2016 believing the signpost had been situated correctly. Had he known this was not the definitive bridleway, he asserted that he would have advised that use was permissive. Mr Cheyney stated that the definitive route of BR18b across his land was not used and that he considered use of the claimed route was ‘by right’ rather than ‘as of right’ as the positioning of the bridleway sign implicitly illustrated use as such. Mr Cheyney wished to formalise the route he had provided at the edge of his land, but not the Order route.
4. It is entirely reasonable for Mr Cheyney to expect that the fingerpost would have been erected in the correct position, and he feels that this has misled him as to the actual location of the bridleway. It is unfortunate that Mr Cheyney did not check the location of the definitive bridleway line, as this would have informed him that the signpost was incorrectly positioned. Ultimately it is the landowner’s responsibility and also in their own interest to check the location of rights of way crossing their land with the DMS.

*Whether there was interruption to use of the route*

1. The Council did not consider in their statement of case that the route had been subject to any interruption of use within their relevant period of 1989-2009. However, when looking at the revised relevant period of 1996-2016, there are two possible interruptions that need to be considered.
2. Mr Marsh’s statement of case refers to the fencing erected by Mr Harmer around his field in 2008/9, stating that it was originally placed ‘tight to the track across Mr Cheyney’s field’. This was disputed as a matter of land ownership and then the fence was moved back further east. This would have formed a temporary interruption of use of the larger width claimed by Mr Smith.
3. There was possibly another brief interruption to use in 2008/9 according to the written evidence of Mr Marsh, when the 1 metre access gap at point B was moved to the eastern side of the gate by Mr Cheyney’s tenant. Mr Marsh wrote that he temporarily provided an alternative access to section A-B via his land for approximately two months, until the gap was reinstated where it was previously situated.
4. The absence of recall of these interruptions from the user evidence would suggest that these events did not interfere with general use of the claimed route. It appears that access was returned to normal shortly after each event. Mr Cheyney also does not recall these interruptions, stating access was always available.
5. The interruptions may correlate with the evidence of one user who recalled fencing being erected and then removed, although no further details were given by the user as to exactly when and where this event occurred. Overall, I consider that these interruptions did not prevent use of the Order route and were very temporary in nature.

*Conclusions on User evidence*

1. There is considerable variation in user recollection as to whether the route remained on the same line, with some users indicating that it did, others saying the line varied, others saying the fencing gradually moved the path over and several who could not remember. One user did provide photos, along with an email sent to the Council in late 2013, complaining about fencing that was gradually being moved northwards across Mr Cheyney’s land.
2. There is limited recall of any limitations or structures in situ, such as fencing and the gate at point B, all of which were present in some form or another for all or much of the relevant period. There was some discussion at the Inquiry about whether the gate at Point B was locked. Mr Cheyney advised it was locked, albeit other evidence indicated it was not locked. Nevertheless, whatever the situation regarding the lock, it appeared to be closed almost all of the time, with no users indicating that the gate was ever open or that they opened the gate to access the section A-B. There is also an element of confusion in the user evidence, with a few UEF’s appearing to refer to use of the route the landowner has provided since 2016, rather than the claimed route.
3. The user evidence submitted indicates substantial use of an approximate line running from A-B-C throughout the relevant period. However there is a lack of detail and clarity regarding a defined route, with those few users who were asked for a width, providing largely different estimations. There appears to be significant differences in recollection and use of the route with some users indicating use of the entire of Mr Cheyney’s land and others seeming to refer to use of Mr Harmer’s land.
4. I note that some users stated that they had used the full widths of the application route, as applied for by Mr Smith, and mentioned in his Proof of Evidence. Correspondingly Mr Smith feels that the chalk track shown in aerial images does not limit the extent of use of the claimed route. I agree that there was likely to be an element of deviation from the route, but I do not consider that the user evidence before me is sufficient to illustrate both significant and consistent use of such widths as have been applied for.
5. Overall, there is a sufficient quantity of user evidence to raise a presumption of the dedication of a public bridleway, albeit the width of the route is an area that requires further consideration and will be addressed later in this decision. Therefore, the first part of the statutory test is satisfied.

*Evidence of the landowners and whether the landowners demonstrated a lack of intention to dedicate a public footpath*

1. Mr Cheyney stated that the evidence forms were inconsistent and erroneous, with users stating varying and contradictory widths of the claimed route, which were not borne out by the photographic or aerial imagery submitted in evidence.
2. Mr Cheyney also advised that his land was historically used for grazing and was subject to illegal vehicular use, causing the land to become criss-crossed with ruts, that the public then used as pathways. Over time Mr Cheyney claimed the route used migrated from one place to another according to ground conditions and asserts that the sum of these migrating routes amounting to a single pathway is wrong.
3. Mr Marsh, a former landowner of section B-C of the Order route, submitted extensive evidence both in relation to the claimed route and other adjoining routes which are not the subject of this particular Inquiry. Albeit of less weight than had he attended the Inquiry to give evidence, Mr Marsh’s evidence appears detailed, well-reasoned, and corroboratively supported.
4. Although Mr Marsh agreed with Mr Smith regarding the location of the routes he originally applied for, he was of the opinion that the DMS was incorrect regarding the location of public rights of way in the area. Mr Marsh opposed the application because he considered that should the routes be confirmed, it would leave possibly incorrect routes remaining on the DMS. Accordingly, he submitted his own application to modify the DMS (Council ref: RWO/244). Unfortunately, his application, which may have relevance to all of the rights way in the immediate vicinity, is not before me.
5. Mr Marsh lived close to the Order Route throughout most of the relevant period. He stated that Mr Harmer’s field which lays east of the Order route is significant to the claim, as it was unfenced, with unrestricted access until 2008. His photo from 2005 supports this view. Mr Marsh stated that the public, especially cyclists and equestrians preferred to cross Mr Harmers land as it was flatter and better maintained, resulting in a criss-crossing of routes across Mr Harmer’s field. He observed only very light use of the narrow track across Mr Cheyney’s land which then intensified once Mr Harmer fenced off his field in 2008/9 and when he then closed all access points in 2011. This statement was also supported by the aerial imagery and photos supplied by Mr Marsh.
6. Mrs Marsh in correspondence to the Council in December 2016 recounted her own experience of walking the Order route which was ‘narrow and often muddy’. She estimated the path was 1-2 metres wide with a metre or so of shorter grass on each side, which could be used in adverse conditions. Mrs Marsh also stated that the land belonging to Mr Cheyney, between the claimed route and Mr Harmers fence was accessible to the public but was not used it as it was overgrown and very uneven with rabbit holes.
7. Mr Marsh stated there were well established cut throughs from Mr Cheney’s land to Mr Harmers field. This is at odds with Mr Smith who felt that the multitude of lines shown on Mr Harmers land were evidence of a separate circular route being of the opinion that there had always been fencing around Mr Harmer’s field, although dilapidated. Albeit some of the tracks in the 2009 aerial image look circular in nature, there are clear entry / exit points adjoining to the Order route as well as from the northern end of the existing BR18b onto Mr Harmers land. This supports the evidence from the other landowners and from some of the UEF’s that the public used routes all over the land in this vicinity.
8. Mr Harmer, an adjoining landowner to the east stated in his original comments to the claim, that he had lived and worked around the bridleway for over 50 years and the claimed route had never been defined in an exact position, always moving around as the ground became muddy in one place, with users picking a cleaner line. This view was also held by Mr Cheyney who at the Inquiry commented that Mr Harmers field was drier with a more even surface, whereas his land was generally overgrown. This also correlates with the evidence of Mr Marsh.

*Conclusion on landowner evidence*

1. There is no evidence before me that suggests present or previous landowners erected any signs or indicated any intention not to dedicate the claimed route during the relevant period. Indeed, all landowners appear to have presumed that the Order route was a public right of way already, with Mr Marsh already believing that part B-C of the route was a bridleway as reflected by his Section 31(6) deposit in 2009, Mr Cheyney believing the route was definitive because of the fingerpost and Mr Harmer indicating a route on his S31(6) deposit.
2. All landowners were consistent in their recollections of the public using a variety of routes all across the land in the area, and of use of the claimed route, albeit not always consistently on the defined line.

*Conclusions on statutory dedication*

1. Evidence suggests that until Mr Harmer started fencing his property in 2008/9 the land in the area was predominantly open and accessible and the public generally roamed across Mr Cheyney and Mr Harmers land, although use must have occurred of the Order route due to the consistent depiction of a narrow chalk path. Use seems to have become more concentrated over Mr Cheyney’s land following the fencing of Mr Harmers land. This is supported by the evidence forms of the earliest users of the route, as well as earlier aerial photography.
2. Evidence also suggests that the land over which the claimed route ran was originally open and unfenced between section A-B. The bridleway BR18b also crosses this piece of land, although the definitive line does not appear to have been used in many years. It may be the case that over the years, use of BR18b migrated north eastwards across the land, onto the track whether that be because of fencing possibly obstructing the line of the definitive bridleway or because the claimed route was a more direct line to connect with Hamsey BR 17 or Hamsey BR 20C. Overall I accept that there is sufficient user and documentary evidence to show use of the claimed route A-B-C.
3. I have concluded that the user evidence is sufficient to raise a presumption that the claimed route has been dedicated as a public bridleway. In addition, there is no evidence that the landowners demonstrated to the public, a lack of intention to dedicate a bridleway during the relevant period. Therefore, I conclude on the balance of probabilities that a public bridleway subsists. In light of this conclusion, there is no need for me to address the evidence in the context of common law dedication.

*Width of the Order route*

1. On his application, Mr Smith stated widths of 4 metres at point A, rising to 8 metres at points H/I, and rising again to 11 metres at point B. For section B-C Mr Smith stated a width of 4 metres.
2. In their 2019 report the Council commented that the inconsistency of the width stated by users left room for question as to the width of the route and the consistency of any habitually used line. They concluded after their investigations that although evidence of use was high, there was an inconsistency in the evidence of width used and considered that in this case a varying width of 6-8 metres was appropriate. In later comments the Council acknowledged that the width of the Order route may not be fully available on the ground just north of B and that the Order might require modification.
3. Mr Marsh, the landowner for section B-C of the claimed route, submitted the width for this part of the route was 4 metres. This correlates with the width stated by Mr Smith and also with the span of the metalled surfacing I noted at this location, on my unaccompanied site visit.
4. Both landowners disagreed with the widths stated on the application form for section A-B of the claimed route. Mr Cheyney felt the aerial images illustrated that the widths claimed by Mr Smith were ‘highly imaginative,’ and Mr Marsh stated the widths were ‘highly inflated’ and should be reduced to those stated in the Council’s initial report of February 2019. In this report when concluding on the documentary evidence, the Council found that widths of 3 metres and 5 metres were evidenced.
5. Considering point A of the route, I concur with Mr Smith that his stated width of 4 metres is appropriate, as this accorded with what I saw on my site visit and also correlates with the width suggested by the aerial photos for this location.
6. The aerial photos then show a consistently defined chalk path on the line of the application route between points A and B which seems to vary in width depending on the year the photo was taken, but overall suggests a trodden width of approximately 2 metres.
7. At the Inquiry Mr Smith commented on the widths stated on the UEF’s, saying that the significant differences between the forms were attributable to the way in which people used the claimed route. Cyclists preferred a dry firm surface, whilst equestrians would rather use a soft surface, and all users moved around when the ground was muddy. Mr Smith felt that although the trodden route was only 6-8 feet, there was use of a wider width as alternative lines were used to utilise the grass surface. He also felt that a lack of evidence of worn lines to indicate wider use, did not necessarily mean that no use of this kind had taken place.
8. I accept Mr Smith’s comments that differences in the width quoted may have been dependant on the preference of surface type of each user and the conditions of the ground underfoot at the time of use. Mr Smith’s comment is supported by some users who submitted that they used the least muddy ground, a recollection also shared by Mr Smith’s own memory of his use as well as one of the landowners.
9. I also accept that there might be some users who departed further still from the line of the claimed route. However, departing from a route by sometimes many metres to avoid boggy ground or to find a preferred surface for the chosen method of travel, does not necessarily accord to using a defined route. Most of the user evidence did not specify widths of the routes used and the few that clarified a width as a result of further questions from the Council, varied substantially. Correspondingly the user evidence before me is insufficient to support a width of 8 metres.
10. Considering the documentary evidence, aerial images from 2006 to 2009 do suggest wider use of the area however the lines are numerous and widespread across both Mr Cheyney’s and Mr Harmers land. A 2010 image shows lots of faint lines around the chalk track but by 2013 the aerial images revert to showing a track that is narrower than BR18b at point A and narrower than section B-C. There are a few faint lines near the defined track on some of the aerial imagery but nothing that supports substantive use of a wider width for the 20-year relevant period.
11. Photographic evidence provided by Mr Marsh and dating back to 2002 clearly illustrated that there was a pinch point at the site of point B. At this location the photos evidenced a closed gate with an approximate 1 metre gap to the side, allowing access to Mr Cheyney’s land and the rest of the application route, north-westwards to point A. Very few users mentioned this gate or the accompanying gap in their user evidence forms, but they must have had to negotiate this limitation during their use of route A-B-C. I noted on my site visit that the gate is still in situ along with the gap to the side, albeit there are now wires across the gap.
12. At the Inquiry Mr Smith explained that his 11-metre width for point B was the width between points D-B on the application map, minus a 3-metre allowance for the scrub that was historically in situ. He felt that those users coming from the direction of F-E would approach the section A-B at point D. However, this decision is only able to consider the route, A-B-C, and I consider it unlikely that anyone using A-B-C would head 11 metres away from the line of A-B when approaching the 1 metre gap that was evident at point B.
13. Ultimately, I am not satisfied that the evidence before me supports a width of 6-8 metres as the Order states, or a varying width of between 4- 11 metres as suggested by Mr Smith. The small number of users that evidenced a width showed great disparity, stating anywhere between 6 feet to 20 metres. I acknowledge that some people may have moved off the line of the path, however the evidence before me is not substantive enough to be supportive of the widths applied for by Mr Smith.
14. Where a width is not clearly established, it is reasonable when assessing the width to take account of the nature of the physical location and the type of user. I consider that an appropriate width where the evidence is substantial enough to support this and to account for where users may have needed to depart from the worn path to cross on drier land, is 4 metres.
15. I am satisfied that the evidence supports a width of 4 metres throughout the Order route, with a limitation at point B, where the width narrows to 1 metre, next to the gate. Accordingly the widths of the Order will be modified in this manner.

**Other matters**

1. Mr Marsh understandably expressed concern that as his application to the Council (RWO 244) to modify the DMS had not been considered simultaneously with this application, the confirmation of the Order route would possibly mean multiple rights of way across his and others property, which he feels are due to errors on the DMS, rather than comprising extra rights of way.
2. I recognise this is a genuine and relevant concern, but it is outside the scope of what I can consider when writing this decision. The Council have acknowledged that later amendments can be made to the DMS should the evidence from Mr Marsh’s separate DMMO application so indicate, which may or may not impact this Order. This matter should be taken up with the Council to ensure a consistent approach is taken when further considering the definitive line of the rights of way in the immediate vicinity of this part of the National Park.

Conclusions

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

Formal Decision

1. I confirm the Order subject to the following modifications:

* In Part I of the Schedule, under ‘Description of path to be added,’ **delete** ‘*The bridleway has a varying width of between 6 metres and 8 metres*’ **and** **replace with** ‘*The bridleway has a width of 4 metres*’.
* In Part 2 of the Schedule, Modification of Definitive Statement, section (ii) ‘Addition of the following particulars to the East Sussex County Council (Lewes District) Definitive Statement’, under ‘Remarks’ **delete** ‘*varying width between 6-8 m*’ **and insert** ‘*width of 4 metres*’.
* In Part 3 of the Schedule, under Limitations, **delete** ‘*None*’ **and insert** ‘*The width narrows to 1 metre, adjacent to a field gate, at Point X on the Order Map*’.
* On the Order Map, i**nsert** the letter ‘*X’* north west of Point B where the metalled track stops at a field gate.

A Behn

**INSPECTOR**

**APPEARANCES**

**For the Council:**

Gareth Jones Solicitor, East Sussex County Council (ESCC)

who called:

Stephen Kisko Senior Definitive Map Officer, ESCC

**Applicant:**

Christopher Smith Open Spaces Society (OSS)

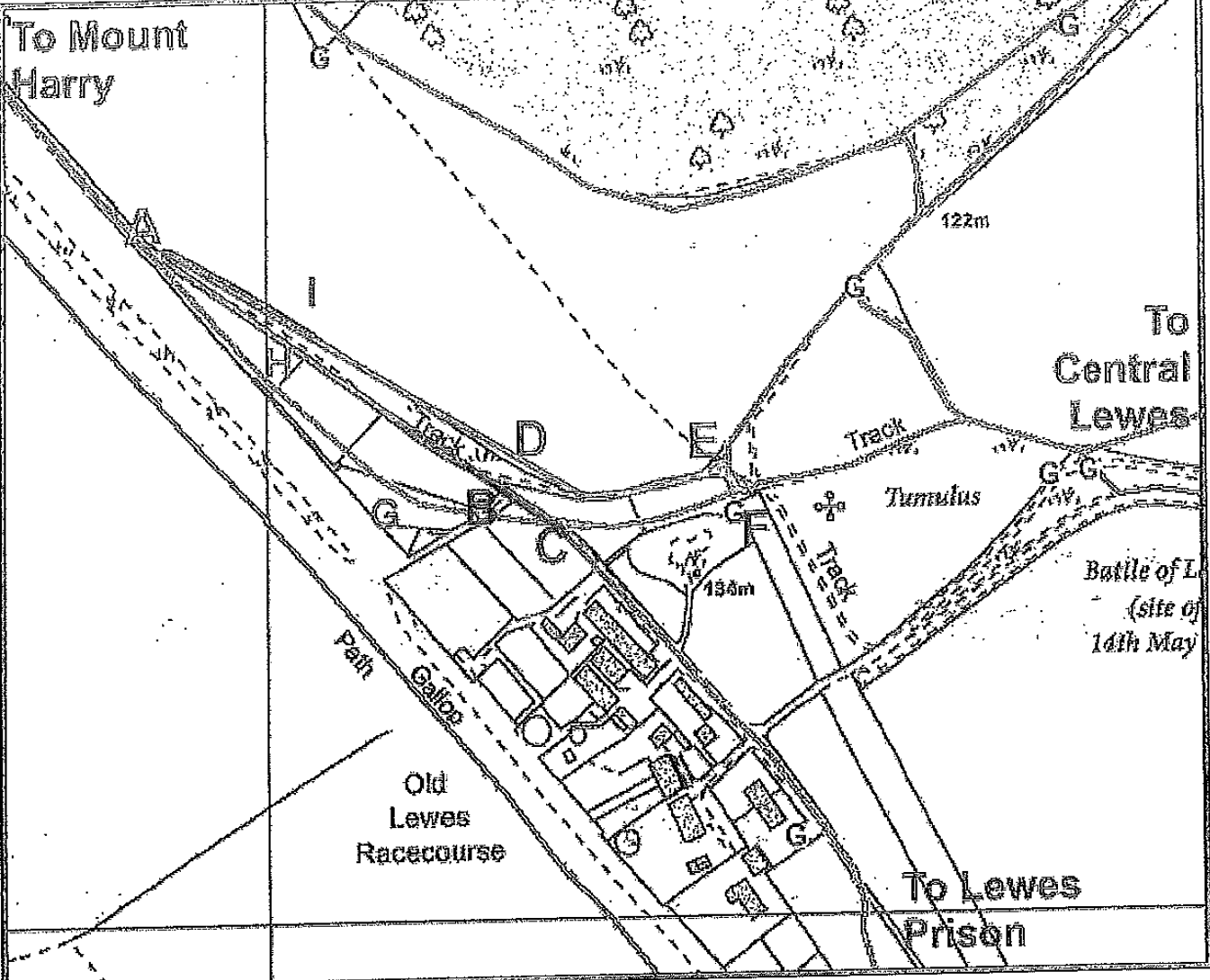
**Objectors:**

Nick Cheyney Landowner

Christopher Smith OSS

**DOCUMENTS SUBMITTED AT THE INQUIRY**

Closing Submission from ESCC

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**Modified Order Map - Copy - Not to original scale.**

