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| **Order Decision**Site visit made on 23 May 2025 |
| **by D M Young JP BSc (Hons) MPlan MRTPI MIHE** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 15 July 2025** |

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| **Order Ref: ROW/3334639** |
| * This Order is made under Section 53 (2) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the West Sussex County Council (Chichester No. 3: West Wittering (Addition of a Byway Open to All Traffic)) Definitive Map Modification Order 2023.
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| * The Order is dated 29 August 2023 and proposes to modify the Definitive Map and Statement for the area by adding a Byway Open to All Traffic as shown in the Order plan and described in the Order Schedule.
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| * There were 31 objections outstanding when the Order was submitted to the Secretary of State.
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| **Summary of Decision: The Order is Confirmed.**  |

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Preliminary Matters

1. The application to add the route to the Definitive Map and Statement (DMS) as a “byway open to all traffic” (BOAT) was made by Mr Peter Dawson on 28 December 2018. Although Mr Dawson died in 2023, arrangements were made prior to his death to transfer applicancy to Ms Liza Lingham of Wicks Farm House, Redlands Lane, West Wittering.
2. The Order route is approximately 1.4km in length commencing at Point A at the Rookwood Lane/B2179 junction (grid ref: 478634, 099219) and continuing north-eastwards, terminating at Point B, a short distance west of the junction with at Redlands Lane (grid ref: 479704, 099573). The remaining section of Sheepwash Lane to the Redlands Lane junction is a registered D-class highway.
3. Following investigation by West Sussex County Council (the Order Making Authority (OMA)), it was considered there was a reasonable allegation of the route having historic highway rights. The Order was subsequently made on 17 September 2023. Due to a drafting error on the accompanying Plan, the Order was remade on 29 August 2023 and readvertised. Five letters of objection were received in response to the original Order and a further 26 to the remade version.
4. As the Order Route is unregistered, notices of the application were posted at either end of Sheepwash Lane on 26 February 2019. The same notices were also served on adjacent landowners and occupiers.
5. I carried out a site visit on 23 May 2025 where I walked along the Order route between points A-B.

Main Issues

1. The Order is made under Section 53(2)(b) of the 1981 Act, relying on the occurrence of an event specified in Section 53(3)(c)(i) of the same. This section requires me to consider whether the evidence discovered by the OMA, when considered with all other relevant evidence, is sufficient to show, on the balance of probabilities, that the right of way described in the Order subsists and that the DMS therefore requires modification.
2. Section 36(6) of the 1980 Act requires every highway authority to make, and keep up to date, a list of streets (LOS) within its area, which are highways maintainable at public expense. It is not disputed that the Order route (Sheepwash Lane) is recorded on the LOS as a G-class highway. This status means it is a highway of a historic nature but over which the extent of the public right has not been investigated and established
3. The user evidence submitted in support of the Order constitutes the ‘discovery of evidence’ for the purposes of section 53(3)(c)(i) of the 1981 Act. Section 31 of the 1980 Highways Act (the 1980 Act) requires me to consider if the public have used the route as of right and without interruption, for a period of twenty years immediately prior to its status being brought into question. The application was submitted in response to the increased use of Sheepwash Lane by motor vehicles in 2018. Although not strictly a ‘calling into question’, the OMA has used the date of the application as the basis for determining the 20-year period. The relevant 20-year period is therefore 1998-2018.
4. Documentary evidence was also submitted in support of the Order. Section 32 of the 1980 Act requires me to take into consideration any map, plan or history of the locality, or other relevant document provided, giving it such weight as is appropriate, before determining whether or not a way has been dedicated as a highway.
5. Under common law, an inference that a way has been dedicated for public use may be drawn when the actions of the landowners (or lack of action), indicate that they intended a way to be dedicated as a highway and where the public have accepted that dedication. The burden of proof lies with the claimant to demonstrate that the evidence is sufficient to indicate an intention of dedication. I shall examine the evidence as a whole to establish whether public rights of way for vehicles exist along the Order route.
6. The Natural Environment and Rural Communities Act 2006 (the 2006 Act) extinguished rights for mechanically propelled vehicles subject to certain exceptions set out in Section 67 of that Act. I will need to determine if any of these exemptions apply to the Order route.
7. My decision as to whether or not the Order should be confirmed, or modified, will be taken on the balance of probabilities.

**Reasons**

*Documentary evidence*

1. The salient historical evidence discovered by the OMA is set out below in chronological order.
2. The 1793 West Wittering Inclosure Award only shows the very eastern end of Sheepwash Lane, along with Redlands Lane, coloured yellow. The colouring indicates it was considered to be a public road.
3. The Order route is depicted using solid lines on the 1846 West Wittering Tithe Map and Apportionment. No restrictions are shown across the route, and it is unnumbered on the Apportionment. That is consistent with other roads known to be in use by the public at the time. While the Tithe map is helpful in establishing the physical presence of the route, it does not assist greatly in determining whether the rights along it were public or private.
4. Ordnance Survey (OS) maps from the 1806 first draft through to the 1995 edition show Sheepwash Lane braced between two solid lines. There are no visible features which would suggest that the claimed route was not freely accessible to the public. The 1875 First Edition colours the route orange, which is the same as other roads in the area. The area book for the First Edition labels the route as area 194 with the description “road”.
5. While OS and other maps referenced by the OMA provide strong evidence as to the physical qualities of the Order route, it should be noted that the surveyors mapped physical features and not legal rights. From 1888, OS maps carried a disclaimer to the effect that the representation of a track or way on the map was not evidence of the existence of a public right of way.
6. The Minutes from a West Wittering Parish Council meeting in March 1919 record a complaint regarding the poor condition of Sheepwash Lane. It was resolved that the District Council should be notified and asked to carry out repairs. This document is strong evidence that the Order route was considered to be a road maintainable at public expense.
7. The 1932 Rights of Way Act map does not depict the Order route as a footpath or bridleway. Nonetheless, other footpaths in the area are shown connecting with it, indicating the public had a right of access over the Order route. The map prepared for the Act was based on the 1933 OS map, which shows Sheepwash Lane as an open road much like the B2179.
8. The parish survey carried out pursuant to the National Parks and Access to the Countryside Act 1949 does not show the Order route as a right of way. It is uncoloured whereas County Roads were shaded in orange. A survey of footpaths in the Parish of West Wittering carried out in 1951 contains a list of recorded paths and describes their state of use and maintenance for the benefit of the Ramblers Association. It describes Sheepwash Lane as an ‘Unclaimed Path’ and listed as ‘*A*’ meaning ‘*path little used*’ according to the key. The description of the path is “*a good track between hedges*”. The report is typed throughout, however, next to the description is a handwritten note which states ‘*maintained carriageway*’. The references to ‘path and track’ in the parish survey evidence suggests there was limited use by mechanically propelled vehicles (MPVs) at that time.

*Conclusions on the Documentary Evidence*

1. Overall, the documents are suggestive of a public carriageway maintainable at public expense. Use by MPVs appears to have declined during the 20th century probably due to the proximity of alternative routes and the route’s poor condition. Collectively, I consider the documentary evidence as a whole is suggestive of carriageway rights. I therefore conclude it is sufficient to show that, on the balance of probabilities, the Order route is a historic vehicular highway.

*User Evidence*

1. The application was supported by six user evidence forms (UEFs), testifying to the use of the appeal route ‘as of right’ between 1965 to 2018. The users claim to have used the route either on foot, bicycle or horseback but not by MPV. Frequency of use ranges from daily to weekly. None of the users reported having been prevented from using the route, having seen anyone else prevented or recalled there being signage or obstructions on the route.
2. The user evidence, albeit scant, points to the route being well used by pedestrians, cyclists and equestrians. This gives rise to a presumption of dedication and therefore the burden shifts to the landowner to demonstrate a lack of intention to dedicate.
3. For there to be sufficient evidence of this there must be evidence of some overt acts on the part of the landowner, during the relevant period to show the public who used the path, that they had no intention to dedicate. In this case, no landowner has been identified or come forward and thus there is no evidence of a lack of intention to dedicate.

**Natural Environment and Rural Communities Act 2006**

1. As I have concluded that the Order route has been shown, on the balance of probabilities, to carry public vehicular rights I need to consider the impact of the 2006 Act on them. This came into effect on 2 May 2006. From that date an existing public right of way for mechanically propelled vehicles (MPVs) was extinguished if it was over a way which, immediately before commencement of the 2006 Act, was not shown in the DMS, or was shown as either a footpath, bridleway or restricted byway. Certain exceptions are set out in section 67.
2. Under section 67(2)(b) of the 2006 Act, public rights for MPVs were not extinguished if, immediately before commencement, it was not shown on the DMS but was shown on the LOS. This is the case for the Order route, therefore public vehicular rights over it were not extinguished.

**Whether the Order route should be recorded on the DMS with the status BOAT**

1. The statutory definition of a BOAT, as set out in section 82 of the Countryside and Rights of Way Act 2000 is as follows:

“*a highway over which the public have a right of way for vehicular and all other kinds of traffic, but which is used by the public mainly for the purpose for which footpaths and bridleways are so used*”.

1. Objections from the Pegasus Group and Trail Riders Fellowship, point to the Order route’s inclusion on the LOS in support of their argument that Sheepwash Lane is already part of the ‘ordinary road network’ and as such it cannot qualify as a BOAT. Although I agree with the objectors that the purpose of the legislation was not to record rights of way on the DMS which were part of the ordinary road network, the LOS is simply a list of all highways in the County and variable to the level of maintenance afforded. It does not assist to any great degree in establishing whether vehicular rights exist along a route.
2. For the Order route to be considered part of the ‘ordinary road network’, the evidence would need to show that the predominant use of the route is by MPVs when set against the other forms of public use. From my own observations as well as the user evidence, I do not consider that to be the case here.
3. Sheepwash Lane is a quiet country lane which intersects with Footpaths 32, 2817, 2818 and 2819 at various points. The route is signed as ‘*Unsuitable for HGVs*' at both ends. The surface is a mix of uneven tarmac, gravel and eventually dirt. There is little evidence of active maintenance with potholes being prevalent along most sections of the route. It is therefore unsuited to use by MPVs. Indeed, the only regular use appears to be from farm vehicles accessing adjacent fields. The route is flanked by hedges, vegetation and/or ditches. Overall, Sheepwash Lane has the character of a track predominantly used by those on foot, pedal cycle and horseback, and whose suitability matches this use.
4. I am satisfied from the evidence as a whole that the way in which the route is used, along with its appearance, show on the balance of probabilities that it has the “…*concept or character*…” supporting the recording of the route as a BOAT on the DMS.

**Other Matters**

1. Various matters have been raised in the written representations (summarised at paragraph 9 above) including but not limited to the desirability of the route and concerns regarding future use, public safety and future management. However, these are not matters that can be taken into consideration under section 53 of the 1981 Act.

**Overall Conclusions**

1. Despite being limited, the user evidence demonstrates the Order route has been freely available for the public to use during the 20-year period on foot, cycle and horseback without restriction. The documentary evidence suggests the Order route is a historic vehicular highway. There is no evidence that the use was interrupted or that it was not ‘as of right’. I have not identified any evidence to show a lack of intention to dedicate a public right of way over the Order route within the 20-year period.
2. Therefore, on the balance of probabilities, I am satisfied that the evidence as a whole is supportive of the Order route being an old public vehicular highway.

Formal Decision

1. The Order is confirmed.

D M Young

INSPECTOR

**APPENDIX A – ORDER PLAN**

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