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| **Interim Order Decision** |
| Inquiry opened on 4 June 2024 |
| **by Nigel Farthing LLB** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 5 July 2024** |

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| **Order Ref: ROW/3312595 referred to as Order A** |
| * This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as The Cornwall Council (addition of Bridleways together with the upgrade of Footpaths to Bridleways and a Restricted Byway at Tregonning Hill in the parishes of Germoe and Breage) Modification Order 2021. * The Order is dated 15 July 2021 and proposes to modify the Definitive Map and Statement (DMS) for the area by adding bridleways and upgrading footpaths to bridleways and a restricted byway as shown on the Order plan and described in the Order Schedule. * There were seven objections outstanding at the date of the commencement of the inquiry. |
| **Summary of Decision: The Order is proposed for confirmation subject to modifications which require advertising as set out below in the Formal Decision** |
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**Order ROW/33126100 referred to as Order B**

* This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as The Cornwall Council (addition of Restricted Byways together with the upgrade of Footpaths to Restricted Byways at Tregonning Hill in the parishes of Germoe and Breage) Modification Order 2021.
* The Order is dated 15 July 2021 and proposes to modify the Definitive Map and Statement (DMS) for the area by adding restricted byways and upgrading footpaths to a restricted byways as shown on the Order plan and described in the Order Schedule.
* There were seven objections outstanding at the date of the commencement of the inquiry.

**Summary of Decision: The Order is proposed for confirmation subject to modifications which require advertising as set out below in the Formal Decision** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Preliminary Matters**

1. I held an inquiry at Praa Sands Community Centre, Pengersick Lane, Praa Sands, Penzance commencing on 4 June 2024. I made an unaccompanied site visit on the afternoon of 3 June. I made a further site visit on the morning of 5 June accompanied by representatives of Cornwall Council (“the Council”) and the Objectors.
2. These Orders concern two interlinked routes, each crossing Tregonning Hill. The route the subject of Order A, if confirmed, would result in the majority of what is currently recorded as Footpath (FP) 25 Germoe being upgraded to a bridleway with two minor realignments to reflect deviations of the used route from the recorded footpath route. The southern section of the route, between points K and L, would be upgraded to a restricted byway.
3. The route the subject of Order B is substantially unrecorded on the DMS and would, if the Order is confirmed, be added as a restricted byway. It also incorporates a small section of FP 76 Breage and a slightly longer section of FP 36 Breage, both of which would be upgraded to restricted byway.
4. There are many common features to the documentary evidence for each of the routes and many of the same individuals gave evidence of use of both routes. Accordingly, it was expedient for the two routes to be the subject of a single inquiry and a single decision.
5. Thirteen objections to confirmation of the Orders were recorded of which six had been withdrawn prior to commencement of the inquiry.
6. In this decision I have found it convenient to refer to the Order maps and for ease of reference copies are attached. I shall refer in this decision to the annotation shown on the maps.

**The Main Issue**

1. The Orders have been made under sections 53(3)(c)(i) and (ii) of the 1981 Act which require me to consider whether evidence has been discovered 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 or that a highway shown on the DMS as a highway of a particular description ought to be shown as a highway of a different description.
2. At this confirmation stage a reasonable allegation is not sufficient, and the right of way must be shown to subsist. The standard of proof is the balance of probabilities.
3. The Council, in making the Order A, rely in part upon a presumption of dedication arising further to the tests laid down in Section 31 of the Highways Act 1980 (the 1980 Act).
4. Accordingly, where Section 31 is relied upon, I must establish the date when the public’s right to use the Order routes was brought into question. The evidence must then be examined to determine whether there has been use by the public and that such use has been as of right and without interruption for a period of not less than 20 years ending on that date. Finally, it is necessary to consider whether there is sufficient evidence that there was no intention on the part of the landowners to dedicate public rights during this 20-year period.
5. In the event that the requirements for a presumption of dedication under the 1980 Act are not met, I will need to consider whether there is sufficient evidence to give rise to an inference of dedication at common law.
6. In relation to the sections of the Order routes which are sought to be recorded as a restricted byway, I shall need to consider whether the evidence shows that the routes have the status of a vehicular highway but the right to use them with mechanically propelled vehicles has been extinguished by the provisions of the Natural Environment and Rural Communities Act 2006 (NERC).

Reasons

***Site visit***

1. I made an unaccompanied site visit in the afternoon of 3 June.

Order Route A

1. I began my visit at point L at the southern end of route A alongside Nevada House where the route connects to the C162. At this point, the Order route is a hard surfaced track capable of carrying vehicular traffic. The route proceeds uphill to point J where there is a five-bar wooden gate spanning the track, with a smaller pedestrian gate to the west side. There is a by-pass route to the east incorporating a cattle grid. Between the road and this configuration of gates there is a sign attached to a boulder to the side of the track. The sign includes the following wording ‘This is a road over which the right of way is on FOOT ONLY other than permitted vehicles’.
2. Beyond the gate the track continues uphill towards Tregonning Hill House. There is a wide open grass area to the east of the track and within this is an oval wooden sign mounted on two posts. The sign is weathered and has the appearance of age. It states ‘ PRIVATE – TREGONNING HILL HOUSE – PUBLIC FOOTPATH ONLY’.
3. When Tregonning Hill House is reached the route levels out. The access to the house is to the left (west). The track continues behind some outbuildings between points I and H. At this point the track is no longer concrete but is stoned to provide a hard surface. The recorded route of FP 25 Germoe is obstructed by the outbuildings between points H and I and the Order route deviates around the buildings between these points and thus reflects the current used route.
4. At point G the Order route leaves the curtilage of Tregonning Hill House. Here there is a stone stile, accessible only to pedestrians. Alongside this to the west is a wooden gate which was shut and reinforced by a metal Heras style fence panel.
5. Beyond the gate the Order route continues as an unmade track over the open heath. Initially the worn track is approximately 2 metres wide but this narrows to a sunken channel with a width of approximately half a metre, with grass banks either side beyond which there is heathland vegetation of heather, bracken and gorse which showed no sign of use. At point F Footpath 36 Breage diverges to the north. The Order route continues to point D where it intersects with the Order B route. Between points E and D the Order route departs from the recorded alignment of FP 25 Germoe and FP 76 Breage. There is no evidence of use of the recorded route of these footpaths, the area being heavily overgrown. The adoption by users of the Order route between points E and D is unsurprising as this forms a direct straight line to point D whereas the recorded alignment involves using two sides of a triangle.
6. Between points D and C the Order route has the appearance of an improved stoned track of approximately 2 metres width with narrow grass verges. From point C the track narrows to approximately 1 metre before opening out again as the property known as Stony Acres is reached. From this point the route continues downhill to Barwest as a surfaced road which provides access to a small number of houses. The route terminates where it rejoins the C 162 at point A.

Order Route B

1. The Order route leave the C162 alongside the property known as Hillside at point A, heading in a north-westerly direction. The route is a stoned track of vehicular width with a grass strip in the middle suggesting regular vehicular use. The route provides access to a small number of houses. At the point just beyond the access to the final house (this point is not annotated on the Order map) there is a five-bar wooden gate which was part open. Passing through the gate one enters an overgrown enclosure bordered on both sides by Cornish hedges (a loose stone wall filled with soil which supports a variety of plants and flowers giving the appearance of a natural hedge). The width of the enclosure varies significantly. A narrow, worn path meanders through the thick vegetation to point B. Just before point B is reached the route passes between two stone pillars which have the appearance of gate posts but with no gate evident now.
2. At point C the route intersects Order route A at the crest of the hill. From point C the Order route continues over the hill crossing an open patch of ground before entering a further linear parcel of land enclosed on both sides by Cornish hedges. This enclosure is similar to that between points A and B but is steeper and the vegetation denser. The worn path is similarly narrow and meandering. The gradient eases after point D. At point E there is a wooden five bar gate which was closed but not locked. The gate closes on to stone posts. The gate is in fair condition but has the appearance of some age.
3. Beyond point E the Order route continues as a narrow worn track with equally narrow grass verges and steep overgrown sides. The Order route terminates at point F where it meets the U6022. The physical condition of the route does not change at this point with the U6022 continuing as a narrow overgrown pedestrian track with no evidence of any recent vehicular use.
4. I made an accompanied visit on 5 June when we walked the Order A route in the opposite direction, starting at point A. We then walked a section of the Order B route from point C into the enclosed area south of point B. We then returned to point C and walked as far as point E before returning to point C and thence back to Balwest.

***User evidence***

*Order route A*

1. The application for this modification order was supported by 27 user evidence forms (UEFs), of which 26 gave relevant evidence of use on horse, bicycle and on foot over varying periods between 1944 and 2006. Subsequently a further 27 forms were submitted covering a period from 1938 to 2024. Evidence of pedestrian use is relevant only to the sections D to E and H to I as the remainder of the Order route is currently recorded on the DMS as a public footpath and such use was therefore by right. The UEFs constitute new evidence for the purposes of Section 53 of the 1981 Act.

Twenty-year period

1. For the purposes of a statutory presumption of dedication under section 31 of the 1980 Act it is necessary to establish when the right of the public to use the route as a bridleway was first brought into question. The date adopted by the Council is 2000, being the date when Tregonning Hill House changed hands and the new owner began to take steps to prevent use of the Order route insofar as it crossed her property by horse riders and cyclists.
2. The principal objector argues that the date of bringing in to question should be 2006, being the date of the application for a Definitive Map Modification Order (‘DMMO’). My understanding of her argument is that horse riders and cyclists were not physically prevented from using the Order route until 2007 and that from 2000 she allowed horse riders to continue to use the route on a permissive basis, and this is recorded in email correspondence with Germoe Parish Council. The objector however also states that from the time she took possession of Tregonning Hill House in 2000 she erected signage refuting the right of the public to use the route for any purposes other than as a footpath, and in 2003 she lodged with the Council a statement and declaration pursuant to Section 31(6) of the 1980 Act. In addition, she gave evidence that the gate at point G was closed and locked on Christmas day each year with the intention of preventing public bridleway rights becomming established.
3. The right of the public to use a route is brought into question by an act of the landowner which is inconsistent with the existence of the alleged right and which is brought to the attention of the public. It is not necessary for the claimed route to be made inaccessible. In this case I am satisfied that the actions of the landowner in giving permission to use the route, erecting signs, the annual locking of the gate and submitting a Section 31(6) statement and declaration were sufficient to make it clear to the public from 2000 that their right to use the route other than as a footpath was being challenged. Therefore, the effective date of bringing into question was 2000 and the relevant period of use to be considered is 1980 to 2000.

Use as of right

1. Use is only as of right if it is undertaken without force, secrecy or permission. In this case there is no suggestion that use was undertaken in secret nor by force, although I shall later deal with the effect of the signs that were displayed in the vicinity of Tregonning Hill House within the relevant period.
2. Two of the objectors argue that use of the Order route over the land belonging with Tregonning Hill House should properly be characterised as permissive. It is suggested that many of the users were local people known to the property owners who acquiesced in their use but that this did not extend to the public at large. It is not argued that permission was specifically given to any individuals or to any particular group of users.
3. The form of UEF completed by 54 individuals asks questions about the user’s connection with the land and specifically whether they had ‘ever obtained permission to use the route?’. All the users answer this question in the negative. It is clear that some users may have enjoyed private rights over part of the Order route, but the vast majority assert that their use was undertaken as of right. This was reinforced by the six users who gave oral evidence at the inquiry.
4. A UEF was completed by a former owner of Tregonning Hill House who states that she has known the route since 1972 and that it ‘has always been open to horse riders, cyclists and walkers. There has never been any obstruction by owners of properties or obstacles.’ She also states that she had never obtained permission to use the route.
5. The objectors argue that the tolerance or acquiescence of the landowners should be interpreted as giving rise to an implied permission to use the route. Reference was made to the fact that a number of users, both in their UEFs and in oral evidence, acknowledged knowing the landowner and passing the time of day with them. However, all of these users state that they were not at any time given permission to use the Order route, and there are many users who make no reference to any interaction with the landowners.
6. The courts have made it plain that it is tolerance or acquiescence which, if allowed to continue will, after 20 years ripen into the establishment of a right. I would accept that after Tregonning Hill House changed hands in 2000 the new owner undertook the various acts I have described earlier to evidence a lack of intention to dedicate a public bridleway and it may be that continued use of the Order route during this period could be characterised as permissive, but that is after the date of bringing into question, and thus outside the period under consideration. There is no evidence of similar actions on the part of any landowner prior to 2000.

Sufficiency of use

1. For a statutory presumption of dedication to arise the evidence must demonstrate, on a balance of probabilities, that the Order route was throughout the full 20-year period used without interruption by a sufficient number of people to bring to the attention of a reasonable landowner that a right to use the route as a bridleway was being asserted.
2. Analysis of the UEFs shows that in 1980 there were 29 claimed users. Not all of these used the route for the full 20-year period but in 2000 there were 26 relevant users and a similar number throughout the intervening period. On a numerical basis I have no difficulty in finding that the level of use was sufficient to represent use by the public.
3. The objectors draw my attention to inconsistencies in some of the details given in the UEFs and similarities between some other forms. They urge me to view the evidence with caution. I accept that the UEFs do contain some differences as to the details recalled by the witnesses. Examples are the perceived width of the route and recollection of signage or gates. I recognise that memory is fallible and for this reason it may not be appropriate to accept every detail at face value although in general terms I do accept that most, if not all of those who have completed UEFs have done so with the intention of providing accurate information to the best of their ability. In this case the totality of the evidence provides an overwhelming picture of a route that was throughout the relevant 20-year period used regularly by the public on foot, horseback and on bicycles.
4. Six users gave oral evidence at the inquiry and were subject to cross-examination. I found each of the witnesses to be credible and truthful and nothing arose to cast doubt upon their claimed use of the route. This oral evidence served to endorse the provisional conclusions I had reached from the UEFs.
5. Whilst it is apparent that the section of the Order route L to K is used by vehicles for the purposes of accessing Tregonning Hill House and associated purposes, I was presented with no evidence of any public vehicular use of this section.

Lack of intention to dedicate

1. Evidence of a lack of intention on the part of a landowner to dedicate the Order route as a bridleway would preclude any statutory presumption of dedication from arising. To constitute an effective demonstration of a lack of intention to dedicate the landowner, during the relevant twenty-year period, must have acted in a way which would have brought home to users of the route that they did not wish it to become a public bridleway.
2. There is evidence that at a time prior to 2000 there were three wooden signs displayed on the approach to Tregonning Hill House between points K and I on the Order map. One of these signs remains and was seen on my site visits. This is the sign described in paragraph 15 above. One of the other two signs was described by the landowner as being located at the gate (point K or J) and the other near the reservoir. These two signs are no longer present, but it is the principal objector’s evidence that they were in place when she acquired Tregonning Hill House in 2000. All signs are said to have carried the same wording ‘‘ PRIVATE – TREGONNING HILL HOUSE – PUBLIC FOOTPATH ONLY”.
3. The majority of users state that there were no signs on the Order route, but a small number refer to a sign or signs at the eastern end of the route stating that it was for use as a footpath only. On a balance of probabilities, I accept that these signs were present within the period 1980 to 2000, but I am unable to determine when they were erected, by whom or for what purpose. It is necessary for me to consider whether these signs can be relied upon by the objector to evidence a lack of intention to dedicate.
4. When considering the effect of a sign it is necessary to consider the wording and the context to form a view as to how it would have been interpreted by a reasonable user. In this case the wording ‘Private’ and ‘Footpath only’ would seem to be directed at persons using the route and to assert that the only recognised exception to the private nature of the land is in favour of those using the public footpath. On this basis the wording is, on the face of it, capable of demonstrating a lack of intention to dedicate. However, it is necessary also to have regard to the relevant context, and in this case the owner of the property for the period 1985 to 2000 has provided written evidence that during her period of ownership the Order route was open for use by horse riders and cyclists without obstruction or obstacles. This would seem to be a clear recognition by the landowner that the public had a right to use the Order route for the purposes of a bridleway and in that context, it is not open to me to find that the sign is evidence of a lack of intention to dedicate on the part of the owner at that time.
5. A previous owner of Tregonning Hill House stated that the gate at point J was locked for a 48-hour period in August 1999 in an attempt to control access onto the hill for the purposes of watching the lunar eclipse. In some circumstances the closure of the route in this fashion may constitute an interruption to use or demonstrate a lack of intention to dedicate. However, in the very special circumstances of this instance, I do not consider the purpose of the closure was to achieve either of these outcomes.
6. There was some evidence that the gate at point J was sometimes closed, but other than the occasion referred to in the preceding paragraph, no evidence that it was locked, and no evidence from any user that they were ever unable to gain access through it.
7. The principal objector gave evidence of a number of measures that she has undertaken since acquiring Tregonning Hill House in 2000. All post-date the relevant period and are therefore not material to my deliberation.

*Order route B*

1. Only two sections of Order route B are currently recorded on the DMS. The section B to C, which is where the route crosses the ridge of Tregonning Hill, is coincident with a recorded section of FP 26 Breage and the section between points D and E is coincident with FP 36 Breage. The remainder of the route is not recorded on the DMS at any status.

Dedication under Section 31 of the 1981 Act

1. There is no evidence of any challenge to the right of the public to use Order route B as a public right of way and the parties agree that the appropriate date for calculating retrospectively the 20-year period is the date of application for the DMMO. A DMMO application was made in 2005 by Breage Parish Council (‘the 2005 application’) to record Order route B as a public footpath. A further application was made in 2006 (‘the 2006 application’) to record the route as a bridleway. The earlier application will have had the effect of bringing into question the right of the public to use the route and the relevant period is thus 1985 to 2005.
2. The parties accept that for the period 2000 to 2005 much of Order route B was overgrown to such an extent as to prevent use as a bridleway. For this reason, it is accepted that reliance cannot be placed on a presumption of dedication under Section 31 of the 1981 Act. Accordingly, it is necessary to consider the position at common law.

Dedication at common law

1. Public use of a route can result in dedication at common law but there is no presumption to that effect. There is no prescribed period for such use. Instead, the evidence of use must be such as to give rise to an inference that the landowner has in fact dedicated the route. Use does not create a public right but is evidence which can support an inference of dedication.
2. The 2005 application was supported by 11 UEFs covering a period from 1935 to 2001. The users referred to regular use of the route, mainly on foot but with some use on horseback. Use ceased when the route became so overgrown as to be impassable.
3. The 2006 application was supported by 27 UEFs covering a period from 1935 to 2006, although those for the period after 2000 refer to use of part only of the route. All but one of the users refer to use on horseback, but with some also having used it on foot. The frequency of use varies with a significant number referring to use of more than once a week on average. Six of these users gave evidence at the inquiry of unhindered and unchallenged regular use.
4. None of the users recalled any signs on the route. Most recalled a gate at point E but all said this was never locked. Some recalled a gate just south of point B which again was never locked and had gone some time before 2000. None recalled being challenged and many refer to passing the time of day with the landowners as they rode through. Evidence was given by a member of the family which own part of the route. He accepted that the public had a right to use the route as a bridleway and confirmed this was recognised and welcomed by his family.
5. I was presented with no evidence of any vehicular use of any part of Order route B.

Conclusions on user evidence

1. There is ample evidence of use of Order route A over the full 20-year period to give rise to a statutory presumption of dedication as a bridleway. The majority of the use was undertaken as of right and without effective interruption. There is no sufficient evidence of a lack of intention to dedicate on the part of a relevant landowner.
2. The evidence of use of Order route B, together with the lack of evidence of any actions on the part of any landowner to challenge such use, is sufficient to give rise to an inference of dedication at common law of the route as a bridleway.

***Documentary evidence***

1. The Order was made under section 53(3)(b) of the 1981 Act and relies upon both user evidence and historical documentary evidence. I am satisfied that the user evidence is sufficient to demonstrate dedication of both Order routes as bridleways. The documentary evidence must be considered to determine whether either route, or any part thereof, has been dedicated at any higher status.

*Order route A*

1. The Council has relied upon the documentary evidence to make the Order for the section K to L at Restricted Byway status.

Private County Maps

1. The Council has consulted Thomas Martyn’s Map of 1748 – 1749 and Greenwood’s Map of 1826 – 1827. Neither depict features suggestive of a right of way of any description in the vicinity of the Order route.

Ordnance Survey (OS) Maps 1888 - 1961

1. The Council has produced in evidence a series of OS maps from 1888 to 1961. All show the Order route as a defined feature with the sections at both ends shown as a distinct track with solid boundary lines. The remainder of the Order route is depicted by a double or single pecked line. For most of the section D to E the Order route is coincident with the boundary between the parishes of Germoe and Breage.
2. The depiction of Order route A on the series of OS maps is evidence of the historic existence of a physical route consistent with the nature of use attested to. The OS maps are good evidence of the physical features depicted but do not purport to distinguish between public and private routes and often contain a disclaimer to that effect.

Germoe and Breage Tithe Maps c.1840

1. The purpose of tithe maps and apportionments was to identify land subject to payment of tithe and to allocate a value thereto. It was not the purpose of a tithe map to depict public rights of way although roads were usually shown. Where a route is shown on the tithe map as exempt from tithe it is primarily evidence that the parcel of land was not capable of supporting a tithable crop and this could apply equally to a public road and to a private accommodation way. Where the context permits, the inclusion of a route within the schedule of roads contained within the tithe apportionment can be supporting evidence of highway status, but without some corroboration it will rarely be of sufficient weight on its own to prove this, even on a balance of probabilities.
2. The Tithe Map for the parish of Germoe shows the section of the Order route K to L as an enclosed track which is a cul-de-sac terminating at point K bearing the parcel number 1082. The track is coloured sienna in the same manner as the public road (now the C162) from which it emanates. No route of any description is shown proceeding on the Order route alignment from point K.
3. The Tithe Apportionment describes the parcel 1082 under the heading of ‘Roads’ as ‘Chycarne and Tresowes Lane’. Examination of the Tithe Map shows that the road now known as the C162 between Chycarne and Tresowes Hill, together with a number of routes emanating from that road, are all part of parcel 1082. Some of the offshoots, such as the Order route section K to L, are cul-de-sacs and some are shown as narrower features between pecked lines. Some of the routes are not today recognised as public rights of way of any description.
4. In this case the section of the route K to L is shown on the Tithe Map in the same manner as other routes now recognised to be vehicular highways although not all routes so depicted are recognised as highways today. The section of the Order route K to L, being a cul-de-sac with no clear purpose, does not appear to have the usual characteristics of a public highway. I note that the parcel of land to the north-east of the termination point contains a quarry which could have benefitted from using this route to extract quarried material, but such use would be more consistent with a private rather than public right.

Finance Act 1910

1. The map prepared for the purposes of the Finance Act 1910 has been examined and found to contain no evidence supportive of the Order route section K to L having vehicular highway status. In fact, the Order route between points K and L forms part of a coloured hereditament No. 107 which, in the Provisional Valuation form, is described as ‘Quarry and Land’ with no reference to a road. No deduction is made for public rights of way or user.

Highway Maintenance Records

1. No evidence has been produced to suggest that any part of the Order route has been maintained at public expense.

Definitive Map Record

1. The Definitive Map record does not indicate that any part of the Order route was considered to have any status higher than a footpath.

Conclusions on documentary evidence for Order route A

1. The documentary evidence demonstrates that a route consistent with Order route A has been in existence since at least the late nineteenth century, but no single piece of evidence is conclusive as to status. The physical characteristics of the route are, for the most part, consistent with footpath or bridleway use but the DMS record would suggest that the historical reputation of the route has been of a footpath. For the section A to K there is nothing in the documentary evidence to suggest any higher status.
2. The treatment of the section K to L on the Tithe Survey and Apportionment does raise the possibility of public vehicular status. I have outlined the factors to be taken into account when assessing this evidence and the weight that I can attach to it. It would be unusual to make a finding of vehicular highway status on the strength of tithe map evidence alone. In this case there is no corroborative evidence, and the Finance Act treatment of the route is counter-indicative of highway status.
3. I am required to make a finding on a balance of probabilities having regard to all the evidence available. I do not find the evidence sufficient to meet that standard of proof and accordingly conclude that the documentary evidence does not demonstrate any higher status than bridleway for any part of the route.

*Order route B*

Greenwood’s Map 1826 - 1827

1. Greenwood’s map shows a spur off the road now known as the C162 at approximately point A on the Order map. The spur terminates alongside a building and no continuation of the route is shown. Although the spur is shown in the same manner as the C 162 and other roads which are within the modern highway network, the map also shows in the same way other cul-de-sac routes which appear to serve only to access properties.

Ordnance Survey Maps 1888 to 1960

1. The series of OS maps between 1888 and 1960 depict Order route B between points A and B as an enclosed feature, relatively narrow where it leaves the road and continuing at this width for a short distance before opening out into a much wider feature. Between points B and C the route is shown within a wide bell-shaped parcel of land which narrows to an enclosed feature of variable width continuing to point F and beyond. On the 1960 1:25,000 edition the route is annotated ‘FP’ in two places.

The Germoe and Breage Tithe Maps and Apportionments c.1840

1. The Tithe Map for the parish of Germoe shows Order route B between points A and C. The section between B and C appears on both this and the Tithe Map for the parish of Breage which is unusual and unexplained. The whole of the feature between points A and B is coloured sienna in the same manner as the C162 and is given the apportionment number 1082, as described earlier. At point B the depicted route narrows very significantly and is shown continuing beyond point C where it is annotated ‘To Tresowes’. The narrow route shown between points B and C appears also to be coloured sienna but does not appear to form part of apportionment 1082.
2. The Tithe Map for the parish of Breage depicts Order route B between points B and F. In contrast to the Germoe Tithe Map, the map depicts the section B to C as a substantial bell-shaped feature with no defined route within it. From points C to F the route is shown as an enclosed feature with solid boundaries and with a variable width and given the apportionment number 3704. At point F the route is shown to continue uninterrupted to Tresowes. The section beyond point F is now an unclassified county road (the U6022). The Tithe Apportionment describes parcel 3704 under the heading ‘Commons Roads and Wastes’ as ‘Wastes and Roads at Tregonning’.

Finance Act 1910

1. The District Valuation Map shows Order route B to be partly within hereditament 99 in the parish of Germoe and the remainder within hereditament 563 in the parish of Breage. The Provisional Valuation form covering hereditament 99 Germoe has not been found. The form covering hereditament 563 Breage includes a deduction of £82 for ‘Public Rights of Way and User’ but the location and the nature of the rights of way for which the deduction was made is not specified. The Council state that £82 was a significant deduction, but it covers a large hereditament with various tracks shown.

Bartholomew’s Half Inch Map of England 1903

1. Bartholomew’s Map shows a route approximating to Order route B. It shows in a similar fashion a second route crossing Tregonning Hill to the south of Order route B. This second route is not shown on the 1909 OS and is not today recorded as a public right of way of any description. Bartholomew’s Maps were prepared for use by cyclists to show routes which could be navigated on a bicycle. They did not purport to be an authoritative record of public rights of way.

Definitive Map record 1951 to 1960

1. No part of Order route B between points A and B or between points C and D was claimed for inclusion on the DMS at any status. The route between B and C was claimed and recorded as a footpath as part of FP 76 Breage. The route between E and F was claimed and recorded as part of FP 36 Breage.

Conclusions on documentary evidence for Order route B

1. The documentary evidence shows that Order route B has existed as a through route between the C162 and U6022 since at least the mid-nineteenth century. For a significant part of its length the route is shown as an enclosed feature of a width somewhat in excess of what would be required for a vehicular highway.
2. The treatment of Order route B in the Tithe Map and Apportionment is suggestive of a public highway, being included under the heading “Roads”, being described as ‘Chycarne and Tresowes Lane’ and coloured sienna and connecting to a highway at each end. Whilst suggestive of highway status it is not necessarily indicative of a vehicular route; a bridle road or drove road are also possibilities.
3. The evidence of the Finance Act Provisional Valuation does not suggest a vehicular highway. A vehicular highway was excluded from duty under the Act and would usually be shown uncoloured and excluded from dutiable hereditaments. In this case the inclusion of the route within dutiable hereditaments, albeit with a deduction for public rights of way, is suggestive of something less than a vehicular highway.
4. The physical characteristics of the route may be relevant in reaching a conclusion as to status. The section of the route C to D contains some particularly steep stages. The users who gave evidence to the inquiry confirmed that a ridden horse can cope with steep slopes such as this. I would however have doubts about the ability of a horse drawn vehicle to negotiate these sections.
5. On a balance of probabilities, I consider it more likely that the route was used on foot and horseback and as a drove for domesticated animals. This would fit with both the tithe and Finance Act evidence and probably explain the enclosed nature and significant width of large sections of the route. In consequence I am not satisfied, on a balance of probabilities that the route has a status greater than that of a bridleway as demonstrated by the user evidence.

**Width**

1. The width of the route that has been dedicated for use by the public can sometimes be inferred from the physical evidence. Where dedication is presumed or implied as a result of long use, the physical extent of the land dedicated is to be established by the extent of use.
2. In the case of both Order routes A and B some sections are enclosed on one or both sides by walls or hedging. Where this is the case, it is to be presumed that dedication extends to all the land between the features. I note that the widths recorded in the Orders reflect these features with the actual width being scaled from the OS County Series 2nd Edition 1:2500 map. I accept that this is an appropriate approach and no contrary representations have been made. It does result in significant variations in the recorded width, but this reflects the features which exist on the ground.
3. Where the Order route is unenclosed, or enclosed on one side only, it is necessary to make an assessment of the width which has in fact been used by the public. A starting point is the information given in the UEFs, but as one objector has pointed out, the users’ assessments of the width are very varied. Having regard to this evidence and the physical evidence on the ground I accept that the minimum and maximum widths given in the Orders are reasonable.

**Limitations**

1. In the case of Order route A it was accepted by the Council that dedication of the route as a bridleway was subject to the limitations of a wooden five-bar gate and stone stile at point G and a metal six-bar gate and wooded pedestrian gate at point J.
2. In the case of Order route B, it was accepted by the Council that dedication of the route as a public right of way was subject to the limitation of a wooden five-bar gate at point E. The existing wooden gate between points A and B was installed after 2006 when the route became dedicated.

**Other matters**

1. Issues have been raised about the suitability of the Order routes for use on horseback or bicycle. Whilst I understand the concerns being expressed, my role is to determine whether, as a result of what has already happened, the routes have been dedicated as public rights of way. Accordingly, matters relating to suitability, safety or environmental considerations are not material to my decision.
2. Some concerns have been expressed about the process leading to the making of the Orders. In particular an issue has been raised about potential conflicts of interest concerning a parish council member. I have seen no evidence which suggests that there was any impropriety in the making of the Orders, but my task is to consider the evidence relating to the merits of the Order and I am satisfied that the evidence has been fairly and properly assembled and presented to me and that there has been no procedural irregularity, and certainly nothing which has any bearing upon my findings.

**Overall Conclusion**

1. I propose to confirm the Orders subject to the modifications detailed in my Formal Decision below.

**Formal Decision**

Order Route A

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

Delete references to ‘Restricted Byway’ in the Order and make consequential amendments so as to record as Bridleway the section of the Order route previously to be recorded as Restricted Byway.

Delete from Part 1 the words “A length of existing Footpath Number 26 in the Parish of Germoe to be upgraded to Restricted Byway commencing at its junction with existing Footpath 26 Germoe to be upgraded to Public Bridleway by this Order approximately 180 Metres north-east of “Nevada House”, at OSGR SW 6047/2913 shown as point “K” on the attached Order map,”

Delete from Part 1 the figure “1252” metres and insert “1470” metres.

Delete from Part 1 “7 (seven) metres” and insert “20 (twenty) metres”.

Delete from Part 1 the words “The length of Footpath to be upgraded to a Restricted Byway is 218 metres. The width of the Restricted Byway described varies between 4 (four) metres and 20 (twenty) metres according to the depiction of the way on map sheet Cornwall LXXV.7 from the Ordnance Survey County Series Second Edition at 1:2500 series”.

Delete from Part II the words “RB south of Tresowes Hill” and insert “road north of Ashton”. Delete Minimum width of “2” metres and insert “4”. Delete Maximum width of “7” metres and insert “20”. Delete the words “RB from BR25 south of Tresowes Hill to Road north of Ashton”. Delete “RB” and insert “BR”.

Amend the Order Map and annotation as shown red on copy attached.

Order route B

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

Delete references to ‘Restricted Byway/s’ in the Order and insert ‘Bridleway/s’.

Amend the Order Map and annotation as shown red on copy attached.

1. Since the confirmed Order would show as a highway of one description a way which is shown in the Order as a highway of another description as submitted, I am required by virtue 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 representation procedure.

Nigel Farthing

**Inspector**

**APPEARANCES**

For the Council Mr B Curnow, who called:-

Mr J Rowell

Mrs J Lake

Mrs J Shore

Mrs S Jones

Mrs C Griffin

Mr G Blight

Mr P Bray

For Mrs P Liddicoat Mrs M James who called:-

Mrs P Liddicoat

Mrs N Gale

Mrs E Knight

Mr P Rice

Mrs J Forbes

Mrs Matthews

**DOCUMENTS PRODUCED AT THE INQUIRY**

Inquiry bundles

The Council’s opening statement

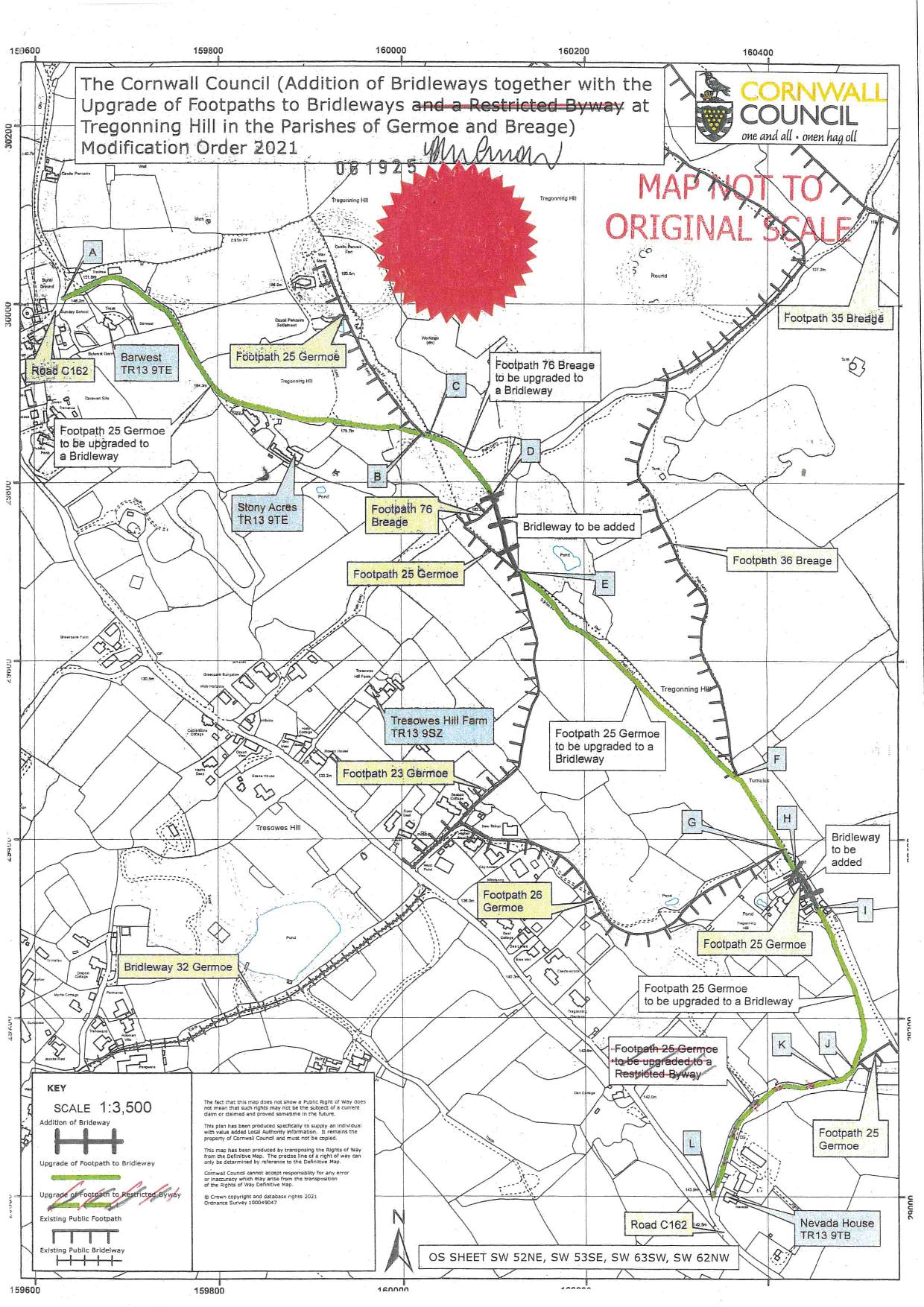
Final submissions on behalf of Mrs P Liddicoat

Final submissions on behalf of Paul Rice and Sally Pentreath

Breage PC statement of position

The Council’s closing submissions

Order A ROW/3312595



Order B ROW/3312610

