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| **Order Decision** |
| Inquiry held on 4 and 5 June 2024 |
| **by A Behn Dip MS MIPROW** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 5 August 2024** |

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| **Order Ref: ROW/3330122** |
| * This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the East Sussex County Council (Public Footpath Wadhurst 79a, Wadhurst 79b, Wadhurst 79c, Wadhurst 79d, Wadhurst 80, Wadhurst 81, Wadhurst 82) Definitive Map Modification Order 2023.
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| * The Order is dated I July 2023 and proposes to modify the Definitive Map and Statement for the area by adding the public footpaths at Wadhurst, as shown on the Order Map and described in the Order Schedule.
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| * There were 5 objections outstanding at the commencement of the Inquiry.
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| **Summary of Decision: The Order is confirmed.** |
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Preliminary Matters

1. Three objections were received following the making of the Order and its subsequent submission to the Planning Inspectorate and a further two were received shortly prior to the Inquiry. HCR Law, acting on behalf of the landowner, advised on 25 April 2024 that the landowner would not be attending the Inquiry. As the evidence submitted predominantly comprised of user evidence, the Inquiry went ahead in the absence of the landowner, in order that this evidence could be fully tested. At the Inquiry I emphasised that my questions might appear biased in favour of the landowner and that this was to assure impartiality in the absence of the landowner, and that no prejudice arose.
2. On the original application the claimed paths were presented as one route by Mr and Mrs Shairp (the applicants), albeit to differentiate the paths, each strand was given a different reference by East Sussex County Council (the Council). The current landowner felt that to consider the route as a single entity, when there appeared to be a number of routes being claimed, would skew the issue of sufficiency of use and I concur with this view. Accordingly for the purpose of this decision I will regard each strand as an individual route. In writing this decision I have found it convenient to refer to points marked on the Order Map and I therefore attach a copy of this map
3. I held a public Inquiry into the Order on Tuesday 4 and Wednesday 5 June 2024 at Bells Yew Green Village Hall, Tunbridge Wells. I made an unaccompanied site visit on Monday 3 June 2024, when I was able to walk the adjoining public footpaths FP51 and FP45 and view what I was able of the access points to the claimed routes, as well as familiarise myself with the area.
4. I undertook a further accompanied visit on Wednesday 5 June in the company of the landowner and the Council when access was provided by the landowner to the woodland within which the claimed routes are situated. The claimed routes were not evident on the ground due to the extent of several years overgrowth from when the Order routes were fenced off in 2018, albeit their general alignments were able to be defined to a sufficient degree from the Order map, photographic evidence and descriptions given in evidence at the Inquiry.
5. The landowner had expressed in correspondence that permission to access the site of the claimed routes was granted solely to the Inspector and the Council. Accordingly one applicant (Mr Shairp) and his representative attended only that part of the accompanied site visit, which was on public footpaths 45 and 51, for the purpose of pointing out the location of the access points to the claimed routes. Following this, they departed.
6. The landowner felt that there was a conflict of interests in Mr Shairp being present for part of the site visit, in that he was both an applicant and a member of the Parish Council. In response Mr Shairp stated that at the time of the application, he was not a member of the Parish Council and that the application had been made in a personal capacity.
7. The application was made in the name of Mr and Mrs Shairp and there was no communication from Mr Shairp in the evidence submitted, at the Inquiry or on the site visit wherein he presented himself in the capacity of the Parish Council. Indeed Mr Shairp’s statement of case is explicit in its statement that he was not appointed to the Parish Council until February 2022 and that he is not acting in his capacity as a parish councillor, nor is he speaking for the Parish Council. I therefore do not consider that there is a conflict of interests in this regard.
8. Moreover it is noted from the evidence before me that the Parish Council have expressed support of the claimed routes, meaning there is also no conflict of interests in the standpoint taken by these parties.

The Main Issues

1. The Council made the Definitive Map Modification Order (DMMO) under Section 53(2)(b) of the 1981 Act on the occurrence of an event specified in sub-section 53(3)(c)(i). Accordingly, the main issue is whether the evidence discovered (when considered with all other evidence available) is sufficient to show that public rights of way which are not shown on the Definitive Map and Statement (DMS) subsist over land to which the map relates.
2. Whilst it suffices under section 53(3)(c)(i) for a public right of way to be reasonably alleged to subsist in order to make a DMMO, the standard of proof is higher for it to be confirmed. At this stage, evidence is required to show, on the balance of probabilities that a right of way subsists
3. The landowner considered that the evidence submitted did not justify the making of the Order and that the Council should have undertaken more interviews and further scrutinised the UEF’s. He suggested that if they had done so, it was unlikely the Order would have been made, or it would look very different to the Order as made.
4. As outlined above, the Council need only be satisfied that the claimed routes are ‘reasonably alleged to subsist’ to make an Order. I am satisfied that this lower test was met. The Order is now before me for confirmation and for the Order to be confirmed, the evidence must now meet the higher test that on the ‘balance of probabilities,’ the claimed routes subsist.
5. The Council carried out their own research on historical documents but were unable to find any evidence of a route of any antiquity. Consequently the evidence in support of the application is centred on user evidence. As a result, the statutory requirements of Section 31 of the Highways Act 1980 (the 1980 Act) are relevant. This sets out that where a way has been enjoyed by the public as of right and without interruption for a full period of twenty years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The period of twenty years referred to, is to be calculated retrospectively from the date when the right of the public to use the way was brought into question.
6. If statutory dedication is not applicable, I shall consider whether an implication of dedication has been shown at common law. Common law requires me to consider whether the use of the path and the actions of the landowner have been of such a nature that the dedication of the path by the landowner can be inferred.

**Reasoning**

***Statutory dedication***

*When the status of the claimed routes were brought into question*

1. The status of the claimed routes were first brought to the attention of the public by the erection of fencing and signs across the Order routes in late 2017 and early 2018. An application to add the Order routes to the DMS was made by the applicants in February 2018 and validated by the Council in March 2018.
2. The landowner deposited a Map, Statement and Declaration under the provisions of Section 31(6) of the 1980 Act, in 2018, however the erection of fencing happened prior to this. As such, the Council have ascertained that the relevant twenty-year period to be evaluated for the purpose of statutory dedication is 1997 -2017 (the relevant period).
3. Although they did not own the land at the time, the landowners in their objection speculated that the outbreak of Foot and Mouth Disease (FMD) in 2001 would have constituted an interruption of use of the claimed routes, *referencing R (on the application of Roxlena Ltd) v Cumbria County Council [2017] EWHC 2651* and the subsequent Court of Appeal *case R (on the application of Roxlena Ltd) v Cumbria County Council [2019] EWCA Civ 1639*. As a result they considered that the relevant period should be pushed back to 1981-2001.
4. The Foot and Mouth Disease (Amendment) (England) Order 2001 came into force on 27 February 2001 and gave powers to Inspectors appointed by the Ministry of Agriculture, Fisheries and Food (or a local authority) to close public footpaths and prohibit entry on to the land by displaying, or causing to be displayed, a notice to that effect at every entrance to the land.
5. The Order routes would not have been subject to the 2001 Order as they were not dedicated highways and the Council stated that they were unaware of any steps being taken to close the adjoining public footpaths FP45 and FP51. The User Evidence Forms (UEF’s) gave no suggestion that there were notices or closures of any kind over the relevant period and there is no mention of FMD in the written testimony of the landowner at that time. None of the 14 witnesses who gave oral evidence at the Inquiry recalled any notices indicating this was a closure zone for FMD or any obstruction to their use during this period. One witness considered it unlikely that steps had ever been taken to close FP45 and FP51 as cattle did not graze there. Another witness at Inquiry advised she was on the Parish Council during 2001 and stated she was not alerted to any footpaths in the local area being closed. She considered that she would have received at least one enquiry from a local resident regarding such a closure, given the engagement the parishioners would have had with such an event.
6. Ultimately there is nothing before me to indicate that access to FP45 or FP51 was closed off during the Foot and Mouth outbreak in 2001. For the purposes of this decision, in the absence of any evidence to the contrary, it cannot be said that this event formed an interruption to use or that the relevant period should be altered. Accordingly, the relevant twenty-year period to be evaluated for the purpose of statutory dedication remains as 1997 -2017.

*Evidence of use by the public*

1. Over forty UEF’s, many of which were accompanied by Statutory Declarations were provided in support of use of the claimed routes, with earliest use dating back to 1952. The vast majority of users were local residents and claimed daily, weekly or monthly use over the relevant period, mostly on foot. Use appeared to be open and without force, secrecy, or permission. Only one user documented being challenged, although this was outside of the relevant period. Of these users, eleven were interviewed by the Council prior to the making of the order and fourteen witnesses spoke at the Inquiry. The evidence of those witnesses is considered below.
2. Mr and Mrs Shairp advised that they had moved into the area in 1996, residing in a property close to the claimed routes. Whilst walking their dog, they soon noticed people leaving FP45 and ‘wandering along those paths’ that are the subject of this Order. Mr Shairp referred to an aerial photograph from 2009 that showed a small field near to points G and H on the Order map. There appeared to be two clear lines that emanated from those reference points leading down a small meadow and converging near the bottom, at point F on the Order Map.
3. Mr Shairp stated that he used either point G or point H to access the claimed routes and described a path from point F to points E /D that ran through the woods, where there was a beautiful display of bluebells in spring. He often saw other people and recalled three routes that could then be taken. A short route from points D-A that crossed a stream with stepping stones that aided people to cross without paddling, a higher route from points D-B crossing an open stretch of land, and a steep route from points E-C where there were conifer trees. Mr Shairp stated that he walked all of the routes but that his favourite was route E-C.
4. Mrs Shairp stated that she used the routes at least three times a week, often daily and sometimes twice each day for dog walking. In the mornings she would frequently see her neighbour Hannah on the routes, who also had a border collie. She described her walks that began at points G or H and which led through some bracken to a small sloping open space that would dip at the bottom before the woodland, through which points F-D were found.
5. When their children were little Mrs Shairp would often follow the lowest and shortest route from D to A, where the children would play in the stream. As they grew she used the D-B or E-C routes which were steeper, with E-C being known as the ‘high road.’ Mrs Shairp also remembered that when using the D-A route which was a much lower route, she was able to see people walking above her, using one of the higher routes. She recalled that route D-B ran south of an area of conifer trees and through an open space to a gate at point B. She recalled that route E-C rose steeply through the woods before dropping down to point C on FP51.
6. The recollection of seeing other using the routes was shared by almost every witness who spoke at the Inquiry. Many passed others between points F-D and it was a common recollection that on the D-A, D-B, or E-C routes, other people would be seen above or below due to the steep incline of the woodland. Mr Clark, who often saw others, especially on the path through the ‘bluebell wood’ mainly entered the woodland from point G, undertaking a circular walk through the woodland, using route D-A when walking with the children, or routes D-B and E-C otherwise.
7. Diane Newham stated use of the claimed routes approximately 3 times per week from 2006 until the fences were erected, utilising all of the routes with no particular preference, although she used route E-C a little less often than the other two. She stated her use was ‘without secrecy, force or permission,’ a statement that was unanimously echoed by all who spoke at the Inquiry.
8. Mr Timmis who also spoke at the Inquiry moved into the area in 1978 to a property adjoining FP45. He used the claimed paths regularly from 1978 both during the week and at weekends, as part of a circular route to walk his dog, sometimes 3 times each week if the weather was fair. He mostly used point H to access the routes as this was closest to where he lived, describing it as a narrow path that ran through an area of scrub and wood before opening onto a field sloping down to point F. He recalled this small field being used in the past by locals for tobogganing when it snowed.
9. He then walked from point F along a more level wooded area that he recalled were full of bluebells in spring to points E/D. Mr Timmis referenced two photos he had submitted in evidence, taken by his daughter in 2011, one of where there were children crouching on a narrow path amongst bluebells, close to point E. He mostly continued his journey using the route D- A via the stream which had stepping stones, but required ‘a certain agility’ to cross. Mr Timmis sometimes used routes E-C and D-B, especially if the stream was ‘flooded’ as both of these routes avoided crossing the stream altogether. He recalled sometimes seeing others on these routes and stated that they were much steeper and narrower than route D-A, with route E-C descending to point C after a steep upwards climb from point E.
10. Similar recollections were also shared by Charmaine Noel who walked the claimed paths with family and friends on a regular basis, from 1995 until the routes were obstructed in 2017. At Inquiry she explained that her favourite walk utilised points G/H-F-E-D-A, although when the children were very small, she used a short circular route using points G-H-F-G. As the children grew she extended the walk to incorporate points E-D-A. When the children were a little older and also when the route D-A was muddy and wet, Mrs Noel would use routes D-B or E-C as they were much drier. She recalled a gently sloping small meadow between points G/H to point F where the children would toboggan in winter and would see rabbits in the summer, edged by blackthorn and blackberry bushes from which they would pick sloe and blackberries in late summer and autumn. This would be followed by a walk through the ‘beautiful woods,’ from point F, utilising routes D-A, D-B or E-C where they would see lots of birds, jays and on occasion, badgers.
11. Stella Carswell occasionally used routes D-B or E-C, but favoured the D-A route, although she almost always started her walk at point H rather than point G. From 1996, in the company of her young daughters and later a dog, she would walk down the small meadow to point F, then onwards to points E, D and then A, before joining FP51 to exit onto Whitegates Lane. Walks were daily until 2001, when she moved to a house further away from the claimed routes, which she then used weekly. Ms Carswell stated she always saw others, but how many very much depended on the time of day. She spoke of memories of splashing in the stream, looking at the wild garlic close by and of bluebells in spring.
12. Most of the witnesses at the Inquiry shared experiences of the beauty of the flora and fauna along the routes, especially the bluebells in the wood, and the wild blackberries in autumn. Joan Grace who had used the paths as part of a circular route on a monthly basis since 1977, recalled orchids near point F and the conifer trees when travelling her favoured route between points H-F-E-C. Sally Field was one of a number of witnesses who recalled wild garlic near the stream and she also recollected autumn toadstools that were prevalent on the route E-C, amongst the conifers and the decaying wood. She used the routes 2-3 times each week from 1998 until they were fenced off in late 2017/early 2018 to exercise her energetic cocker spaniel. Although her preferred route from the woodland was to branch off to routes D-B or E-C, her dog also loved to splash in the stream between points D-A. Terry Williams who used the route 3- 4 times per week with his border collie also spoke of the wild garlic whilst on his preferred route of G–F-E-D-A. Mr Williams sometimes used route D-B, especially if his preferred route of D-A was muddy and occasionally would use route E-C. He spoke of seeing others using the routes, albeit not every time he used the routes.
13. Susan Johnson who was a daily user of the claimed routes from 1991 until 2017 when she moved away, remembered the paths through the woodland being a haven for wildlife, especially birds and even the occasional heron. She recalled bluebells and wood anemones in the spring and the blackberries in the meadow in autumn. Her usual route would be from points G or H, down through the sloping meadow and into the path through the wood, where she would fork off towards point A for the children to play by the stream if they were accompanying her, before heading back to take one of the higher routes where there were a number of badger setts. Owning a dog, she walked at all times of the day, and was often on the claimed paths at twilight or later hoping to see owls or badgers. She frequently saw others, taking photographs of wildlife in the woods, picnicking, or walking their own dogs.
14. A number of photographs were submitted in evidence that were, in the main taken by Julie Batty. Ms Batty used all of the claimed routes, although on a less frequent basis than most other witnesses at the Inquiry, claiming use 10-12 times per year since moving to the area in 2003. She spoke of her late elderly neighbour who was aged 91 at the time Ms Batty completed her user evidence form. The elderly neighbour reminisced of walking the claimed routes since she was a young child. Often walking with family and friends, several of Ms Batty’s photos from April 2017 show wide, bare earth paths through the woodland as well as a worn line through the meadow area.
15. Terry Williams remembered the claimed paths being wide enough to easily pass by others and Serena Gadd in her evidence giving, recalled wide and dusty paths, which enabled her to stand to one side with her dog and allow others to pass. Being unsure of how social her dog would be in the company of others, she generally used the paths once or twice a week, in the afternoon or evening to reduce possible conflict with people or other dogs. Having followed points G/H-F-E, she then preferred to use routes E-C or D-B as they were high routes, avoiding route D-A which could be muddy. Although she used the paths later in the day, she usually saw others. When asked to qualify her comment of a ‘high footfall’ of people, written in her statement of case, she replied that as she often walked alone, she felt reassured by the presence of others, stating that ‘if she screamed, someone would be there and would hear you.’
16. These well-worn paths were also referenced by David Field who had used the claimed routes approximately 3 times every week. Mr Field lived close to and had used the claimed routes at various times of the day and days of the week since 1988, often seeing others, although the number was dependent on the time of day.
17. Mr Field would use the route from points G to F through the woodland to point E, and then of the three eastern paths, would use mostly D-A. He used the other routes when the stream was at full flow, remarking that FP51 could be a stream bed itself from November to May, and that D-B and E-C were routes that could be taken to avoid this.
18. He recalled that route D-B ran through a clearing, below an area of coniferous trees and mentioned the presence of a gate at point B, a structure also attested to by some of the other witnesses. To his memory a gate had always been there in one guise or another, but had not been locked or had a sign attached until 2017 and that prior to this, people just opened the gate and walked through. Mr Field also spoke of the higher route of E-C that passed through an area of sweet chestnuts in Oak Wood and joined FP51 further towards Whitegates Lane. Mr Field acknowledged that these paths were less trodden than the lower route from D-A, but nonetheless were still clear and easy to follow.
19. Mr Corke who was a representative for Wadhurst Footpath Society spoke at Inquiry. He advised that he had not walked the claimed routes himself, but first became aware of them approximately 12 years ago when he was approached and asked whether the society undertook vegetation clearance on the routes.

*Conclusions on evidence of use by the public*

1. It is clear from the evidence given at Inquiry that the claimed routes have been used for many years both during and before the relevant period. There appears to have been use of the wood by the public from as far back as the 1950’s although the evidence is more unclear prior to the relevant period, as to exact routes used. Mr Bell had used points G-F between 1952-1958 to play with his friends and pick blackberries and Mr and Mrs Alwen who owned the land between 1977 to 1990 wrote that they were aware of use of the claimed routes by the public during their ownership and were content with this.
2. Overall, having regard to the above and taking into account the untested evidence which holds less weight but which does add a degree of support to the tested evidence, I find that there is user evidence sufficient to raise a presumption of the dedication of public footpaths. Therefore, the first part of the statutory test is satisfied.

*Evidential Quality of the User Evidence Forms*

1. The landowner did not attend the Inquiry, but relied on his objection that was submitted to the Council following the making of the Order.
2. In the objection the landowner expressed serious concern regarding the evidential quality of the user evidence forms as a whole, feeling they lacked clarity, were inconsistent and that there was clear collusion in the completion of the forms. He considered that there must have been discussions between a number of people in the preparation of their evidence, and felt this was evidenced by the majority of UEF’s showing an identical map, but that following interviews by the Council, it was clear that not all of those interviewed had used all of the routes.
3. With regard to the evidential quality of the UEF’s and interviews, it was acknowledged by the landowner, that the Council when considering whether to make a DMMO, had noted some variation between evidence given on the forms and at interview. The Council’s view was that such variation was to be expected when people used the claimed routes at different times and some of the routes more than others.
4. The landowner did not agree with this view and highlighted that three of the eleven users interviewed had only used some of the routes, these being Mr Bell, Mrs Brown and Mrs Noel. Attention was also directed to the fact that Mr Bell and Mrs Brown had not drawn the lines themselves on the map submitted with their user evidence. As a result the landowner felt that the amount of evidential weight that could be given to any of the UEF’s was significantly reduced.
5. The disparity between Mr Bell’s UEF and his interview was referenced by the Council in their report where they noted his evidence ‘ falls well outside the relevant period’ and ‘can largely be put aside for this report.’ Albeit this was acknowledged by the landowner, he felt that the point still stood that the detail on the UEF differed from that given at interview.
6. Looking more closely at the evidence of Mrs Brown, and as pointed out by the landowner, Mrs Brown stated that she used points G-F according to the Council’s Interview summary. However her UEF mentions ‘sledging’ which would have occurred between points G-F, ‘bluebells’ which were found in the woodland between points F-D, and the ‘sound of the stream’ which could be found on the route between points D-A. This suggests that her use was likely more akin to what was stated in her UEF than the reference points stated at interview. When interviewed, the Council’s summary notates Mrs Bell mentioning the ‘bluebells in the wood’ and referencing the Order route as the ‘muddy walk’ which was a phrase frequently used by other users for the claimed route from D-A, not points G-F. When asked about the lines on her map, she did advise that someone else drew them because ‘she is not good with maps.’
7. Mrs Noel gave evidence at the Inquiry and I requested clarification of the routes she used, directing her toward the disparity between her UEF which suggested use of the entire of the routes and the interview where it appeared she stated use of points G-H-F-G only. In reply, she explained that she used points G-H-F-G when her children were small, extending the walk between points G-F-E-D-A when they were a little older. If the ground was muddy on route D-A she would then take the D-B or E-C routes as these were higher and avoided the stream.
8. Turning to the remainder of those users interviewed by the Council, there were 2 users who did not attend the Inquiry but whose interview correlated with their UEF’s and who had used routes utilising points G/H- F-E-D-B or G/H-F-E-C. The remaining 6 spoke at the Inquiry where their evidence was tested, the information being as provided in the *Evidence of use by the public* section of this decision. Of note, the Council’s interview summary for Joan Grace states use of just points H-F, yet within the same interview she talks of bluebells in the wood, the conifer trees between points E-C and the narrow drop on one side of route D-B to the water. At the Inquiry Miss Grace spoke of how she only used route D-A in good weather because of the mud, how she often observed children at the stream between points D-A, saw orchids every year near point F and remembered people tobogganing down the hill between points G/H–F. It is clear from her evidence both at interview and Inquiry that her use of the Order routes was more than the H-F notated on the Council’s interview summary.
9. As such I do not accept the landowner’s view that any evidential weight of UEF’s should be significantly reduced as a result of disparities noted on the Council interview summary. However I do find that although the UEF’s provide an overview of use they do not deliver the clarity required to accurately assess from them, the use of the 7 routes before me. Accordingly the evidential weight placed on UEF’s is less than those witnesses that spoke at Inquiry and whose evidence was able to be tested and clarified in regard to use of the different routes.
10. Aligned to the maps, the landowner considered that the similarity of 36 of the UEF maps having the routes already printed on them was a direct result of collusion. He felt this was further reinforced by some users on their UEF’s or interview notes affirming that they did not draw the lines themselves. The landowner also brought attention to the notation by the Council that one user had said at interview that a group got together and drew on maps to ensure all saying the same thing / thinking the same route.
11. In response to the suggestion of collusion, the applicants, at Inquiry, considered that over forty people coming forward once the claimed routes were obstructed was a spontaneous reaction to the obstruction. The applicants further considered that the idea of collusion to ensure everyone said the same thing would be impossible when considering the number of people involved.
12. Whilst I do understand the view of the landowner, it would be most surprising if the users of a claimed route did not discuss the route when making an application. Indeed they would need to have spoken to each other to get the application together. With regard to the maps themselves, several users that were interviewed and some witnesses at Inquiry said they were not good with maps and had sought assistance. I do accept the possibility that some users may have signed a map for which they may not have used all of the routes. However the suggestion that this may be the case for many of the users, as a result of the interview summary written by the Council, is not borne out when the interview summaries are more deeply scrutinised.

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

1. In the original objection to the Order being made, the landowner stated that they were aware that people had trespassed on their property but that this was never acquiesced to. The landowner considered the occasions where they observed trespass were infrequent given the nature of the land and the time they spent on that part of the property, but that when such an occasion arose, people were challenged and invited to make their way back to the established rights of way. However no evidence was given by the landowner of any specific instances of challenge and such challenges are at odds with the user evidence and those who spoke at Inquiry, who said with certainty that they had not been challenged before the calling into question in 2017.
2. Statements of objection were also made, just prior to the Inquiry, by previous landowners, Mr S Rodgers and Mr A Rodgers who had owned the land between 1990 and 2006. They submitted that the Order routes between points B-D, C-E and E-F-G were never more than forest tracks made by animals and immediate family. Mr S Rodgers stated in his objection that he took regular walks through the woods to check everything was ok, incorporating points G, F, E, D and A and ‘at no point did we see anyone using the tracks or see any evidence of anyone on the land.’
3. Mr A Rodgers in his objection stated they ‘only had one issue with regard to trespassers on our land and advised them that they were on private property and asked them to leave.’ No details were provided as to when and where this happened.
4. Mr A Rodgers also stated that FP51 was fenced in the late 1980’s by the previous owners to them, to keep people on FP51 and out of the woods and that it was maintained by them ‘and re-fenced on the occasion that deer or trespassers pushed the fences over’. The current landowner in his original objection also stated that there was some evidence of dilapidated fences erected by previous owners, which he felt was an indication of action to prevent users trespassing onto the land.
5. At Inquiry I questioned the witnesses about fencing on the land. Many could not recall any fencing until that which was erected by the current landowner in late 2017, although some did remember some old broken down fencing that was present along some parts of FP51. All witnesses were adamant that it did not obstruct access to the Order routes.
6. The previous owners to Mr Rodgers were Mr and Mrs Alwen who owned the land across which the Order routes run from 1977 to 1990 and would likely have erected the original fencing. In a letter dated 13 February 2018 they stated ‘we were aware throughout these years that the public used the paths shown in green on the enclosed map without secrecy or our permission, and not by any force. We were always content for this to be so.’
7. With reference to the Alwen’s period of ownership, the landowner was of the understanding that commercial shoots had taken place on the land for many years and that this would have been incompatible with public use. However Mr and Mrs Alwen confirmed by email in February 2024 that the shoots, held for family and friends, were only occasional and *‘were well to the west of, and out of range of the footpaths connecting Three Oaks Lane to Whitegates Farm’*.

*Conclusions on evidence of landowners*

1. It is apparent from the written testimony of the current landowner, that he did not intend to dedicate the claimed route as a public footpath, however no overt action was taken to notify the public of this until several years after he took ownership of the land, the actions of which formed the bringing into question of the claimed routes. From late 2017, coherent actions were taken, such as signs and fences being erected and a Section 31(6) Deposit and Statement being made.
2. However during the relevant period of 1997-2017, there is little contemporaneous evidence that this lack of intention to dedicate was made clear to users of the path. It appears to be common ground that no signs were erected advising there were no public rights of way across the land prior to late 2017. There is evidence of fencing that was intermittent and out of repair and that an unlocked gate existed at point B, albeit this was never considered an obstruction to walkers.
3. Although the previous landowner, Mr Rodgers, submitted that use of the paths did not really occur during that part of the relevant period where the land was in his ownership, this contrasts with the user evidence and also appears to be at odds with use prior to the relevant period, whereby the letter from the owners of the land between 1977-1990 state they were aware of and content with use of the claimed routes.
4. Ultimately, I find insufficient evidence of any clear and overt action taken by any landowner during the relevant period of 1997 to 2017 to demonstrate there was a lack of intention to dedicate a footpath.

*Sufficiency of use*

1. The landowner in his objection voiced concerns about the sufficiency of use of the claimed routes, again referencing the fact that the maps accompanying the UEF’s for the most part showed all of the claimed routes, regardless of what routes were being used by an individual user. Consideration is given to this concern below.
2. The application as submitted presented the route as a single entity rather than multiple routes, which does make the exact use of each of the routes difficult to gauge, especially when the question being asked on the UEF invites a singular response. Accordingly the UEF’s alone, are of limited weight in assessing sufficiency of use of each defined route.
3. The Council interviews were more helpful in this regard. Deeper scrutiny of the UEF’s for those that were interviewed by the Council was suggestive of use of more of the claimed routes by some people, than notated by the Council against the question of which routes were used.
4. The Inquiry held the most benefit in evidencing the regularity and mix of use of the claimed paths (for those who gave evidence). The 14 witnesses who spoke at Inquiry gave detailed descriptions of their personal routes and how often they used them.
5. Twelve of the witnesses walked either daily, several times weekly or weekly, with only two of the witnesses claiming a less frequent use of monthly. Points G/H-F-E were used on almost every visit by all who spoke at the Inquiry, with access at point G being only slightly more popular than access at point H. Half of the witnesses stated that D-A was their most frequently used route onward from point E, with only one witness not having used the D-A route at all. All witnesses had used the onward routes of D-B and E-C on a regular basis, due to the often muddy nature of D-A or the flooding of the stream, although E-C was slightly less popular, mainly due to the incline.
6. The evidence above illustrates a consistent use of all of the claimed paths. When combined with the regularity of use by the witnesses, I consider the sufficiency test is met for all of the claimed routes.

*Conclusions on statutory dedication*

1. Albeit he did not participate in the Inquiry, the landowner had anticipated that the testing of evidence at Inquiry would show similar disparities as were evidenced in the user evidence forms and interviews.
2. Although I accept that the user evidence forms and interviews did show some disparities, further scrutiny of those interviewed found the differences not to be as inconsistent or as drastically prohibitive as suggested by the landowner. They do provide a degree of support to the evidence of the 14 witnesses who spoke at the Inquiry and gave cogent, credible and detailed recollections of their use and experience of the claimed routes. At Inquiry, there was no evidence of collusion as each witness recollected personal experiences which were different to other witnesses but bore consistent similarities to the recollections of others, such as the various fauna, flora and wildlife encountered, where on the routes these might be found and the topography of the land across which the claimed routes cross.
3. I consider the reference by the applicants in closing submissions to *Mann v Brodie 1885*, to be appropriate in this case for the user evidence given at Inquiry. Lord Watson said *‘if twenty witnesses had merely repeated the statements made by the six old men who gave evidence, that would not have strengthened the respondents case. On the other hand the testimony of a smaller number of witnesses each speaking to persons using and occasions of user other than those observed by these six witnesses, might have been a very material addition to the evidence.’*
4. There is no statutory minimum level of use required to raise a presumption of dedication and the level of use will vary dependent on the location. Having regard to the above, the claimed routes are situated in a rural location and although there are not substantial numbers of users providing evidence for every path, there is a sufficient core of evidence of use of all claimed routes. Moreover the evidence of use spans a long period of time, both during and preceding the relevant period.
5. Use of the routes was of a manner and over a length of time that was sufficiently notorious to alert the current and previous landowners that a continuous right to enjoyment of the use of the paths was being asserted. Albeit Mr A and Mr S Rodgers who owned the land between 1990 -2007 submitted that they never saw evidence of anyone on the land, this is at odds with over forty people who claim use during and over the relevant period, as well as the previous landowners to them who were fully aware of use of the claimed routes.
6. It is common ground that no notices were in place advising that the claimed routes were not public until the calling into question of the routes in 2017. Albeit there is evidence of fencing, it appears to have been intermittent by nature and in a state of dilapidation in parts, with no evidence that it prevented access until the current landowner erected further fencing in 2017. There are submissions of challenges being made, however these are vague with no specific instances given and there was no corroboration of this from the evidence tested at the Inquiry.
7. The current and previous landowners were clear in the fact that they did not acquiesce to use of the claimed routes, however their written submissions did not provide sufficient evidence of alerting the public to this lack of intention to dedicate, in a clear and overt way. Moreover, their evidence was unable to be explored or expanded upon at Inquiry.
8. I have concluded that the user evidence is sufficient on the balance of probabilities, to raise a presumption that the claimed routes have been dedicated as public footpaths. In addition, there is insufficient evidence that the landowners demonstrated to the public, a clear lack of intention to dedicate the routes during the relevant period. Therefore, I conclude on the balance of probabilities that the public footpaths subsist. In light of this conclusion, there is no need for me to address the evidence in the context of common law dedication.

**Other matters**

1. There were two other written objections received to the making of this Order. Both of these objectors felt that the ‘campaign to reopen these footpaths’ was aggressive and that it was known which paths were public rights of way and that use of the Order routes were a matter of trespass. They further considered that there were more than enough public footpaths in and around the surrounding area and that the Order routes ‘only go to 2 points of access’. These objectors appeared to acknowledge use of the routes, however they were concerned that when the woodland was open there were instances of anti-social behaviour, problems with littering, and incidents of dog attacks.
2. The son of the previous landowner Mr A Rodgers was apprehensive that that the claimed route from C-E was on a very steep bank where he previously had lost his footing on more than one occasion. He envisaged it would be ill considered for this route to become a public footpath with children and elderly people using it.
3. Whilst I recognise all of the above as genuine concerns, the legal basis on which this case must be determined does not allow for consideration of matters relating to the safety, necessity, suitability or desirability of a claimed route. These are factors which I am unable to take into account in reaching my decision.

Conclusions

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

Formal Decision

1. I confirm the Order.

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**INSPECTOR**

**APPEARANCES**

**For the Council:**

Gareth Jones Solicitor, East Sussex County Council

who called:

Stephen Kisko Senior Definitive Map Officer, East Sussex County Council

David Shairp

John Timmis

Joanna Shairp

Charmaine Noel

Stuart Clark

Joan Grace

Susan Johnson

**For the Applicants:**

Simon Bell Counsel for the Applicants

who called:

Julie Batty

Stella Carswell

David Field

Serena Gadd

Sally Field

Diane Newham

Terry Williams

**Interested Party:**

John Corke Wadhurst Footpath Society

**Objector:**

Not in attendance

**DOCUMENTS HANDED IN AT THE INQUIRY**

1. Opening and closing statements of Counsel for the applicants.
2. Closing statement of East Sussex County Council

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