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| **Interim Order Decision** |
| Inquiry Opened on 31 October 2023Site visit made on 30 October 2023 |
| **by A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practicing)** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 6 February 2024** |

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| **Order Ref: ROW/3292846** |
| * This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Hampshire (Test Valley Borough No.68) (Parish of Andover and Parish of Longparish) Definitive Map Modification Order 2020.
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| * The Order is dated 9 December 2020 and proposes to modify the Definitive Map and Statement for the area by adding a bridleway and upgrading a length of footpath to bridleway as shown in the Order plan and described in the Order Schedule.
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| * There was one objection outstanding at the commencement of the inquiry.
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| **Summary of Decision: The Order is proposed for confirmation subject to the modifications set out below in the Formal Decision.** |
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Procedural Matters

1. I made an unaccompanied visit to the claimed route on 30 October 2023. A public Inquiry into the Order was held on 31 October 2023 and 1 November 2023 at Longparish Village Hall. At the Inquiry, Hampshire County Council, the Order Making Authority (the OMA), spoke in support of the Order.
2. The land that forms part of the Order route as shown between points C-D on the Order plan, is unregistered. As such, the OMA has provided confirmation that a direction under schedule 14 of the 1981 Act was sought from the Secretary of State for Environment, Food and Rural Affairs that the OMA need not serve a notice on the landowner, and that such dispensation was granted in May 2023.

Background and The Main Issues

1. An application was made under Section 53 of the 1981 Act in November 2007, which sought to add to the Definitive Map and Statement (the DMS) a bridleway from The Middleway to Longparish Footpath 27b, and to upgrade a section of Longparish Footpath 27b and upgrade Andover Footpath 68, to Bridleway. Hampshire County Council resolved to approve the application on 11 September 2019.
2. The Order is made under section 53(2)(b) of the 1981 Act on the basis of events specified in sub-sections 53(3)(c)(i) and 53(3)(c)(ii) of the 1981 Act. Section 53(3)(c)(i) requires the discovery of evidence which shows, on a balance of probability, that a right of way subsists, or is reasonably alleged to subsist, over the way in question. However, at this stage, if I am to confirm the Order I must be satisfied, on a balance of probability, that the public rights do subsist. Section 53(3)(c)(ii) requires the discovery of evidence which shows, similarly on the balance of probability, that “a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description”, in this case that Andover Footpath 68 and parts of Longparish Footpath 27b should instead be shown as a bridleway.
3. In respect of documentary evidence, Section 32 of the Highways Act 1980 (the 1980 Act) requires a court or tribunal to take into consideration any map, plan or history of the locality, or other relevant document, which is tendered in evidence, giving it such weight as is appropriate, before determining whether or not a way has been dedicated as a highway.
4. Dedication through public use arises either by presumed dedication as set out in Section 31 of the 1980 Act, or by implied dedication under common law. The 1980 Act requires consideration of whether there has been use of a way by the public, as of right and without interruption, for a full period of twenty years prior to its status being brought into question and, if so, whether there is sufficient evidence that any landowner demonstrated a lack of intention, during that period, to dedicate a public right of way.
5. At common law a right of way may be created through express or implied dedication and acceptance. Dedication may be presumed if there is sufficient evidence, from which it could reasonably be inferred, that the landowner has dedicated a right of way and the public has accepted that dedication. No minimum or fixed user period is required for the dedication of a public right of way at common law.
6. The main issue is whether the evidence, when considered as a whole, shows that a bridleway subsists over the Order route shown between points A-B on the Order plan and that sections of footpaths shown between points B-C-D on the Order plan ought to be upgraded to bridleway status with the particulars contained within the DMS being modified as a result of the upgrading. My decision is reached on the balance of probability.

Reasons

***The Order Route***

1. The Order route commences from a point on The Middleway (at point A) and runs in a generally northeast direction through wooded areas of Harewood Forest, to a point where it meets Longparish Footpath 27b (at point B). The Order route then follows the line of Longparish Footpath 27b northwards, crossing over the parish boundary (at point C), becoming Andover Footpath 68, before terminating at the junction with London Road (at point D). On my visit, I observed that, in places along the Order route, a concrete surface could be seen under the surface soil, fallen leaves and other tree debris.

***Documentary Evidence***

1. Copies of Ordnance Survey maps (OS maps) have been provided. The 1873, 1895 and 1910 editions of County Series OS maps do not appear to show any feature which corresponds with the Order route. However, the later 1946 (Revised 1940) County Series OS map and a 1961 OS map (National Grid) appear to show a trackway as a discernible feature on the ground and which aligns with the Order route.
2. Records from the landowning estate have been submitted in evidence that includes an entry from the Estate’s Record Book dated for 1955, and which states, “*At this date (Feb 1st 1955) Harewood Forest had not been derequisitioned by the Air Ministry & Bomb Disposal Squads were still operating therein*”. Undated maps of Harewood Forest have also been submitted and which, it has been put to me, show the extent of the Air Ministry’s operations.
3. I have also been provided with copies of records relating to the preparation and publication of the DMS. Andover parish maps used in the preparation of the First Definitive Map, include a notation for Andover Footpath 68 but do not show the Order route. Similarly, Longparish Parish maps show Longparish Footpath 27 but do not depict the Order route from the Middleway to its junction with Longparish Footpath 27. Whilst the Order route is not shown, Andover Footpath 68 and Longparish Footpath 27 are both shown on the First Definitive Map (1957).

*Conclusions on Documentary Evidence*

1. The OS maps record the physical features, such as routes, present at the time of the survey. The trackway which is discernible in the 1946 (Revised 1940) and 1961 OS maps, but which does not appear on the earlier editions, appears to correlate with the use of this wooded area during World War II, by the Air Ministry, for the storage of ammunition, and for which concrete tracks were installed on the ground. There does not appear to be any dispute between the landowner and those who support confirmation of the Order, that the area of Harewood Forest used for ammunition storage was not decommissioned until after 1 February 1955, and that public access to the forest would have been prevented by the Air Ministry until such time as the area had been fully decommissioned.
2. None of the records relating to the publication of the DMS show the Order route. It is noted that the relevant footpath and section of another footpath, as shown between points B-C-D, were claimed and recorded on the Definitive Map during its preparation as footpaths. However, it does not necessarily mean that public rights as a bridleway were not acquired subsequently.

**Section 31 of the 1980 Act**

*The relevant twenty-year period*

1. It is necessary to determine when the claimed rights of way were brought into question, and so that the statutory period of twenty years can be calculated up to that date in accordance with section 31(2) of the 1980 Act.
2. The owner of the estate through which the Order route runs deposited a map and statement and declaration under the provisions of section 31(6) of the 1980 Act, to Hampshire County Council, in 1993. Such notices and deposits enable landowners formally to acknowledge the rights of way across their land and, in doing so, create a presumption that they have no intention to dedicate any further routes across their land.
3. Within the submissions in this case, it has been put to me that challenges were issued by gamekeepers and estate staff to those members of the public who they saw within Harewood Forest and who were not on an established public right of way. Furthermore, it is maintained that fencing was previously installed, and which prevented access onto the Order route from the Middleway. Whilst I shall return below to consider challenges to use by the landowner, the evidence before me indicates that the installation of the fencing occurred after 2000. As such, that obstruction was first encountered after the date on which the abovementioned deposit under section 31(6) had been made.
4. In respect of the above matters, I am satisfied that, on the balance of probability, that the use of the route was brought into question in 1993 when the deposit was made under section 31(6) of the 1980 Act by the landowner. Consequently, the relevant twenty-year period is from 1973 to 1993.

*Evidence of use*

1. From those who completed User Evidence Forms (UEFs) or sent letters regarding the Order route, fourteen users provide evidence of use, on foot, on horseback and by bicycle, during the relevant twenty year period. Reported use of the Order route on foot or by bicycle occurred since the 1950s, and on horseback (including the leading of horses with young riders) since the 1970s. A number of additional UEFs were also completed and submitted, but for which reported use only occurred after 1993 and, therefore, confirms use only after the date at which the claimed rights were brought into question by the deposit made in 1993 by the landowner. Further UEFs were provided, but for which no dates of use and no details of frequency of any use, had been provided.
2. With regards to use on horseback, one user, who was not available to provide evidence at the Inquiry but who had provided a completed UEF, reported use of the Order route three times per week after 1987. At the Inquiry, a further witness provided evidence of substantial use on horseback at weekends and during school holidays after 1990. Two further UEFs reported use on horseback approximately twice per week for the period 1978 up until 2006. Only one user, who provided evidence in the form of a completed UEF dated August 2023, reported use of the Order route during the whole of the relevant twenty year period. That UEF indicates that use of the Order route during the period 1973 to approximately 2010, was on foot, by bicycle and on horseback, daily.
3. The evidence from six persons who completed UEFs or submitted letters in support of the confirmation of the Order, reported use by bicycle during the relevant period. Three users reported frequent or daily use by bicycle for the whole of the relevant period, with two users reporting that use on bicycle occurred after 1987. One user who had indicated on their UEF that use on bicycle occurred up until 1985, conceded at the Inquiry that such use was only up until the late 1970s and confirmed that frequency of use of the Order route decreased after they started riding a motorcycle in about early 1967.
4. A greater amount of evidence has been provided with regards to use on foot. In that respect, fourteen users reported use on foot during the relevant period, with six of those users confirming such use over the entire relevant twenty year period. Frequency varied between daily use up to use only once or twice a year on foot.

*Use as of right*

1. In order for any use of the Order route to give rise to a presumption of dedication, it is also necessary to consider whether or not that use was ‘as of right’. The use as of right requires that the use be without force, without secrecy and without permission.
2. There is nothing before me which indicates that any use of the Order route was with force or that use was in secret, with the evidence providing that users of the Order route previously reported to the landowner when seeing poaching or use of motorbikes.
3. In terms of permission there is, however, evidence in the form of a letter dated 1980, from the landowner to one of the users who had completed a UEF, and which provides permission for riding in Harewood Forest provided that they kept to recognised tracks. The circumstances that led to that letter being issued are unknown. The letter was addressed to one of the users who reported use on horseback from 1978. The husband of that recipient whose UEF reported use on horseback since 1978, was not specifically named. I acknowledge the submissions from the main parties and from the husband of the recipient with regards to whether the letter should be taken as also providing permission to the husband. In my view it would have been apparent to both of those users that permission had been provided to someone within the same household. I therefore disregard their evidence of use on the basis that the use was not ‘without permission’.

 *Conclusions on use as of right*

1. Whilst noting the above, I do not find that use by some who had been provided with permission, would necessarily negate use by others who did not seek or were not provided with permission to enter the land. There is no evidence to suggest that sufficient steps were taken by the landowner to inform the public that permission was required to enter the land or that other users who have submitted evidence of use, used the claimed routes with permission.
2. I am satisfied that, on the balance of probability, the evidence demonstrates that use of the claimed routes was made without secrecy, without permission and without force. Consequently, I am satisfied that use of the claimed routes was ‘as of right’.

*Interruption*

1. Turning to whether use was without interruption, in order to be effective an interruption must be with intent to disabuse users of any belief that there was a public right. In that regard, it appears that barriers were previously erected after 2000, close to point A on the Order plan. As such, those barriers did not form an interruption to use until after the end of the relevant twenty year period.
2. Nonetheless, it has been put to me in objection to confirmation of the Order that there were forestry management activities taking place within Harewood Forest during the relevant period and which would have interrupted use. Evidence in the form of Forestry Commission and estate records were provided and which indicated specific areas of Harewood Forest which had been subject to land management activities such as tree felling between 1964 and 1974. However, it is clear that those records only show that such works were carried out away from the Order route. As such, the evidence supports the position that use during the relevant period was without interruption.

*Lack of intention to dedicate*

1. The evidence strongly supports the contention that signage was erected, to the effect that the route was not a public right of way, only after 2000 and therefore outside of the relevant twenty year period.
2. In objection to the Order, evidence was submitted by a number of employees of the landowner which provided that challenges were issued to anyone found to be within Harewood Forest but not on a recognised public right of way. Whilst noting those submissions, none of that evidence confirms that any such challenges were issued to those who were specifically using the Order route, and all except for one of those employees only started their employment with the landowner after 1993, being the date at which use of the route was brought into question.
3. One gamekeeper who provided oral evidence at the Inquiry confirmed that, whilst maintaining that he issued challenges to anyone seen within the forest but not on a recognised public right of way, he could not recall any specific details of challenges issued to anyone found on the Order route. However, that gamekeeper also maintained that he had specifically challenged one of the users who had reported on their UEF use on foot. In that regard, the user gave oral evidence to the effect that he recalled speaking to that gamekeeper but that no challenge was issued, but rather that use was tolerated with the gamekeeper pointing out features of interest within the forest.
4. The user evidence does also confirm that some challenges were issued by the landowner’s employees, but that such actions only occurred after 2000 and therefore outside of the relevant twenty year period. In light of the above, on the balance of probabilities I do not find that there is sufficient evidence of a lack of intention to dedicate a right of way by the relevant landowner over the claimed route.

*Conclusions on evidence of use*

1. The Order route is located at the edge of the forest and within a semi-rural area outside Andover. The surrounding area is dominated by the forest. Nonetheless, the Order route is in an area where there is residential development and which is located north and northwest of the route.
2. In terms of use of the Order route on horseback during the relevant twenty year period, only one user reported use over the entire period, with two users only reporting use during the period 1987 to 1993. It has also been established that one of those who reported use on horseback from 1978, also had permission from the landowner for such use after 1980, and it is apparent that another, who also reported use on horseback from 1978, was aware that that permission to ride within Harewood Forest had been provided by the landowner to his wife.
3. Whilst the evidence of that user who reported use on horseback covering the entire relevant period was not tested at the Inquiry, evidence from members of their household indicated that they did not reside within the area for the period between approximately 1974 and 1983. Moreover, the use of the Order route during that time and whilst visiting relatives, was infrequent. From the evidence before me, I find it probable that use over such a period was predominately on foot.
4. The numbers of reported users of the Order route on bicycle during the relevant period, is low. The evidence indicates that two of those users who reported such use over the entire period on their UEFs, had moved away from the area for the period between approximately 1974 and 1983. Their use was likely to be predominately on foot as part of infrequent visits to the area during that time. Furthermore, from oral evidence given at the Inquiry by the third person who reported use on bicycle over the entire period, it appears that frequency of use decreased significantly after 1980.
5. In addition to the above, the evidence before me indicates that a significant portion of those who reported use by bicycle, were residents of properties located on London Road and which adjoin the forest. It appears that access onto and off of the Order route was taken directly from the rear of the gardens of those properties during certain periods of reported use. As such, on the balance of probabilities, it is likely that, especially in the case of those who reported use on bicycle in order to visit friends and family who also lived at properties which are adjacent to the edge of the forest, the entire Order route was not used by persons riding bicycles.
6. For the above reasons regarding the numbers of persons, frequency and duration of use during the relevant period, I do not find that the evidence of equestrian use alone is sufficient to reach the conclusion that the Order route subsists as a bridleway. Notwithstanding that conclusion, the OMA maintains that the reported use by bicycle would also add to the conclusion that the Order route is a bridleway. However, in objection it has been put to me that use on bicycle can support the conclusion that the Order route is a bridleway only where there is sufficient evidence of a pre-existing bridleway.
7. In that regard, both the OMA and the Objector referred me to the Court of Appeal Judgment in the matter of Whitworth v Secretary of State for Environment, Food and Rural Affairs [2010] EWCA Civ 1468 (“Whitworth”). A principle established in Whitworth was that where the evidence pointed to a long-established but unrecorded bridleway subsequently being used by the public with bicycles, that later use with bicycles should be attributed to the bridleway status that was established first, given that that status would be the least burdensome interference with the landowner’s property rights.
8. In the matter that is before me, it has not been argued that there was a long established but unrecorded pre-existing bridleway prior to the first reported use on bicycle. Nonetheless, even when the evidence of reported use on horseback and by bicycle is combined, given the above reasons regarding numbers and frequency of use on bicycle and on horseback, and the conclusion that a significant portion of users on bicycle are unlikely to have used the entire length of the Order route, I do not find there is sufficient evidence of use on bicycle and on horseback together to reach the conclusion that the Order route subsists as a bridleway.
9. Furthermore, in respect of whether the evidence of use by cyclists in combination with later reported use on horseback could support the establishment of a restricted byway over the Order route, for the same reasons given above, even when such evidence of use is combined, I do not find there is sufficient evidence to reach the conclusion that the Order route subsists as a restricted byway.
10. The OMA has put it to me that should it be concluded that there is insufficient evidence to support the confirmation of the Order as made, consideration should be given to the modification of the Order so as to record a public footpath over the Order route.
11. In that regard and as noted above, I find that there is substantial evidence of use on foot during the relevant period. Whilst there are some familial relationships between a number of those who provided evidence of use, I am satisfied that the user evidence before me represents the use by the public from a number of distinct and separate households.
12. On the balance of probabilities, I conclude there is sufficient evidence of use by the public on foot, as of right and without interruption throughout the relevant twenty-year period. Such use appears to have been made by members of the public that reside within the wider surrounding area and that there has been such use over the entire route between points A-B on the Order plan. As such and by reason of the numbers of persons and frequency of use, there is sufficient evidence to raise the presumption that the Order Route between points A-B as shown on the Order plan has been dedicated as a footpath. I do not find that there is sufficient evidence of a lack of intention to dedicate rights of way by the relevant landowner. The routes shown between points B-C and between points C-D on the Order plan are currently recorded as public footpaths within the DMS.

**Common Law**

1. For the reasons given above, I have found that the user evidence is sufficient to raise the presumption that the Order route between points A-B has been dedicated as a footpath under statute. As such, it is not necessary to consider the position with regards to the dedication of a footpath at common law.
2. Turning to the common law position in relation to the entirety of the Order route as either bridleway, or restricted byway, I do not find that indications of use, such as the presence of tracks and signs of wear, would have made it apparent to the landowner that there was public use of the route on horseback or by bicycle. In that regard, it would not have been possible for the landowner to know whether such tracks or signs of wear represented public use or use made by those to whom permission had been given to ride, or use made by gamekeepers or other employees of the landowner.
3. As noted above, reported use on horseback did not commence until 1973. Furthermore, I do not consider that the reported use on bicycle during the period from 1955, when it appears that use of the forest by the Air Ministry for storage of ammunition had ceased, up until 1973, is sufficient to support dedication at common law, for either a restricted byway or a bridleway. Overall, I do not consider that there is evidence of any actions by the landowner that amounted to acquiescence to public use of the route on horseback or by bicycle. Consequently, on the balance of probabilities, I do not consider that the burden of proof to show that common law dedication of a bridleway or restricted byway, has been met.

**Other Matters**

1. The OMA has advised that some of the grid references given on the Order schedule in respect of certain points on the Order route, are as result of typing errors and, as such, requests modifications to correct those details. However, in light of the above conclusions that there is insufficient evidence to upgrade the status of the existing footpaths, it has not been necessary for me to make the requested modifications in that regard. Nonetheless, I shall propose to make the below modification in respect of the status of the right of way to be added to the DMS, with further modifications to delete the text within the Order schedule which relate to the upgrade of connecting rights of way.

Overall Conclusions

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

**Formal Decision**

1. I propose to confirm the Order subject to the following modifications:
* Delete the text “*Sections 53(3)(c)(i) and (ii) of the Act namely:-*” in the preamble to the Order and insert:

 “*Section 53(3)(c)(i) of the Act namely:-*”

* Delete the text *“(ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description;”* in the preamble to the Order.
* Delete the text “*A Bridleway 3 metres wide*” in Part I of the Order Schedule and insert:

 “*A Footpath 3 metres wide*”

* Delete all the text after “*A total distance of 720 metres*” in Part I of the Order Schedule.
* Delete all the text after “*The following description shall be added to the Definitive Statement for the Parish of Andover*:” and insert:

“*The following description shall be added to the Definitive Statement for the Parish of Longparish:*

 *Longparish Footpath 504*

 *Add:*

 *“Footpath*

 *3988 4562 C87 The Middleway*

 *4026 4617 Footpath 27b*

*From C87 (The Middleway) north-eastwards along 3 metre wide track to junction with Footpath 27b.”*

*NOTE: ALL LENGTHS ARE APPROXIMATE*”

* On the Order plan delete the section B-C-D.
* In the key to the Order plan delete the text “*Bridleway to be added*” and insert:

 “*Footpath to be added*”

1. Since the confirmed Order would show a highway of one description, a way which is shown in the Order as a highway of another description, I am required, by reason of Paragraph 8(2) of Schedule 15 to the 1981 Act to give notice of the proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modifications. A letter will be sent to interested persons about the advertisement procedure.

Mr A Spencer-Peet

INSPECTOR

**APPEARANCES**

**In Support of the Order**

**For the Order Making Authority:**

Miss J Lean of Counsel *instructed by* Hampshire County Council

*who called:*

Mrs B Harding-Rennie Map Review Officer, Hampshire County Council

Mr S Leigh

Mr R Leigh

Mr J Ponting

Mrs J Ponting

Mrs S Hopkins

Mr D Beeson

**In Objection to the Order:**

Mr M Wood ET Landnet Limited *on behalf of* the Middleton Estate

*who called:*

Mr J Heagren

Mr J Edwards

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

Mr D Thornton

**Documents Submitted at Inquiry:**

1. Signed Proof of Evidence of Mr David Beeson.
2. Opening submissions submitted by Miss J Lean on behalf of Hampshire County Council.
3. Closing submissions submitted by Miss J Lean on behalf of Hampshire County Council.
4. Closing submissions submitted by Mr M Wood on behalf of the Middleton Estate.

 