

|  |
| --- |
| **Order Decision** |
| Site visit 5 August 2025 |
| **by Nigel Farthing LLB** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 26 August 2025** |

|  |
| --- |
| **Order Ref: ROW/3334603** |
| * 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 (Petworth No.1 Loxwood (Addition of a Footpath)) Definitive Map Modification Order 2023.
 |
| * The Order is dated 15 September 2023 and proposes to modify the Definitive Map and Statement (DMS) for the area by adding a footpath as shown on the Order map and described in the Order Schedule.
 |
| * There was one objection outstanding at the date the Order was submitted for confirmation.
 |
| **Summary of Decision: The Order is confirmed.** |
|  |

Preliminary Matters

1. This matter was originally scheduled for a public inquiry commencing 5th August 2025. No statement of case was submitted by the Objector who indicated they would not attend the inquiry. It was concluded that the matter would proceed by way of written representations.
2. I made an unaccompanied site visit on 5th August 2025.
3. In this decision I have found it convenient to refer to the Order map and for ease of reference a copy is attached. The Order map is annotated with points A to D which I shall refer to in this decision.
4. This Order seeks to add to the DMS a public footpath commencing at point A on the Order map where the Order route branches out of FP 795. The Order route proceeds in a north-westerly direction to point B where it crosses a public footpath and then continues in the same direction to point C where it turns sharply to a northerly direction to meet FP 797 at point D.
5. One objection to confirmation of the Order was received from Loxwood Clay Pits which has not been withdrawn.

**The Main Issues**

1. The Order has been made under section 53(3)(b) of the 1981 Act which requires the expiration of any period such that enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path.
2. The standard of proof to be applied is the balance of probabilities.
3. West Sussex County Council (‘the Council’), in making the Order, rely upon a presumption of dedication arising further to the tests laid down in Section 31 of the Highways Act 1980 (the 1980 Act).
4. Accordingly, I must establish the date when the public’s right to use the Order route was brought into question. The evidence must then be examined to determine whether there has been sufficient use to demonstrate use by the public and that such use has been as of right and without interruption for a period of not less than 20 years ending on that date. Finally, it is necessary to consider whether there is sufficient evidence of actions by the landowners during the relevant 20-year period which demonstrate that there was no intention on their part to dedicate public rights.
5. In the event that the requirements for a presumption of dedication under the 1980 Act are not met, I will need to consider whether there is sufficient evidence for an inference of dedication at common law.

Reasons

***Site visit***

1. I began my visit at point A where the Order route departs from FP 795 which continues in a westerly direction. At point A the Order route is an improved track of vehicular width. A few metres beyond point A there is a galvanised metal gate with metal posts on each side. At the time of my visit the gate was open but when closed it would span the width of the track. There was no fence or structure beyond either metal post. There was a chain with which the gate could be secured shut, but there was no lock. On the gate a sign was displayed which reads ‘WARNING Wildlife Management - Shooting is undertaken in these woods.’
2. From point A the track proceeds in a north-westerly direction on a broadly straight line. A short distance along the track the stoned surface gives way to two wheel lines, with a stoned surface and a grass strip in the middle. The width of the track does not vary. The impression given is that the track is used by heavy equipment, probably for forestry purposes. The route passes through deciduous woodland and at points there are various informal tracks leading off on both sides having the appearance of being used by pedestrians.
3. At point B the Order route crosses a public footpath. On either side of the intersection there is a galvanised metal gate, similar to that at point A. Both gates were open. Each gate had a chain to secure it shut and one chain had a combination lock. There were no signs on either gate.
4. Beyond the intersection the Order route continues in the same direction to point C where the main track turns through 90 degrees to a northerly alignment. A less significant track continues in the original direction of the Order route. From point C the Order route proceeds downhill to a crossing of a small stream and then rises on the far side. Between points C and D the track bifurcates, with the more significant track heading broadly west while the Order route continues north, now as an unsurfaced track, to its junction with FP 797 at point D. Here there is a further galvanised metal gate similar to those at A and B. Here the gate was closed and secured shut with a chain and padlock. On the gate (facing north) was a sign reading ‘CAUTION Tractor access required’.
5. Other than the four gates and the signs described there was no obstruction to unrestricted use of the Order route. I saw no other signs.
6. For completeness I shall describe FP 795 east of point A. FP 795 branches out of a public bridleway to the east of point A. At this point there is a galvanised metal gate across the track, similar in appearance to the gates described at other locations on the Order route. To the side of the gate is a smaller, pedestrian gate. Both gates were shut when I visited, but neither was locked.
7. Between the two gates described and point A there is a point where the track widens and there is an arrangement of metal kerbing giving the appearance of a place for truck or heavy machinery to pass. Immediately beyond this there are two red and white poles, one on each side of the track, with a similar bar between them. I assumed this device is to limit the height and width of vehicles passing through. FP 795 runs between these poles.

***Documentary evidence***

1. The Order was made under section 53(3)(b) of the 1981 Act and does not rely on documentary evidence. Various Ordnance Survey (OS) map extracts have been submitted in support of the application. OS maps usually carry a disclaimer stating that they do not purport to distinguish public rights of way and thus cannot be relied upon as evidence of status but are good evidence of the physical features existing on the ground. The maps show that a network of rides has existed through this woodland since at least the second half of the nineteenth century, including a route substantially, but not wholly, co-extensive with the Order route. The 1898 and 1914 OS show the entirety of the Order route save for a slightly different configuration in the vicinity of point A where the track joins FP 795. The OS 1934 edition and subsequent editions show the Order route as it exists on the ground today, indicating that the route was fully evident by that date.

***User Evidence***

1. The application for a modification order was initially supported by 116 user evidence forms (UEFs) testifying to use by 118 individuals within the period 1950 – 2021. Statements in the form of emails relating to use of the Order route were submitted on behalf of 14 individuals.

Twenty-year period

1. For the purposes of a statutory presumption of dedication under section 31 of the 1980 Act it is necessary to establish when the right of the public to use the route was first brought into question. The Council note the erection of gates with notices across the Order route in January 2021 which would have been a sufficient challenge to the right of the public to use the track. However, in July 2020 the landowners made a CA16 deposit which did not recognise the Order route as a public right of way, and this was sufficient to bring into question the right of the public to use the way. On this basis the relevant period for consideration is 2000 – 2020.
2. The landowners assert that gates were erected across the route in 1995. Correspondence has been produced in evidence which refers to the erection of gates at that time. The correspondence does not indicate the precise location of the gates, and the photographs provided indicate that one of the gates referred to is not on the Order route. The other gate pictured is accepted to be on the Order route, but it is not apparent when the photograph was taken, and it does not therefore corroborate the presence of a gate in the 1990’s.
3. If it could be established that a gate was present across the Order route at a date earlier than 2020 this could have the effect of setting a different 20-year period. However, in this case there are a very substantial number of user evidence forms, many of which relate to the period between the mid-1990’s and 2020. The forms ask a specific question about the presence of gates. None of the users acknowledge the presence of any gates prior January 2021. Given the unanimity of the user evidence on this point, and the lack of any corroborative evidence of the existence of a gate in 1995, I conclude, on a balance of probability, that the landowners are mistaken about the presence of a gate on the Order route prior to 2021.

Use as of right

1. Use is only as of right if it is undertaken without force, secrecy or permission. In this case there is no suggestion that any use was undertaken in secret.
2. Use can be permissive if undertaken in consequence of specific permission having been granted by the landowner. Use will also be permissive if it is undertaken in the exercise of an implied right.
3. Three users who claim continuous use of the route between 2000 and 2020 acknowledge that they were given permission to do so. Such use is to be disregarded when assessing whether the overall level of use is sufficient to demonstrate use by the public.
4. The landowners state that “the public have been noted using the service route irregularly and are considered unauthorised users”. They also state that notices have been displayed stating ‘no unauthorised access”, “machinery access route” and “timber lorry access route”. It is apparent from these comments that the landowners were aware of public use and, although they may have considered it unauthorised, their belief as to the nature of the use does not render such use contentious.
5. A sign stating ‘no unauthorised access’ could render use contentious but no details are given of where and when such a sign was displayed and none of the users have referred to such a sign in answer to a question specifically about notices. The notices referring to machinery and timber lorries could be regarded as acknowledging the presence of the public and giving them warning of potential hazards.
6. The landowners assert that members of the public have been challenged when using the Order route and told it is not a public right of way. No details have been given as to where or when the challenges took place or by whom they were made. The user evidence forms ask specifically whether the user had been challenged by the landowner. A number of users acknowledge being challenged in 2021, after the gates were put up, but none refers to any earlier challenge.
7. I must assess the evidence on a balance of probabilities. As with the gates, in the absence of details of the where and when the signs were located or challenges took place, and with a very significant number of users stating they had not seen any signs or been challenged, I conclude, on a balance of probability, that, with the exception of the three users who had permission, the evidence detailed in the user evidence forms and statements was use as of right.

Use by the public

1. For the Order to be confirmed the evidence must show that the qualifying use has been such that it is representative of use by the public at large throughout the relevant twenty-year period. There is no minimum requirement for the number of users. Frequency of use and quality of evidence are relevant factors.
2. In this case there are 116 user evidence forms and 14 user statements. It is acknowledged that the evidence of three individuals should be disregarded as they were given permission to use the Order route.
3. The majority of the user evidence forms refer to use in the 21st century. The earliest claimed use commenced in 1950. A small number of users give evidence in the 1950s and 1960s but a more significant number describe use which commenced in the 1970s. Many refer to regular use, in terms of weekly or more frequently.
4. Having regard to the period 2000 – 2020 I am satisfied that the evidence overwhelmingly demonstrates use by the public. For the reasons given I have determined that 2000 – 2020 is the relevant 20-year period although I have referred to the Objectors’ contention that the right of the public to use the order route was challenged in 1995. I have not accepted that argument, but would, for completeness, comment that the user evidence forms and statements probably confirm sufficient evidence of use for the period 1975 – 1995 to give rise to a statutory presumption of dedication.
5. There is no evidence to suggest that the ability or right of the public to use the Order route was interrupted within the relevant 20-year period.

Conclusions on user evidence

1. I am satisfied that the Order route has been used by the public as of right and without interruption for the relevant 20-year period such as to give rise to a presumption of dedication under section 31 of the 1981 Act.

Lack of intention to dedicate (‘the proviso’)

1. Evidence of a lack of intention on the part of the landowner to dedicate the Order route as a footpath would preclude any statutory presumption of dedication from arising. To constitute an effective demonstration of a lack of intention to dedicate the landowner, during the relevant twenty-year period, must have acted in a way which would have brought home to users of the route that he did not wish it to become a public right of way. The requirement is only that the lack of intention is demonstrated ‘during’ rather than throughout the 20-year period.
2. Acts which would call into question the right of the public to use the Order route would usually also demonstrate a lack of intention to dedicate. Accordingly, it is necessary for me to consider the actions of the landowners within the period 2000 - 2020. The suggestion that a gate was erected in 1995 is outside the 20-year period and is thus not relevant. I have examined the suggestion that notices were erected, and users challenged, and I have found that the evidence does not support the landowners’ assertion that use was not as of right. For the same reasons I find that the landowners have not sufficiently demonstrated a lack of intention to dedicate and therefor are unable to rely upon the proviso.

Conclusions on presumed dedication under section 31 of the 1980 Act

1. Having regard to the foregoing I am satisfied, on a balance of probability, that the Order route has been sufficiently used by the public as of right to give rise to a presumption of dedication and that there is no sufficient evidence of actions on the part of the landowner to demonstrate a lack of intention to dedicate.

Common Law

1. Having concluded that the evidence gives rise to a statutory presumption of dedication it is not necessary for me to consider the position at common law.

**Overall Conclusion**

1. Having regard to these and all other matters raised I conclude that the Order should be confirmed.

**Formal Decision**

1. I confirm the Order.

Nigel Farthing

**Inspector**

