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| **Order Decision** |
| Site visit made on 15 August 2023. |
| **by Charlotte Ditchburn BSc (Hons) MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 5 September 2023** |

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| **Order Ref: ROW/3296404** |
| * 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 (Public Restricted Byway Piddinghoe 15) Definitive Map Modification Order 2021. |
| * The Order is dated 3 December 2021 and proposes to modify the Definitive Map and Statement for the area by adding a Restricted Byway as shown in the Order plan and described in the Order Schedule. |
| * There were 2 objections outstanding when East Sussex County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation. |
| **Summary of Decision: The Order is not confirmed.** |
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Procedural Matters

1. I made an unaccompanied site visit on 15 August 2023, when I was able to view the whole of the Order route.
2. The Order has been made further to an Appeal determined by another Inspector. The Order Making Authority (OMA) takes a neutral position in relation to confirmation of the Order.

The Main Issues

1. The Order has been made under Section 53(3)(2)(b) of the Wildlife and Countryside Act 1981 in consequence of the occurrence of an event specified in Section 53(3)(c)(i).
2. The main issue is whether the discovery by the OMA of evidence which (when considered with all other evidence available) is sufficient to show that a right of way which is not shown in the Definitive Map and Statement (DMS) subsists over land in the area to which the map relates (section 53(3)(c)(i)).
3. Whilst it suffices under section 53(3)(c)(i) for a public right of way to be *reasonably alleged* to subsist, the standard of proof is higher for the Order to be confirmed. At this stage, evidence is required on the balance of probabilities that a right of way subsists.

Reasons

*Background*

1. The Order relates to a Restricted Byway with a length of approximately 556 metres that runs in a south-easterly direction from the public highway named The Street, before turning in an easterly direction until it reaches public footpath Piddinghoe 9.
2. At the time of my visit, the route was clearly visible on the ground, there was an open gate at the north western entrance to Newhaven & Seaford Sailing Club’s car park and a bollard with two fence posts alongside at the eastern end of the car park. From my observations, it was apparent that works have been undertaken at some point in the past to modify the Order route’s surface, for access to the Sailing Club and for use on horse back and bicycle along the Egrets Way route, which had signage at either end of the route.

*Documentary evidence*

1. The Budgen’s map of 1724, provided by the OMA, shows the Order route running in a south-easterly then easterly direction. The cartographer indicates the existence of the route, but it is not shown in its current position. No key to the map has been provided. It is not known what status the cartographer considered the route to be.
2. Overton and Bowles map of Sussex 1740, provided by the OMA, shows the Order route in a similar manner to the Budgen’s map of 1724. With no key to the map being provided it is not known what status the cartographer considered the route to be.
3. The Yeakell and Gardner map (1778-1783) only shows part of the Order route, along the western end of the route. This map shows a route which appears to serve as an access to adjacent fields and which does not provide a through route to the river. Although that part of the Order route which is shown is depicted in the manner of a track or road, it may have been no more than an agricultural track giving access to cultivated fields.
4. The Lewes and Laughton Levels map 1791 shows the Order route as a broad track running between fields. Adjacent fields are numbered on the plan whereas the Order route is not. It is uncertain what the colouring depicts on the Levels maps and it is not clear what was intended to be shown in terms of the Order route’s status.
5. Other maps of Sussex provided by the objector, titled ‘Old Sussex Mapped’, including Cole’s map 1808 and Charles Smith 1801 do not show the Order route, the accuracy and status of routes shown on these maps are open to interpretation with no key provided. These maps carry little weight in determining public rights of way due to the scale, accuracy and purpose of their creation.
6. Mudge’s map (surveyed 1813 but not updated until 1873) shows the Order route in its entirety. This map was produced to record all routes where public or private for the purposes of possible invasion, therefore it is not strong evidence in isolation for determining public rights.
7. Greenwood’s map of 1825 shows the route enclosed from surrounding land. This cannot be taken as unambiguously depicting a public carriageway furthermore Greenwood’s map of 1829 does not show the Order route.
8. OS map, first edition 1873 shows the Order route as a track going through a plot numbered 71, relating to the Ordnance Survey books of reference which show the Order route as “Road (rough pasture)”. This does not provide definitive evidence of the status of the route but could indicate the route was a public road. OS map, second edition, 1899, shows the route as plot 79, without the accompanying book of reference it is not possible to be sure what the cartographer intended to show the status of the route was. OS map 1888, shows the route as a physical feature. OS map 1945, shows the route in white colouring bounded by black lines and as connected to the rest of the public road network, whilst the OS Maps from 1873 to 1945 are all supportive of a physical feature along the Order route which could be interpreted as a road, they are not direct evidence that it did carry that status.
9. The Order route is shown as plot 79 in the Piddinghoe Tithe records. This plot is described in the apportionment as being in the ownership and occupation of a William Waterman and is described as a ‘droveway’ cultivated as ‘pasture. With the exception of one small plot immediately to the north of the Order route, all the adjacent plots were also recorded as being in the ownership of William Waterman. Whilst the tithe documents do not preclude the existence of public rights, it is not possible to say whether the tithe records show the Order route was used for the purposes of transportation or to have been of a private nature going to and from adjacent fields.
10. The Finance Act 1910 map is drawn upon an OS base map, the base map has no relation to the Revenue Field Books or Finance Act hereditaments. The Order route is not identified by a hereditament number in the records prepared under the Finance Act 1910 and is not included within adjacent hereditaments. Known public highways are not normally shown as included in the hereditaments and where excluded they are usually, but not necessarily, vehicular. Where adjacent hereditaments are located at either side of the Order route, those hereditaments (such as 1431) are braced together with the brace passing under the Order route to signify that the Order route does not form part of the adjacent land. The Order route is coloured blue from its junction with the Street for the entirety of Ordnance Survey land parcel 79 which is identified by solid lines at either end of the parcel. Hereditament 1501 which depicts the then unbuilt Piddinghoe bypass is described as “land”, the property of the County Council of East Sussex, this route is coloured in the same blue shading as the Order route. Hereditament 1510 is also shaded in the same shade of blue and is described as “Green” and “land site of 2 houses”. The blue shading of the Order route could have been meant to depict something other than the route’s status, or it could simply be a drafting error where the cartographer may have tried to depict the route as another road or public space similar to 1501 and 1510. As the Order route is shaded in the same colour as some roads in the locality and it is not part of a hereditament it is more likely that it was not subject to taxation under the Act but it should not be assumed that the existence of public carriageway rights is the only explanation for the exclusion of a route from adjacent hereditaments. Plot/parcel number 79 that is mentioned in the assessment of hereditament 1382 and 1393 is described as a wall, from its depiction on the map it is unlikely that the entirety of plot 79 was a wall. The fact that it is referenced in several hereditaments could suggest it was not owned privately and that the sections referenced were the boundary walls only, leaving the rest of the land in plot 79 outside of the hereditaments that mentioned it. However, the acreage mentioned in the field books that refers to plot 79 does appear to add up to the total acreage attributed to plot 79 on the map.
11. Conveyance documents from the 1930s regarding the sale of part of the Order route refer to the retention of a vehicular right of access, in favour of the vendor of the land together with the right of the purchasers to divert what was described as a ‘farm road’ (OS parcels 79 and 93) to another part of the property being conveyed. This does not preclude the existence of a public right of way. It is possible this conveyance gave a private right of way to the purchaser should a public right of way there ever be stopped up, and so also gave the purchaser the right to divert this private right of access as necessary.
12. The Order route is not given specific mention in the local history ‘Portrait of Piddinghoe’ 1900-2000 although a description is given of the rise and expansion of the clay extraction works to the north of the Order route.
13. Abstract of Title 1936 map shows the Order route as connected to the rest of the public road network but does not provide a key to the status of the Order route.
14. The Order route is not included in the original Definitive Map surveys. Where surveys by the respective Parishes sought to include the routes within the DMS, subsequent procedures determined that they should not be so included. There is no evidence to suggest that formal procedures were not followed correctly.

Conclusions

1. The documentary evidence shows that there has been a physical feature in the landscape from at least the mid-eighteenth century. The route does appear to have been an important one in the landscape being described as a droveway and pasture in the Tithe records. The subsequent evidence, conveyed in the County maps and OS maps, of a continued physical feature on the ground sits alongside continued preservation of private rights during the sale of land and as suggested in the Conveyance documentation.
2. Whilst the Finance Act record is the most compelling piece of evidence submitted by the applicant, these records are not definitive. Although the route is clearly excluded from adjacent hereditaments, there is no deduction for a public right of way nor is it apparent what status the route had. While it may be a strong possibility that the route was of public vehicular status it must be remembered that the production of information on such ways was very much incidental to the main purpose of the legislation.
3. From the above reasons, the evidence is largely inconclusive, and the balance is weighted against the Order route having status other than private. Whilst the route is depicted on some maps, there is little or no evidence to suggest that it was public.
4. Having regard to these and all other matters raised in the written representations I conclude that the Order should not be confirmed.

Other Matters

1. One of the outstanding objections is based on the grounds that there is already plenty of access in the area. My decision relates to whether the public rights exist on the balance of probabilities, I cannot consider the suitability or desirability of the route for public use under the legislation.

Formal Decision

1. I do not confirm the Order.

Charlotte Ditchburn

INSPECTOR

