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| **Appeal Decision**Papers on file |
| **by Claire Tregembo BA(Hons) MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 23 June 2025** |

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| **Appeal Ref: ROW/3356218** |
| * This Appeal is made under section 53(5) and Paragraph 4(1) of Schedule 14 of the Wildlife and Countryside Act 1981 against the decision of East Sussex County Council not to make an Order under section 53(2) of that Act.
* The application dated 4 July 2018 was refused by the Council on 4 November 2024.
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| * The appellant claims the definitive map and statement of public rights of way should be modified by adding a footpath from Potato Lane to Lewes Road as shown on the plan appended to this decision.

**Summary of Decision: The Appeal is allowed.** |
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Procedural Matters

1. I have been directed by the Secretary of State for Environment, Food and Rural Affairs to determine this appeal under section 53(5) and Paragraph 4(1) of Schedule 14 of the Wildlife and Countryside Act 1981 (the 1981 Act).
2. The appeal has been determined on the papers submitted. I have not visited the site, but I am satisfied I can make my decision without the need to do so.
3. I have not been provided with copies of some of the documents referred to. However, none of the parties dispute the descriptions provided by the party referring to them.
4. East Sussex County Council (the Council) provided an annotated map of the appeal route. I will refer to various points shown on it. I have appended a copy of this map to the end of my decision for ease of reference.

Main Issues

1. The application was made under section 53(2) of the 1981 Act which requires the surveying authority to keep their definitive map and statement (DMS) under continuous review, and to modify them upon occurrence of specific events cited in section 53(3).
2. The need for an Order to be considered when evidence is submitted in support of a claim that a public right of way which is not shown in the definitive map subsists is dealt with under section 53 of the 1981 Act. Section 53 (3)I(i) of the 1981 Act provides that a modification order should be made on the discovery of evidence which, when considered with all other relevant evidence available, shows that a right of way which is not shown subsists or is reasonably alleged to subsist over land in the area to which the map relates.
3. I must also consider if the evidence submitted is new evidence. The Courts have previously found that in order for evidence to be ‘new’ it cannot have been previously considered when determining if public rights exist. In *Burrows v Secretary of State for Environment, Food and Rural Affairs [2004] EWHC 132 (admin)* (*Burrows*)the judge stated, *‘an inquiry cannot simply reexamine evidence considered when the way or ways in question were first entered on the definitive map; there must be some new evidence, which when considered with all the other evidence available, justifies the modification’*.
4. In *The Queen v Secretary of State for Environment ex p. Riley [1989] JPEL 921* (*Riley*)it was held that *‘if evidence is discovered which is different from evidence originally relied upon…, it does not matter that such evidence does not really add to the weight of the original evidence… The new evidence was sufficient to trigger off the right to apply for modification of the highway’*.
5. In arriving at my conclusions, I have taken account of the evidence submitted by the parties, the relevant part of the 1981 Act and the findings of the Courts in the cases of *Secretary of State for the Environment ex parte Bagshaw and Norton* (QBD) [1994] 68 P & CR 402 [1995] (*Bagshaw and Norton*) and *R v Secretary of State for Wales ex parte Emery* [1996] 4 All ER 367 (*Emery*).
6. As made clear by the High Court in *Bagshaw and Norton* this involves two tests:

Test A – Does a right of way subsist on the balance of probabilities?

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

1. In relation to Test B, the Court of Appeal recognised in the *Emery* case that there may be instances where conflicting evidence was presented at the schedule 14 stage. In *Emery*, Roche LJ held that “…*The problem arises where there is conflicting evidence…In approaching such cases, the authority and the Secretary of State must bear in mind that an order…made following a Schedule 14 procedure still leaves both the applicant and objectors with the ability to object to the order under Schedule 15 when conflicting evidence can be heard and those issues determined following a public inquiry.”*
2. Historical documents and maps are submitted in support of the appeal route. I need to consider if the evidence provided is sufficient to infer the dedication of public rights over the claimed route at some point in the past. Section 32 of the Highways Act 1980 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 appropriate, before determining whether or not a way has been dedicated as highway.
3. At this stage, I need only to be satisfied that the evidence meets test B, the lesser test.

Reasons

*Broyle Enclosure Act 1767 and Broyle Park Enclosure Award 1771*

1. The Enclosure Act authorised the Commissioners to set out or stop up roads and paths and record them in the Award and Plan.
2. On the Enclosure Award Plan section A-C of the appeal route is clearly shown from *‘Ringmer Gate’* (now Lewes Road) and labelled *‘Foot Road’* between points A-B and B-C, and *‘Wood-field Stile’* at point C. Another foot road is shown heading southwest from point B.
3. The appellant has provided a transcript of the Award with question marks where they are not clear of the wording. It sets out that the Commissioners order, award and appoint public footways or roads, paths or passages over Broyle Park *‘for the purpose particularly mentioned and set out for all persons whatsoever at all times whatsoever to travel pass and repass on foot only at their own free will and pleasure, that is to say a common or public footway or road through or over the ? of the said park’*.
4. The appeal route is described from point C as:

*‘one other public footway or road through or over ? of the said park into the copyhold lott herebefore allotted to the said Thomas Hay Esquire ? a place or stile in then said ? called Woodfield stile and from there through a ? the said copyhold allotted to Thomas Hay in this nearest ? into and ? the private road hereto before appointed called Reads lane by the north east corner of the land hereto before allotted to the said ? Road and from thereon the ring ? of said park into through and over the copyhold lands hereto before allotted to the aforementioned Rebecca Snooke and into through and over certain freehold lands hereinbefore allotted to the said Sir Ferdinand Poole and from there by the enclosure called the Broyle Pound unto the gate called Ringmer Gate beforementioned as the same is marked and described in the said plan or survey.’*

1. The appellant and the Council both consider the Inclosure Award map provides evidence of public footpath rights over the appeal route in 1771 and shows it physically existed at this time.

*Ringmer Tithe Map 1838*

1. An extract of the Tithe map shows a narrow double solid line with hatches along section A-B which then heads around the boundary of several parcels in a generally south westerly, then easterly direction. This line is labelled *‘Broyle Boundary’*. One of the parties considers this indicates a track but other parties state the appeal route is not shown, and these lines indicate the boundary of the Broyle. I consider the labelling indicates a boundary rather than a track.

*Ordnance Survey Maps*

1. Section B-D of the appeal route is shown with double dashed lines on the first edition Ordnance Survey (OS) 25 inch to the mile map of 1875. Another route is shown in the same way heading southwest from point B. Section A-B is not shown. The appeal route is not shown on the second edition OS map circa 1899. The route heading southwest from point B is.
2. The appeal route is not shown on the OS six inch to the mile map of 1931 but the route heading southwest from point B is.

*Definitive Map Records*

1. The appeal route is not shown on the Parish Survey map.
2. A report from the Ramblers Association on the survey of footpaths in the parish of Ringmer dated 28 October 1951 states that paths 1 to 25 are shown on the Parish Council map but 26 to 38 are not. None of the paths listed are the appeal route. Route 30 appears to be a route running southwest and northeast from point B.
3. The file associated with the Parish Survey for Ringmer includes a hand-written note listing routes identified in the 1771 Award including the appeal route which is described as *‘route 8* *Woodfield Stile – Ringmer Gate’*. *‘Route 9’* is the route heading southwest from point B and is referred to as *‘Bushfield Stile – no 8’*.
4. A document dated 24 July 1953 concerns amendments to the Draft map for Ringmer. Path 29 Ringmer states *‘Amendment: path included on Draft map. Reason: Broyle Park Inclosure Award, 1971’*. However, I have not been provided with a copy of the Draft map to see if it was subsequently included or any evidence as to why it did not end up on the DMS.

*Conclusions on the Documentary Evidence*

1. The Inclosure Award set out public footpath rights over part of the appeal route in 1771 and there is no evidence that these have been stopped up by due legal procedure. The reference to the Woodfield Stile at the southern end of the enclosure indicates the appeal route continued south, although it is not shown on the Award map. However, the Inclosure Award was taken into consideration when the DMS was first produced in the 1950s. Therefore, this is not new evidence, but it can be taken into consideration with any new evidence.
2. I do not consider the Tithe map provides any evidence of public rights over the appeal route.
3. Part of the appeal route is shown on the 1875 OS maps indicating at least some of the route awarded in the Inclosure Award was set out and continued to exist. This map also indicates the appeal route south of the Woodfield Stile. There is nothing to indicate that this map was taken into consideration when the DMS was first produced, therefore, I consider this to be new evidence. Later OS maps do not show the appeal route.
4. The appeal route was not claimed on the Parish Survey or by the Ramblers during the production of the DMS in the 1950s. However, a file note states it was to be included on the Draft map due to it being shown on the Broyle Park Inclosure Award. I have not seen a copy of the Draft map, so I cannot determine if it was added, if any objections were made, or further considerations given.
5. Because it was considered during the production of the DMS, the Inclosure Award on its own is not sufficient to demonstrate a discovery of evidence of public rights over the appeal route. However, new evidence has been provided by the 1875 OS map. This map does not add much weight to the Inclosure Award, but in accordance with *Riley* and *Burrows,* it is a discovery of evidence which has not previously been relied on. Therefore, any other evidence can also be taken into consideration. Taking the OS map and the Inclosure Award together, I consider there is sufficient evidence to reasonably allege public footpath rights subsist over the appeal route.

###### Conclusions

1. Having regard to these and all other matters raised in the written representations, I conclude that the appeal should be allowed.

###### Formal Decision

1. In accordance with paragraph 4(2) of Schedule 14 of the 1981 Act, East Sussex County Council is directed to make an order under section 53(2) and Schedule 15 of the 1981 Act within three months of the date of this decision to add the public footpath, as proposed in the application dated 4 July 2018 and shown in red on the plan appended to this decision.
2. This decision is made without prejudice to any decisions that may be given by the Secretary of State in accordance with their powers under Schedule 15 of the 1981 Act.

Claire Tregembo

INSPECTOR

**Appeal Plan**

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