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| **Order Decision** |
| Inquiry opened on 10 September 2024  Site visit made on 9 September 2024 |
| **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: 18 December 2024** |

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| **Order Ref: ROW/3317931** |
| * This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as The East Sussex (Public Footpath Ringmer 33, Barcombe 73a, Barcombe 73b, Barcombe 73c, Barcombe 74) Definitive Map Modification Order 2022. |
| * The Order is dated 22 July 2022 and proposes to modify the Definitive Map and Statement for the area by adding a footpath as shown in the Order plan and described in the Order Schedule. |
| * There were three objections outstanding at the commencement of the inquiry. |
| **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 9 September 2024. A Public Inquiry into the Order was held on 10 September 2024 and 11 September 2024 at Barcombe Village Hall. At the Inquiry, East Sussex County Council, the Order Making Authority (the OMA), spoke in support of the Order.

Background and Main Issues

1. An application was made under Section 53 of the 1981 Act in December 2017, which sought to add to the Definitive Map and Statement (the DMS) a bridleway at Barcombe Mills. However, following receipt of that application, the OMA notified the applicant that that application route did not reach another public right of way or place of public interest. Subsequently, a further application was made in   
   February 2018 for the claimed route that is the subject of this decision. In May 2019 the Applicant sought a Direction Decision for the OMA to determine the application. In September 2019, the OMA was directed to determine the relevant application within twelve months. On 28 June 2021 the OMA recommended that an Order for a footpath over the Order route be made.
2. The Order route runs from the southern side of Pikes Bridge at point A on the Order plan, then in a northerly direction along a tarmac surfaced track continuing over a further bridge at point C on the Order plan, before then passing over a weir at   
   point D. The tarmacked track then proceeds in a westerly direction to point E, before turning again in a northerly direction to point F on the Order plan where the Order route reaches the junction with Hayes Lane. The Order route then continues in a northerly direction until it reaches a junction where Public Restricted Byway Barcombe 25a meets Public Footpath Barcombe 26 at point I on the Order plan.
3. The Order route also includes a length of footpath which runs in a westerly direction from point F, along the tarmac surfaced track of Hayes Lane, until it reaches Barcombe Mills Road at point K on the Order plan.
4. The Order is made under Section 53(3)(c)(i) of the 1981 Act which provides that an Order should be made to modify the DMS on the discovery of evidence which, when considered with all other relevant evidence available, shows that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that land over which the right subsists is a public path. The Order is also made under Section 53(3)(c)(iii) of the 1981 Act which provides that the discovery of evidence which, when considered with all other relevant evidence available, shows (amongst other matters) that, on the balance of probabilities, any other particulars contained within the map and statement require modification.
5. 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.
6. 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 period of not less than twenty years prior to its status being brought into question and, if so, whether there is evidence that any landowner demonstrated a lack of intention, during that period, to dedicate a public right of way.
7. If the matter fails under the statute, then I will need to consider whether there is sufficient evidence of dedication at common law. 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.
8. The main issue is whether, on the balance of probabilities, the evidence shows that a public footpath subsists over the Order route.

Reasons

**Documentary Evidence**

*Early and Commercial Maps*

1. The earliest map before me is the Budgeon Map 1724, from which it is not possible to identify any parts of the Order route due to its small scale. Whilst the Yeakell and Gardener Map (1778-1783), the Garner and Gream Map (1795), and the Greenwood Map (1825) are similarly to a small scale, it appears there are features shown on those maps that may correspond with parts of the Order route as shown between points A-B-C-D-E-F and F-J-K. The provided copy of the later Bartholomew Map (1940) also appears to show a feature that could correspond with parts of the Order route as shown between points A-B-C-D-E-F and F-J-K.

*Ordnance Survey Maps (OS Maps)*

1. I have been provided with a range of OS maps covering the period 1813 to 2010. Whilst the Order route cannot be identified from the smaller scale OS maps, the larger scale OS maps predominantly show some form of route that would correspond with the alignment of the Order route. The provided electronic copy of the 1922 OS map was unclear. However, I was able to inspect a paper copy at the Inquiry and which appeared to similarly show a route that would correspond with parts of the Order route between points A-B-C-D-E-F and F-J-K.

*Tithe Records*

1. The provided copy of the Tithe Map (1840) appears to show parts of the Order route between points A-B-C-D-E-F and F-J-K, and further depicts a track which runs north from point F, but which does not reach point G as shown on the Order plan. The Tithe map includes an apportionment number shown at a location that corresponds with point E on the Order plan, with the accompanying apportionment records describing that section of the Order route as “Roads”.

*Finance Act 1910 Records*

1. These records appear to show parts of the Order route between F-J-K, between   
   F-G-H-I and a very small section of the Order route south of point F, as a white road. The remainder of the Order route is coloured in blue indicating inclusion within a hereditament. No details from an accompanying field book have been provided.

*Photographs and Published Walking and Cycling Guides*

1. A number of photographs have been provided by various parties. Those photographs show different sections of the Order route and walkers, cyclists and children on horseback at differing dates. Other photographs of gates and signage has also been provided and which are described further below in consideration of the application of section 31 of the 1980 Act.
2. Details from a substantial number of walking and cycling guides for the area surrounding the location of the Order route, have been submitted in evidence. These guidebooks describe various sections of the Order route.

*Transfer of Land*

1. I have been provided with details from a conveyance of land to East Sussex County Council dated 1947. It has been put to me that the conveyance shows that a section of the Order route, as shown between points J-K on the Order plan, was purchased with existing rights, including bridleway rights, being protected. It appears that the section of the Order route shown on the conveyance map is a remnant of a military road. It is further maintained that these records show that bridleway rights existed south of Pikes Bridge (shown south of point A on the Order plan).

*Definitive Map Process*

1. Extract copies of Parish Survey maps, the Draft map, the Provisional map, Draft Revised map, Revised Definitive map and current Definitive map have been provided. None of those records show the Order route as being a claimed right of way. However, it is noted that the Definitive maps show a number of rights of way of differing status, which exist today, as joining onto the track which forms the Order route.

*Other Documents*

1. A plan and reference book for the 1856 Lewes and Uckfield Railway have been submitted, which indicate that the line of the proposed railway would cross a road that also formed part of Hayes Lane west of point F on the Order plan. The book of reference describes that road as a public bridle road and occupation carriage road. An objector to the Order maintains that these records demonstrate that a public bridleway existed on part of the Order route between points F-J-K at that time.
2. Further documentary evidence has been submitted in the form of copies of correspondence between Lord Monkton Bretton and his solicitor from 1928. It has been put to me that these documents refer to the sale of a mill at Barcombe which it is maintained mentions that that property fronts onto a “parish road”. An objector to the Order contends that in their response the solicitor refers to a bridleway and that that reference is to the Order route.
3. Various documents and photographs have been provided which confirm that a toll gate previously existed at a location between points E-F on the Order route. The evidence before me includes photographic details of the types and amount of toll that was charged up until the collection of tolls were ceased around 1940. That evidence shows that tolls were charged for carriages and wagons accompanied by horses, motor cars and steam engines. No charges appear to have applied to pedestrians, cyclists or those on horseback. An extract from a Sussex Industrial Archaeology Journal mentions that the owner of the road who was the toll collector during the 1930s was interviewed and alleged that lorries would stop short of the toll gate and that drivers would carry their load through the toll gate to another lorry that was waiting beyond the toll barrier, thereby avoiding paying the toll.
4. Documents have been submitted relating to the construction of a military road and bridge during World War Two, located east of the bridge and trackway through Barcombe Mills. The details on an undated extract copy map of the area show the military road joining Hayes Lane at a location which is just to the east of point K as shown on the Order plan. The evidence before me indicates that the western end of the section of the Order route between points J-K is currently an adopted public highway.

*Conclusions on the Documentary Evidence*

1. Whilst the early and commercial maps show features that could correspond with parts of the Order route, they do not record the status of those routes. Photographs may show the existence of features on the ground, and particular use by persons, at the time they were obtained. While they may assist me in building a picture of the situation on the ground at the time they were taken, these images do not provide strong evidence of the status of any part of the claimed route. Similarly, whilst the details from the walking and cycling guidebooks suggest that the Order route, or parts of the Order route, were attractive for walking and cycle use, these guides give no indication of amount of use, nor do they record the status of the route.
2. The OS maps record the physical features present at the time of the survey. However, since the late 19th Century, OS maps have carried the disclaimer that routes shown provide no evidence of the existence of a public right of way. Tithe maps were prepared to indicate productive land rather than to indicate rights of way. From such records, it is normally only possible to infer that the routes existed on the ground at the time, and to determine whether or not they were considered to be productive in terms of tithe. However, in this instance the description of the route within the tithe records as roads, rather than private roads, does provide some support for the contention that sections of the Order route between A-B-C-D-E-F and F-J-K were considered public highways with a higher status than footpath.
3. At the Inquiry I heard submissions that an oil mill was previously located close to point I which was accessed by vehicles. However, there does not appear to be any substantive evidence before me which indicates whether persons using vehicles to access that oil mill were exercising public or private rights. The 1910 Finance Act required that all land be valued. Where a route is shown uncoloured and unnumbered so that it is outside of hereditaments, it is suggestive of a public highway. The depiction of parts of the Order Route on the valuation map provides supporting evidence of a public vehicular highway. No details from any accompanying field book have been provided. Nonetheless, the 1910 Finance Act records do provide support for the contention that sections of the Order route between F-J-K and between F-G-H-I are public highways with vehicular rights.
4. In terms of the details included within the submitted railway records, the evidence before me suggests that the railway map was looked at during the preparation of the Definitive Map in the 1950s and as such cannot be considered to be new evidence that has been discovered. However, when considered in the context of other new evidence submitted in this matter, the railway records support the contention that bridleway rights existed over part of the Order route between   
   points F-J-K.
5. Furthermore, the correspondence details provided regarding the sale of a mill at Barcombe is noted. In that respect, whilst I acknowledge that the correspondence did not include any map, the details provided describe the mill as being adjacent to the toll gate. The details from these pieces of correspondence provide some support for the contention that bridleway rights existed over part of the Order route between points A-B-C-D-E-F-J-K.
6. The former presence of a toll gate indicates that the track through Barcombe Mills was a well used route, with the evidence suggesting that users would alternatively have to take a large detour in the event that they were not prepared to pay the applicable toll charges. No charges appear to have applied to those passing through the barrier on foot, by bicycle or on horseback. It has been put to me that no charges were applied in respect of users on foot, on bicycle or on horseback, as such use may have been permitted by the landowner.
7. However, there is no substantive evidence that supports that contention, and it could equally be the case that no charges were applied in respect of users on foot, on bicycle or on horseback, as such use was accepted and tolerated by the landowner because they were aware that footpath and bridleway rights existed over the Order route at that time. Given that the presence of the toll gate permitted use of this part of the route for those with carriages or motor vehicles subject to payment of a fee, in my view it is unlikely that use on foot, by bicycle or on horseback, was with permission without payment of a fee. I therefore consider that it is likely that no toll was charged for those on foot, by bicycle or on horseback as the landowner at that time was aware that public rights of at least bridleway status existed over this section of the Order route.
8. The details regarding the construction of the military road and bridge are also noted and that no records have been found for the stopping up of the route through Barcombe Mills between points A-B-C-D-E-F-J-K. No firm conclusions can be reached from these pieces of evidence that the route is a public right of way of any particular status.
9. In terms of the transfer of land the provided details are not entirely clear. In that respect, and as maintained by the OMA, it is possible that the referred to bridleway rights merged with adopted road rights. It is also noted that a number of public rights of way of differing status within the area join onto the Order route. It has been suggested that this was due to it having been believed at the time of the Parish survey that the Order route was a public highway. The DMS was not used to record routes that formed part of the ordinary road network nor record routes that were considered to be private, but rather was intended to record public rights of way. The DMS records, therefore, do not provide support for the existence of a public right of way over the Order route.
10. In summary of the above, there is sufficient evidence to support the contention that the Order route is a public highway of at least footpath status. There is no single piece of evidence which, on its own, confirms that the Order route should be recorded as a public highway with a higher status than footpath. However, overall and when considered together there is sufficient evidence to support the contention that a section of the Order route should be recorded as bridleway, and that there is sufficient evidence to demonstrate that another section of the Order route should be recorded as a public highway with vehicular rights.
11. In those respects, the documentary evidence when taken together supports the contention that between points A-B-C-D-E-F as shown on the Order plan, there exists a long established but unrecorded bridleway. Additionally, the documentary evidence supports the recording of a public highway with vehicular rights between points F-G-H-I and between points F-J-K as shown on the Order plan. Whilst I acknowledge the description of the route between points F-J-K as a public bridle road and occupation carriage road within the 1856 Lewes and Uckfield Railway records, it appears that that position had changed by the time of the Finance Act 1910 records which strongly indicate that these sections of the Order route were public vehicular highways.
12. However, Section 67 of the Natural Environment and Rural Communities Act 2006 (the NERC Act) extinguished any public rights to use mechanically propelled vehicles (MPVs) over a way that was not shown on the DMS prior to 2 May 2006. This is subject to a number of exceptions contained within subsections (2) to (8) of section 67 of the NERC Act. None of those exceptions apply in this instance. As such, public rights to use MPVs over these sections of the Order Route have not been preserved. Consequently, the evidence supports the contention that a restricted byway should be recorded between points F-G-H-I and between   
    points F-J-K as shown on the Order plan.
13. Notwithstanding the above conclusions, in light of the submissions from parties regarding public use of the Order route in this case, it is appropriate to consider the evidence of landowners and users. I shall now turn to consider those matters below.

**User and Landowner Evidence**

1. Evidence of use of the claimed route arises from statements and oral evidence given at Inquiry and from user evidence forms submitted in connection with, or further to, the application. The user evidence is supportive of use of the Order route by pedestrians, horse riders and cyclists. I find that the level of use on foot, as outlined in the user evidence, to be considerable. However, the numbers of reported users of the Order route on horseback and by bicycle, and their frequency of use, is not as substantial as reported use on foot.
2. A landowner states that they issued challenges to the few persons seen on horseback on the route, and that signs were previously erected on the Order route stating that the route was private. The evidence before me confirms that nearly all those who have reported use of the Order route state that no signs were seen.
3. Whilst I acknowledge that there are two users who have mentioned seeing signage, there is little information provided as to exactly where such signs were erected. Nonetheless, even in the event that such signage was erected, the wording used would have merely confirmed that the land was private. I do not consider that such wording by itself would be sufficient to demonstrate to members of the public using the route that no right of way existed, given that it would only have indicated that the land was private and public rights of way invariably pass over private land.
4. In respect of the evidence provided regarding challenges, in my view they do not appear to have been undertaken with such frequency to have become notorious in the local area, or that they had been directed at those frequently using the claimed route.
5. In terms of public use, the more recent user and landowner evidence would be wholly consistent with a pre-existing right of way of at least footpath status. However, on its own the user evidence does not support an existing right to use the Order route on horseback or by bicycle. Nonetheless, as described above, the historic documentary evidence is sufficient on its own to find that between points   
   A-B-C-D-E-F as shown on the Order plan, there exists a long established but unrecorded bridleway, and that between points F-G-H-I and between points F-J-K, the evidence supports the recording of a restricted byway within the DMS.

**Other Matters**

1. A representation by one of the landowners provides support for the recording of bollards and gates as limitations within the Order as identified by grid reference numbers. That landowner has put it to me that it would be helpful if the location of those limitations were also identified, with letters, on the Order plan.
2. However, for the reasons given above, there is sufficient historic documentary evidence, primarily in the form of the Finance Act 1910 records, to support the contention that a section of the Order route should be recorded as bridleway, and that another section of the Order route should be recorded as a public highway with vehicular rights. There is no evidence before me to suggest or confirm that, at the date of dedication, any of the limitations recorded within the Order as made were in place at that time. Consequently, I shall propose to modify the Order to remove all references to limitations on the Order route.

Overall Conclusions

1. In summary of the above, there is sufficient documentary evidence to conclude that the section of the Order route as shown between points A-B-C-D-E-F on the Order plan is a long established but unrecorded bridleway. Furthermore, I conclude that there is sufficient documentary evidence to make a finding that the sections of the Order route as shown between points F-G-H-I and F-J-K on the Order plan is a public highway with vehicular rights. However, by reason of the provisions of the NERC Act, in this instance the public right to use MPVs over these sections of the Order Route have not been preserved. Consequently, I conclude that the sections of the Order route as shown between points F-G-H-I and F-J-K on the Order plan are public highways of restricted byway status.
2. 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 proposed for confirmation with modifications.

**Formal Decision**

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

* Delete the text “(*PUBLIC FOOTPATH RINGMER 33, BARCOMBE 73a, BARCOMBE 73b, BARCOMBE 73c, BARCOMBE 74)*” in the Order title and insert:

“(*BRIDLEWAY RINGMER 33, BRIDLEWAY BARCOMBE 73a, BRIDLEWAY BARCOMBE 73b, RESTRICTED BYWAY BARCOMBE 73c, BARCOMBE 74)*”

* Delete the text “(*Public Footpath Ringmer33, Barcombe 73a, Barcombe 73b, Barcombe 73c, Barcombe 74)*” in article 3 of the Order title and insert:

“(*Bridleway Ringmer33, Bridleway Barcombe 73a, Bridleway Barcombe 73b, Restricted Byway Barcombe 73c, Restricted Byway Barcombe 74)*”

* Delete the text “*A route comprising a public footpath*” in Part I of the Order Schedule and insert:

“*A route comprising a bridleway and restricted byway*”

* Delete the text “*The public footpath commences*” in Part I of the Order Schedule and insert:

“*The public bridleway commences”*

* Delete the text “*the footpath continues*” in Part I of the Order Schedule and insert:

“*the bridleway continues”*

* Insert after the text “*to point F at TQ 4331 1490*” in Part I of the Order Schedule:

“*The restricted byway commences within the civil parish of Barcombe at point F at TQ 4331 1490.*”

* Delete the text “*The width of the public footpath between TQ 4335 1472*” in Part I of the Order Schedule and insert:

“*The width of the bridleway between TQ 4335 1472*”

* Delete the text “*The width of the public footpath between TQ 4335 1473*” in Part I of the Order Schedule and insert:

“*The width of the bridleway between TQ 4335 1473*”

* Delete the text “*The width of the public footpath between TQ 4335 1477*” in Part I of the Order Schedule and insert:

“*The width of the bridleway between TQ 4335 1477*”

* Delete the text “*The width of the public footpath between TQ 4331 1490 and TQ 4330 1497*” in Part I of the Order Schedule and insert:

“*The width of the restricted byway between TQ 4331 1490 and TQ 4330 1497*”

* Delete the text “*The width of the public footpath between TQ 4331 1490 and TQ 4307 1493*” in Part I of the Order Schedule and insert:

“*The width of the restricted byway between TQ 4331 1490 and TQ 4307 1493*”

* Delete the text “*The width of the public footpath between TQ 4307 1493 and TQ 4305 1493*” in Part I of the Order Schedule and insert:

“*The width of the restricted byway between TQ 4307 1493 and TQ 4305 1493*”

* Delete the text “*Public Footpath*” in the Type column of the Ringmer 33 row of the table contained within Part 2 of the Order Schedule and insert:

“*Bridleway*”

* Delete the text “*Public Footpath*” in the Type column of the Barcombe 73a row of the table contained within Part 2 of the Order Schedule and insert:

“*Bridleway*”

* Delete the text “*Public Footpath*” in the Type column of the Barcombe 73b row of the table contained within Part 2 of the Order Schedule and insert:

“*Bridleway*”

* Delete the text “*Public Footpath*” in the Type column of the Barcombe 73c row of the table contained within Part 2 of the Order Schedule and insert:

“*Restricted Byway*”

* Delete the text “*Public Footpath*” in the Type column of the Barcombe 74 row of the table contained within Part 2 of the Order Schedule and insert:

“*Restricted Byway*”

* Delete the text “*Speed humps at TQ 4335 1475; TQ 4335 1479; TQ 4333 1484; TQ 4331 1485; TQ 4331 1487*” and the text “*Field gate at TQ 4331 1489*” and the text “*2 vehicle bollards at TQ 4307 1493*” in Part 3 of the Order Schedule.
* On the Order plan and in the key to the Order plan insert the notation for Bridleway.
* On the Order plan and in the key to the Order plan insert the notation for Restricted Byway.
* Delete the text “*Order Route - - - - A through to K*” in the key to the Order plan.

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:**

Mr G Jones Solicitor, East Sussex County Council

*who called:*

Mr S Kisko Senior Definitive Map Officer, East Sussex County Council

Ms J Brown

**In Objection to the Order:**

Mrs M Parker Mid Sussex Area Bridleways Group

*who called:*

Mr C Smith Open Spaces Society

Mr R Kearley

Mr R Kaplinsky

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

Mr A Oppé

Mrs R Husson

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

Mrs K Millbank

Mrs C Haines

Mrs J Johansson

Mrs A Daniels

Mr S Allum

Mrs J Cornwell

**Documents Submitted at Inquiry:**

1. Statement on behalf of Mr A Oppé
2. Photograph of individuals on horseback submitted by Mrs C Haines

