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| **Order Decision** |
| On papers on file |
| **by Laura Renaudon LLM LARTPI Solicitor** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 31 July 2025** |

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| **Order Ref: ROW/3358905** |
| * This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the West Sussex County Council (Chichester No. 2: Yapton (Addition of a footpath)) Definitive Map Modification Order 2024. |
| * The Order is dated 1 February 2024 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 no objections outstanding when West Sussex County Council (‘the Council’) submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation. |
| **Summary of Decision: The Order is confirmed.** |
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Procedural Matters

1. I have been appointed by the Secretary of State for Environment, Food and Rural Affairs to determine whether this Order should be confirmed on the basis of the papers submitted.
2. The Order was made further to an application made by Mrs Julie Robinson in 2018 to add and upgrade various lengths of bridleway in the area. The Council determined not to make any such Orders, but on appeal to the Secretary of State the Council were directed to make the present Order. This they did, on 1 February 2024.
3. Subsequent consultation resulted in no objections to the Order and it is now submitted for confirmation as an unopposed Order. It is open to the Council to confirm the Order themselves, because it is unopposed, but is before the Secretary of State because it was one of two Orders arising from the former appeal that were consulted upon together. I understand that objections were made to the other Order, leading to the Council to submit them both to the Secretary of State for confirmation. That other Order will be determined separately.

The Main Issues

1. The Council made the Order upon the direction of the previous Inspector, who expressed himself satisfied that ‘Test B’ was passed. By this I refer to the tests established in *R v SSE ex parte Norton & Bagshaw* [1994] 68 P&CR 402 when determining whether to add a route to the Definitive Map and Statement (‘DMS’), namely whether a right of way subsists (Test A) or is reasonably alleged to subsist (Test B). It was established in *Todd & Bradley v SSEFRA* [2004] EWHC 1450 (Admin) that Test A applies at confirmation stage. Thus although there are no objections to the Order I must nonetheless be satisfied that that higher evidential burden is discharged in order to confirm the Order.

Reasons

1. The route of the Order footpath is that referred to as section D-E in the Inspector’s decision of 20 December 2023 under reference ROW/3311239 directing the Council to make the Order. That Inspector considered the documentary evidence in the case in detail and referred specifically to a number of historic maps upon which the route had been depicted as a footpath. Specifically he recorded that:

*The Yeakell and Gardner’s Sussex Map 1778-1783 shows this route D-E in a similar way to other routes through this section of farmland which the evidence, taken in the round, indicates have rights as public footpaths. This route is not shown on all maps, but it does appear on the Ordnance Survey map of 1896-97, where it is marked as a public footpath and again in 1910, as well as 1938-39. Given the connections with it linking with other footpaths as a continuous route on some maps, and the fairly consistent historical information, it is considered that for the route D-E it is reasonable to allege that a right of way subsisted in the past for a footpath but not in terms of any higher status, including for the bridleway which is alleged.*

1. The officer’s report on the original application noted that the route (D-E) was depicted on only a few maps, but including the Quarter Sessions Maps of 1905 and 1920 and on the Draft and Provisional Definitive Maps as a footpath. The application, in regard to D-E, was to record bridleway rights over the route, and the officer’s advice was that such rights were not reasonably alleged. The officer’s report did not however consider whether lesser rights, in this case a footpath, might have been established.
2. In the absence of any objections to the Order as made, I have no reason to depart from the previous Inspector’s findings and there is insufficient conflicting evidence before me to suggest that the route is anything other than a public footpath. Its consistent appearance on Ordnance Survey maps, as part of a longer route, from 1896-7 through to 1938-9, as well as its earlier appearance on Yeakell and Gardner’s Sussex Map 1778-1783, supports such a conclusion, and the lack of objection to the Order indicates some acknowledgement of such rights. On the balance of probabilities, therefore, I find that such rights subsist.

**Conclusion**

1. For the above reasons I shall therefore confirm the Order.

**Formal Decision**

1. The Order is confirmed.

Laura Renaudon

INSPECTOR

Order Map – Copy Not To Scale

