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| **Appeal Decision** |
| **by David Wyborn BSc(Hons) MPhil MRTPI** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 20 December 2023** |

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| **Appeal Ref: ROW/3311239** |
| * The appeal is made under section 53(5) and Paragraph 4(1) of Schedule 14 of the Wildlife and Countryside Act 1981 against the decision of West Sussex County Council not to make an Order under section 53(2) of that Act. |
| * The application dated 18 October 2018 was refused by the Council on 14 October 2022. * The appellant, Mrs Julie Robinson, claims that the definitive map and statement should be amended by the upgrading of Footpaths 165 and 166 from a footpath to a bridleway and sections of bridleway added in the Parishes of Yapton, Climping and Middleton-on-Sea. |
| **Summary of Decision: The appeal to upgrade to bridleway status or record bridleways from points A-B, C-D and E-G is dismissed. The appeal to record bridleways between points B-C and D-E is dismissed but allowed in respect of footpath status.** |
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Procedural Matters

1. I have been directed by the Secretary of State for the Environment, Food and Rural Affairs to determine this appeal under section 53(5) and Paragraph 4(1) of Schedule 14 of the Wildlife and Countryside Act 1981 (the 1981 Act), on the basis of the papers submitted. In this case, I am satisfied that I can reach a decision based on the submitted evidence, and without visiting the site.
2. The appellant requests that the Secretary of State directs West Sussex County Council (the Council) to make a Definitive Map Modification Order under schedule 15 of the 1981 Act to amend the route by upgrading and including sections as bridleways. The application was considered by the Council and this appeal relates to the decision to refuse the application and to not amend the Definitive Map and Statement (DMS).
3. For the ease of reference, I shall refer to the points on the application plan which is attached as part of this decision. The appellant seeks that the Public Footpath 166 between points A-B and C-D be upgraded to a bridleway, that Public Footpath 165 between points E-F be upgraded to a bridleway, and that points B-C, D-E and F-G be recorded as bridleways.

**Main Issues**

1. When a right of way is already shown on the DMS (in this case sections A-B, C-D and E-F), section 53 (3)(c)(ii) of the 1981 Act provides that a modification order should be made on the discovery of evidence which, when considered with all other relevant evidence available, shows the highway shown on the DMS as a highway of a particular description ought to be shown as a highway of a different description. The evidential test to be applied is on the balance of probabilities.
2. When a route is not shown on the DMS, section 53(3)(c)(i) of the 1981 Act provides that a modification order should be made on the discovery of evidence which, when considered with all other relevant evidence available, shows that a right of way which is not shown on the DMS subsists or is reasonably alleged to subsist over land in the area to which the map relates.
3. In arriving at my conclusions, I have taken account of the evidence submitted by the parties, the relevant parts of the 1981 Act and the findings of the Courts in the cases of *Secretary of State for the Environment ex parte Bagshaw and Norton (QBD) [1984] 68 P&CR 402 [1995]* (Bagshaw and Norton) and *R v Secretary of State for Wales ex parte Emery [1994*] 4 All ER 367 (Emery).
4. As made clear by the High Court in Bagshaw and Norton, when a route is not shown on the DMS, this involves two tests, either of which can be met:

Test A - does a right of way subsist on the balance of probabilities?

Test B - is it reasonable to allege that a right of way subsists? For this possibility to exist, it will be necessary to show that a reasonable person, having considered all the relevant evidence available, could reasonably allege that a right of way subsists.

1. In relation to Test B, the Court of Appeal recognised in the Emery case that there may be instances where conflicting evidence was presented at the Schedule 14 stage. In Emery, Roche LJ held that ‘… the problem arises where there is conflicting evidence …. in approaching such cases, the authority and the Secretary of State must bear in mind that an order…. made following a Schedule 14 procedure still leaves both the applicant and objectors with the ability to object to the order under Schedule 15 where conflicting evidence can be heard, and those issues determined following a public inquiry’.
2. The case in support of this application and appeal relies on historical documents and maps, and not in respect of any user evidence. I need to consider if the evidence provided is sufficient to infer the dedication of the rights over the claimed routes at some point in the past. Section 32 of the Highway Act (the 1980 Act) requires a court or tribunal to take into account any map, plan or history of the locality, or other relevant document, which is tendered in evidence, giving it such weight as is justified by the circumstances, before determining whether or not a way has been dedicated as a highway.

**Mapping and Other Information**

1. The appellant has undertaken extensive research and the submissions include extracts and commentary on a wide range of maps and related historical information. There are additional submissions as part of this appeal. The Council has also undertaken detailed research. There is also information and comments including from local residents, owners and legal representatives of owners of land along the route. I have taken all the information into account in my assessment of the appeal, and I have highlighted and assessed key information below.
2. The route A-G crosses land in a number of different parishes and therefore there is information from various sources in some cases which refer to the different parishes through which the route passes.

Sheriff of West Sussex Court Sessions held at Madehurst in 1564.

1. The appellant highlights this information which refers to a road, described at the time as “the Queen’s Highway” used by horsemen and by pedestrians that ran through Ford Park, which later became known as Ford Farm. The appellant claims that, after analysis, this can only refer to the claimed route. However, there is no map, probably because of the historical time, and there is only a very general description of a route. It appears that there was a Queen’s Highway in the said park, however, given the direct alignment between Felpham and Madehurst, albeit it is said that Ancton fell within the Felpham Parish at that time, there is not the documented and clear evidence in these papers which provides me with sufficient confidence that the appeal route is the Queens Highway which is referenced in the Court Sessions papers.
2. The applicant claims that the information the Victoria County History (VCH) provides, in relation to Climping Parish, additional reinforcement to the case regarding a route across the former park associated with Ford. It is explained by the VCH that Climping and Ilsham Manor later came to be known as Park Farm and that in 1564 a road between Felpham and Madehurst passed through the park. This cross references to the information above. While the VCH should be considered a reliable source, it is not certain or definitive as to the route. This publication references a former road; however, it does not include a plan or a specific description of the actual route it is referring to.
3. The appellant’s evidence on this matter is argued to be substantiated by cross-referencing with the Yeakell and Gardner’s Sussex Map 1778-1783 and references are made to the Map of Walberton 1630 and of Walberton and Binsted c1875. As I analyse below, I am not satisfied that this information provides greater clarity on this issue. I appreciate that the appellant strongly disagrees, but I am not convinced that this evidence can be pieced together in this way with anywhere near the confidence that is argued in the appeal.
4. The appellant argues that there are a lack of alternatives for this route, however, this is disputed by the comments of a representative on behalf of one of the landowners and I consider that there is no clear and persuasive evidence that demonstrates that the claimed route should be considered as the only alignment that is possible or indeed probable.
5. In my judgement, there is limited clear and specific documented evidence to support the appeal route as having been the Queen’s Highway and, therefore, it cannot be inferred that the appeal route has any particular status of public access rights based on the Court Sessions held in 1564.

Yeakell and Gardner’s Sussex Map 1778-1783

1. Park Farm is clearly identified on this Map, with buildings. There appears to be a variety of routes of some sort shown on this plan with a dotted line, one of which passes along a reasonable alignment of the Public Footpath 166.
2. Such commercial maps would have been expensive to produce and there may not have been any point, in general, in showing a route that the purchaser of the map would not have been able to use. However, there is no key to this map, and I do not consider that, in these circumstances, it is possible to allude what the status and form of the various routes were on the ground at that time, including whether some were private ways to Park Farm. This Map, therefore, does not especially assist in understanding the nature and status of the route in relation to FP 166.
3. In terms of the section of the Yeakell and Gardner’s Map south of the A259, the first section of this dotted line angles across the field rather than following the route of FP165 and then travels south towards Ancton. It follows the route including the section prior to the diversion in 1954 (to which I refer to later). Again, without a key it is difficult to ascertain the status of this route, but I accept that this information needs to be interpreted in conjunction with other information to build a fuller picture and that a route of some type appears to be shown on this Map.

First Ordnance Survey Old Series Map of Sussex 1813

1. This map shows Cinders Lane (A-B) and the angled route to Park Farm is shown as a double pecked line (which the appellant claims depicts an unfenced road ), which could potentially differentiate it from what, it is assumed, are shown as public roads elsewhere on the Map. The entirety of the route along to what is now the A259 is not shown on this Map. This map is not of particular help to understand the status of the appeal routes.

Greenwood and Greenwood Map of Sussex 1825

1. The appellant states that this map only has a key for vehicular roads and not minor highways. However, the appellant notes that the Map records a portion of the claimed route from point A to Park Farm as a cross road. I accept that these types of maps were only for the benefit of wealthy people, and it is often commented that they would not show a route to a purchaser of a map if they did not have the right to use it. Also, the key that is provided shows turnpike roads with the only alternative as cross roads. The Council consider that that depiction on the map might suggest a private route rather than a public one, however, it is difficult to draw a firm conclusion on the status of the route from the information.
2. Additionally, the route from Point A does not link at both ends to a highway and only leads to Park Farm, a private property. This route is shown differently to public roads in the local and wider area on the map. I consider that it is important to note that there is no continuation beyond Park Farm and, therefore, this map does not especially assist the claim of higher rights than those already recorded.

Felpham Inclosure Map 1826 (The Council report says Yapton, but the appellant has corrected this to Felpham in their appeal statement)

1. There were no Inclosure Awards for Climping and Middleton, and the one related to Yapton is not relevant to the issues in this appeal. The Council explain that the Felpham Inclosure Map was a document produced for Allotments and Exchanges in the Parish of Felpham in 1826. Part of the claimed route between F-G is depicted using a faint dotted line, however, the full length is not shown and the dotted line does not extend to point G at Ancton Lane. The Council explain that there is no key to the map and therefore it is not possible to determine the status of the route.

Tithe Maps for Middleton 1838, Yapton 1839, Climping 1843 and Felpham 1844

1. The Felpham Tithe Map shows roads, but does not show any footpaths or bridleways and therefore does not provide assistance in this appeal.
2. The Climping Tithe Map shows roads and some routes to properties off those roads. However, Park Farm is shown as parcel No 3 and with no roads or tracks to it. While it must have been accessed in some way, the Tithe map is of no assistance in this respect.
3. With the Middleton Tithe Map the appellant refers to a route from Felpham Parish to the west and then going in a broadly northerly direction along the Middleton Parish boundary to Yapton Parish. This is not especially informative in terms of status and does not give indications of the route in other parish areas.
4. With regards to the Yapton Tithe Map, the appellant explains that Cinders Lane, the route A-B, is coloured sepia and given apportionment 224. It is explained that the apportionment is excluded from tithe but is not listed under “Roads, Water, Waste and C.” with other roads within the village. It does not appear that this apportionment list has been included in the submissions and overall this tithe map information is not especially helpful in understanding the status of this part of the route at that time. There is a dashed line diagonally across parcel 226, (along the route B-C). This route is then shown, further to the south east, crossing parcel 254 and joining at point D with the now A259. The appellant then explains that the route passes along the eastern boundary of parcel 257.
5. In terms of Cinders Lane, the appellant suggests that the depiction on the Map is consistent with an easement over private land for a bridleway. The map shows the land enclosed at either end, and it seems to me that the route might be more likely to be a private way to access the property at Park Farm rather than a public route. Equally the dashed line through parcel 226 and parcel 254 does not lead to any clear conclusions as to its status.
6. Tithe maps are considered to be generally good evidence of the roads that they portray, especially those which form boundaries of titheable land. However, they may not necessarily provide good evidence of public rights of way or the nature of any public rights that may exist. I consider that is the case with this evidence, and that it does not provide particular enlightenment as to the nature of the route A-B-C-D.

Boundary Remark Books 1872

1. The appellant makes the case that the Boundary Remark Books show the claimed route at numerous points. However, the extracts that have been highlighted show the route marked as a footpath. The maps which show sections of the appeal route also show a stile on one of the boundaries of Yapton and Climping and another stile is identified on the boundary of Middleton with Felpham. This is consistent with footpath use.
2. Boundary Remark Books were produced with the purpose of determining the boundary for each parish, rather than the existence and status of a route. Nevertheless, in this case the extracts from the Books identify that at those parish boundaries the appeal route was identified as a footpath, and these Books do not indicate any higher status.

First Edition of the Ordnance Survey County Series Map 1874-76

1. Ordnance Survey Maps can provide an accurate picture of the area at the time of the survey. The extract showing Park Farm shows a dotted line following the route of C-D. The map does not provide clear information to help determine the status of that part of the route on the ground at that time.
2. With the route A-B, Cinders Lane, the OS First Edition identifies this area as parcel 265 and the entry in the Reference Book says road. The Council make the point that the surveyors mapped physical features rather than the legal position.
3. The extract of the OS First Edition does not appear to show route D-E. The route on the map then follows the route of footpath 165 south towards Ancton.
4. With the exception of the section D-E it is agreed that the route shows a similarity with the route shown on the Yeakell and Gardner’s Sussex Map 1778-1783.

Auction Sale Particulars Plan dated 1862

1. The sales details show the diagonal path of the route across the field from B-C and the plan shows this is marked as a footpath. The sale details refer to Cinders Lane as a private road. I consider that, while this in isolation should be treated with some caution it, nevertheless, provides some supporting information as the details explicitly specify the status of these routes at the time of the sale.

Ordnance Survey 1st Edition LXXIV 1876

1. This map depicts the claimed route from points E-G using single dashed lines. The rest of the claimed route is not shown.

Ordnance Survey Map Sheet LMV (74) 1879 (1885)

1. This map shows the claimed route from points E-G as a faint dotted line. The rest of the claimed route is not shown.

Ordnance Survey LXII (62) 1880

1. The Council explain that this map shows the claimed route from points B-C and part of the route C-D. The Committee Report comments that some of the claimed route from the beginning of point C-D may possibly be shown but it is met by a hedge, so it is not possible to determine whether the route is definitely shown. The claimed route at the above points is depicted by a faint dotted/dashed line. The claimed route from Park Farm to point D is possibly shown by double dashed lines. The rest of the claimed route is not shown.

Ordnance Survey 62/16 Sheet 62 1876

1. This map shows the claimed route from points A-D. The claimed route is depicted using double dashed lines from B-D. The rest of the claimed route is not shown.

West Sussex County Council Adcocks Map 1894

1. The Committee Report explains that this Map shows the claimed route from A-D depicted as a single dashed line. It also shows a portion of the claimed route from Ancton Farm from points G-F as a single dashed line. The rest of the claimed route is not shown.

Quarter Sessions Map 1905

1. The Council explain that this Map was produced for purposes relating to a proposed bridge and covers the area of Littlehampton, Climping, Yapton and Rustington. The Map does not show the claimed route from points A to B, but it does depict the rest of the claimed route with dashed lines. The Council explains that the route is labelled as “FP” in several places between points B-C, C-D, D-E and E-F. It is understood that Bridge papers relating to the building and repair of bridges were deposited as Quarter Sessions to give them legal validity. The documents show land to be crossed, including existing public highways. Consequently, these documents are considered a good source of evidence for the existence and status of public routes and, in this case, supports the contention that the routes are footpaths.

Finance Act 1910

1. This was information that was included in an addendum to the applicant’s statement, and it is argued that this is relevant to the A-B section of the route, Cinders Lane. An extract from the Finance Act Map is included and on which Cinders Lane is shown as uncoloured and not included in the hereditaments. This indicates a strong possibility of vehicular rights although this is one part of the jigsaw of considerations to be considered along with other relevant material particular to each case and I note that the route A-B was recorded as a private road in the auction details.
2. At the application stage submissions were lodged on behalf of the owner of the section C-D. This included some details of the 1917 Conveyance and Acreage Schedule that the road (A-B) was privately owned, and it is said that the double-pecked line running south-east (B-C) was a footpath. This information appears to me to indicate that the road was private but had footpath rights over it at that time.

Quarter Sessions Map 1920

1. The details from the Committee Report explain that this Map was produced for the Ford and Climping Light Railway and covers the areas of Yapton, Ford and Climping. While the plan of the railway does not show the claimed route, the map of the area depicts the claimed route using dashed lines on the Map and the key labels this as a footpath.

OS County Series 1:2500 Sussex 1938-39

1. This map extract shows the diagonal route from B-C across this field with the northern section joining with Cinders Lane. There is no clear information with this Map that assists with understanding the status of the route.

Draft Definitive Map

1. This Map shows the majority of the claimed route as footpaths 165 and 166. The application route A-B and C-D is shown as a purple line and is labelled “FP 166”. The claimed route from E-G is shown as a purple line and is labelled “FP 165”. The claimed route from B-C and D-E is depicted using double dashed lines and is labelled as “FP”.

Provisional Definitive Map

1. This Map largely replicates what is shown on the Draft Definitive Map, however, only part of the claimed route from points B-C is depicted using double dashed lines.

Chichester Definitive Map July 1952

1. This map shows the route, instead of crossing diagonally from B-C, to follow the northern and eastern boundaries in this area. The appellant indicates that the recording of the route changing was due to the Yapton allotment site moving, from a site to the north, to one at the end of Cinders Lane.
2. The appellant explains that she has searched the London Gazette, and identified a raft of changes to the definitive map dated 8 August 1956 in which the only path whose route was being amended in the Yapton Parish was No 359.
3. The applicant asked WSCC Legal Services if they had any information about a diversion between 1932 and the first Definitive Map, and received a reply on 16th October 2018 that the path was recorded in the “moved” position from the first draft and WSCC Legal Services could not find evidence of a diversion on Path 166’s file.
4. With reference to the section F-G, it appears that the route was recorded on the first Definitive Map as crossing diagonally between these two points. However, there is evidence that the diversion was advertised in the London Gazette, and it was formally diverted in 1954. The route now passes from point F along the eastern side of the field and then to the south rather than across to point G. However, the appellant argues that as part of the research for this application there had been the discovery of new evidence and that, on the balance of probabilities, this previous route had higher rights than that of a footpath and those higher rights, in the form of bridleway use, should remain on the original line.

**Representations**

1. There have been representations, including from landowners, local residents, developers of the housing at Yapton through which route B-C passes, and representatives of these parties, as well as The Open Spaces Society and Parish Councils.
2. Many of these representations raise concerns with the practical implications and amenity concerns of a bridleway running across the identified route including for B-C through the new housing development and allotments, and for route F-G through an existing caravan park. However, these are not matters that can be taken into account in determining whether the route A-G should be recorded to have the status of a bridleway. The determination rests, in this case, on the historical evidence and whether the legal tests have been met.
3. Some owners and/or their legal representatives comment on the submitted historical information and make the case that there is no (or certainly insufficient) evidence to justify the upgrading of the footpath to bridleway status. In particular, in terms of the 1564 evidence, it is said that the interpretation of the appellant is incorrect, that it cannot be known with any certainty where the route which is described went and there is no basis for the conclusion that the appeal route was a public carriageway.
4. The Open Spaces Society support the application and the appeal to provide bridleway status along the route.
5. The owner of much of the land through which section C-D of the route passes submitted a landowner deposit in 1993, and renewed this in 1999, 2005 and 2015. Such deposits often provide clarity in demonstrating that a landowner did not intend to dedicate any ways across their private land, other than those on the DMS, for public use. In this case, the submissions to support the appeal are based on archive documentary evidence as opposed to user evidence and therefore the deposits are not relevant for the purposes of the assessment in this case or for arguing to negate the claim. There is, especially the case having regard to the legal presumption that once a highway always a highway.

**Conclusions**

1. The appellant has produced considerable research and evidence. The County Council has also undertaken detailed research and other bodies and local residents have commented.
2. There are two elements to the claim. Sections of the public rights of way network which are footpaths are claimed to be bridleways and linking routes are argued should be added to the DMS as bridleways.
3. Different tests apply in each case. For those parts of the proposal which seeks to upgrade the status of the routes, the evidence should be on the basis of the balance of probabilities. For those where a route is sought to be added, the test is where it is reasonable to allege that a right of way subsists.
4. The appellant takes the starting point for the analysis as the Court Session held at Madehurst in 1564 and that this describes a Queen’s Highway, used by horsemen and pedestrians, that ran through Ford Park. While the appellant concludes that this route could only refer to the claimed route, as I have commented above, there is no map, it is a broad description, and it is not possible to determine the exact route. There has been no subsequent, convincing historical evidence to show the alignment of this way at such a status of rights. In all these circumstances, I have come to the conclusion that very little weight can be attributed to the information from 1564. I do not consider that this information can form the starting point for subsequent considerations of the status of the route and that other Maps are much more instructive and which help build a picture of the alignment and status of any public access rights.

Route C-D

1. Looking at the individual sections of the route and starting with C-D. This is shown on Yeakell and Gardner’s Sussex Map 1778-1783 but there is no indication of its status. With the First Ordnance Survey Old Series Map of Sussex 1813 and Greenwood and Greenwood Map of Sussex 1825, a route is shown only to Park Farm. This indicates to me, on the balance of probability, that this was a private route to the Farm and does not indicate that there were wider rights that allowed horseback use that can be reasonably inferred from this information. The route appears on the Yapton Tithe map, for those sections within that area, but again does not indicate the status of the route.
2. The Boundary Remark Books 1872 identify this part of the route, at the Parish boundaries, as footpaths. The First Edition of the Ordnance Survey County Series Map 1874-76 shows the route C-D as now identified on the Definitive Map, but this 1874-76 map has no clear information again of status. The Council also confirm that the West Sussex County Council Adcocks Map 1894 shows the route C-D as a single dashed line. The Quarter Sessions Maps of 1905 and 1920 show this route as a footpath.
3. Drawing all these matters together for route C-D, there is historical information based on the mapping that some form of route linked these points via the Park Farm site. The route was added to the Definitive Map and Statement as a footpath (No 166) and there is no persuasive evidence that the route had higher rights in the past. It follows that, on the balance of probabilities, I conclude that the route is a footpath and that the claim to upgrade this part of the network to a bridleway has not been justified.

Route E-F

1. Much of the same arguments and conclusions apply in terms of the section of the claimed route E-F. For instance, the Boundary Remark Books 1872 show the route as a footpath at the parish boundary. This supports the contention that this route was known as a footpath at that time, and the other information does not lend clear or convincing information to dispute this status or indicate higher rights. I therefore conclude, on the balance of probabilities, that the route E-F does not have higher status rights than as a footpath.

Route F-G

1. In the past there is evidence that the route extended from point F to G. However, this was the subject of a Diversion Order in March 1954, and which was confirmed in September 1954. The route along public footpath 165 was extinguished for the section F-G and moved to the east. This process removed the footpath rights along the section F-G. As I am not satisfied that the connecting section of footpath 165 from point E to the south had any higher status rights or in itself that there is any reasonable evidence that this section F-G had any status other than a footpath, it follows that the claim that there are bridleway rights along the original route (F-G) is not accepted. I therefore conclude that it is not reasonable to allege that a right of way subsists along the route F-G.

Route B-C

1. In terms of examining the section B-C of the claim, this alignment passes diagonally across an area which was then on the edge of Yapton. For the reasons I have concluded in respect of the section C-D, I also consider that a route from C to the end of Cinders Lane (B) should also be considered to have footpath status. A component of this assessment is that the auction plan of 1862 identifies the route as a footpath. There is no reasonable and clear evidence that would allow higher rights to be concluded, especially as this is a continuous route with section C-D. Nevertheless, a key issue for B-C is what should be the correct alignment of the route or routes that should form part of the DMS.
2. The balance of the evidence is that this route originally followed the alignment B-C. It was not until the mapping for the Definitive Map that there was divergence of the route in this area between B and C. The appellant’s evidence is that the first Definitive Map was the Chichester Definitive Map July 1952. The Council’s evidence is that the Draft Definitive Map, showed the route B-C labelled “FP” and was depicted using double dashed lines. At the Provisional Definitive Map stage, the Council explain that only part of the route B-C was depicted using double dashed lines and it is assumed that this was because of the allotments that had then intervened along this route.
3. The Chichester Definitive Map July 1952 then shows the route passing from the end of Cinders Lane at point B to the east and then south around the edge of the allotments and field before joining at point C.
4. The appellant indicates that, as I have detailed above, WSCC Legal Services was asked by the appellant if there was any record of the diversion between 1932 and the first Definitive Map and there was no evidence on the file. It is also said in contrast that there were other diversion orders, such as the one that moved the route F-G.
5. There is the legal presumption that once a highway always a highway and there is logic in the assumption that if the evidence shows route from point D up past Park Farm and onto point C then it is reasonable that the historical route also continued as a footpath diagonally to point B. Indeed, there is mapping evidence to confirm this. This presumption of a footpath along this alignment must prevail unless some legal event causing the highway to cease can actually positively be shown to have occurred.
6. There is also the legal presumption of regularity, and this can be invoked where there is a lack of evidence on whether proper legal procedures were followed. However, while the surveyors mapping the route should have been aware of the processes involved, there seems to be no record of any formal realignment of the route B-C to pass around rather than across this former field.
7. It can be understood that once the allotments had been provided it would have made practical sense to walk around their boundary but that does not mean that the route was formally diverted, as was the case with some routes, after the Definitive Map has been published. There is no substantive reason to believe that the records for route B-C are incomplete or that any formal diversion process was untaken in this case. Consequently, this does not appear to be a situation when the legal presumption of regularity can be invoked.
8. On the ground, at the present time, the diagonal route B-C would pass through the housing development and allotments. However, based on the analysis above and the legal presumption of once a highway always a highway, it is concluded that the route was established and there is no evidence that the appropriate procedures were followed to divert or extinguish it.
9. Drawing these matters together, the claim is that route B-C should be added to the DMS as a bridleway. The evidence indicates the connection should not have higher status rights than as a footpath. Therefore, I conclude that the claim that the route B-C should have bridleway status, in the circumstances where it connects with the end of a footpath as a continuous route and in conjunction with the other evidence, cannot be reasonably alleged to subsist. However, I conclude that the route B-C was historically a footpath, has not been extinguished or diverted and should be added to the DMS as a footpath.

Route A-B

1. For the route A-B, which follows the alignment of Cinders Lane, this is presently designated as a public footpath. Cinders Lane appears to be a long standing route accessed off the adjoining main road. On the First Ordnance Old Series Map of Sussex 1813, Cinders Lane connects with the route to Park Farm, but this does not especially help with understanding the status of the route. This is similar with the Greenwood and Greenwood Map of Sussex 1825. The Tithe Map for Yapton which shows Cinders Lane does not provide clarity on the status of this route at that time and, therefore, this map is not especially instructive. The First Edition Ordnance Survey County Series Map 1874-76 shows the parcel along Cinders Lane as a road and this may be an accurate picture of the landscape at the time of the survey, but this was the identification of a physical feature rather than confirming or ascribing rights.
2. The Finance Act 1910 Map gives a strong indication of the possibility of vehicular rights, however, this is contradicted by the auction details in 1862 and the 1917 Conveyance and Acreage Schedule that both indicate that Cinders Lane (A-B) was a private road.
3. The route from B-D was, on the evidence, a public footpath, with, in my view, in the past only private rights to travel to Park Farm by other means. Cinders Lane (A-B) is the connection from the main road to point B. Up until the allotments were moved to the end of Cinders Lane, the only land that Cinders Lane would appear to access was Park Farm and other farmland. I do not consider that the evidence indicates that it was or could be a through route for horse riders or other vehicles. Outside of those accessing Park Farm and walking the route to Point D, Cinders Lane was a cul-de-sac which did not lead to any other site for the public to need to access. Drawing all these matters together, and accepting that not all the evidence pulls in the same direction, on the balance of probability, I do not consider that route A-B has higher rights for the public than as a footpath.

Route D-E

1. The remaining section of the route to consider is D-E. The Yeakell and Gardner’s Sussex Map 1778-1783 shows this route D-E in a similar way to other routes through this section of farmland which the evidence, taken in the round, indicates have rights as public footpaths. This route is not shown on all maps, but it does appear on the Ordnance Survey map of 1896-97, where it is marked as a public footpath and again in 1910, as well as 1938-39. Given the connections with it linking with other footpaths as a continuous route on some maps, and the fairly consistent historical information, it is considered that for the route D-E it is reasonable to allege that a right of way subsisted in the past for a footpath but not in terms of any higher status, including for the bridleway which is alleged.
2. Drawing all these matters together, I have carefully considered all the evidence, in particular, that from the appellant and the arguments made in favour of the claims to upgrade the status and to add public routes. However, I am not satisfied that the legal tests for the upgrading or adding of bridleway status to the various sections of the route A-G have been met and I conclude that these elements of the appeal should be dismissed. Nevertheless, I conclude that for the routes B-C and D-E it is reasonable to allege that a public right of way subsists, in the form of a footpath, and accordingly, I conclude that an order or orders should be made in those respects.

**Formal Decision**

1. I dismiss the appeal for the respective sections for upgrading to or adding bridleway status along the alignment of the route A-G.
2. In accordance with paragraph 4(2) of Schedule 14 of the 1981 Act, West Sussex County Council is directed to make an order or orders under section 53(2) and Schedule 15 of the 1981 Act, within three months of the date of this decision, to add public footpaths as shown on the plan between B-C and D-E appended to this decision.
3. This decision is made without prejudice to any decisions that may be given by the Secretary of State in accordance with his powers under Schedule 15 of the 1981 Act.

David Wyborn

INSPECTOR

