

Via email
Planning Inspectorate
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Tuesday 4 July 2023

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SECTION 53 OF THE WILDLIFE AND COUNTRYSIDE ACT 1981

**THE EAST SUSSEX COUNTY COUNCIL (LEWES DISTRICT)
DEFINITIVE MAP AND STATEMENT**

Dear Sir/Madam

**THE EAST SUSSEX (PUBLIC RESTRICTED BYWAY PIDDINGHOE 15)
DEFINITIVE MAP MODIFICATION ORDER 2021**

Thank you for your letter dated 26 May 2023 containing the Statement of Cases/comments by the other parties.

This is now the Council's Final Statement of Case.

While the Council remains neutral on whether the made Order should be confirmed, not confirmed or modified, it makes the following points as matters of interest and that should be considered when determining what should happen next.

Applicant's Statement of Case acting as OMA – received 14 April 2023

The Council has nothing more to add to its previous comments of 22 May 2023 in its Statement of Case, about the Applicant's Statement of Case.

Statement of Case by Newhaven & Seaford Sailing Club – dated 23 May 2023

i. **Finance Act 1910**

Plot/parcel number 79 that is mentioned in the assessment of hereditament 1382 is described as a wall. It is possible this wall abutted plot 79 but was not part of it or hereditament 1382 or that if the wall was in plot 79 that only the wall part of plot 79 was being considered and therefore only the wall was part of hereditament 1382 and the rest of the plot (the Order route) was outside of the hereditament. The Order route and plot 79 both seem too large and wide to consists of just a

wall alone. The Finance Act map shows a double lined route around the edge of the relevant part of hereditament 1382 in this area which could be a wall and the map seems to show the blue shaded area of the Order route was not being in hereditament 1382 as indicated by the bracing marks. Bracing marks acted as boundaries between hereditaments and in this case suggested that the blue shaded area was in a gap between hereditament 1382 and hereditament 1496 to the north of it.

It is stated that plot 79 is also included in hereditament 1393. While it is mentioned in this hereditament it is also again listed as a wall. It seems unlikely that plot 79 would be included in 2 hereditaments, certainly not as a whole. Given that it is mentioned in two separate hereditaments it is more likely that it has been referred to in these hereditaments in part, and probably in relation to the area covered by a wall only. If plot 79 was owned by one person then it would not be split over more than one hereditament and would more likely be covered by just one hereditament if at all and so would not need a separate plot number. The fact that it is referenced in several hereditaments could suggest it was not owned privately and that the bits referenced were the boundary walls only, leaving the rest of the land in plot 79 outside of the hereditaments that mentioned it. However, the acreage mentioned in the field books that refer to plot 79 do appear to add up to the total acreage attributed to plot 79 on the map.

It is not helpful that plot 79 is listed as such but split between what seems to be two hereditaments and shaded blue.

The Inspector who allowed the Appeal into this case said that the Order route did not fall into any hereditaments.

ii. 1930 conveyance

As private rights of way can co-exist with public rights of way, it is possible this conveyance gave a private right of way to the purchaser should a public right of way there ever be stopped up, and so also gave the purchaser to divert this private right of access as necessary.

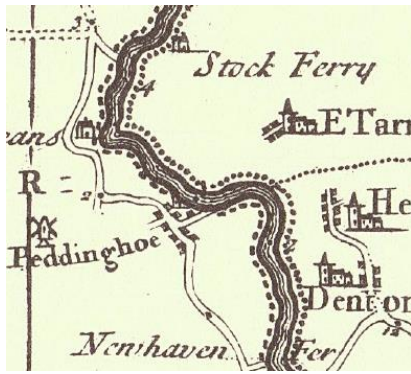
iii. Historic County maps

It's probable that the Applicant got his labelling of his historic maps mixed up in his Statement of Case.

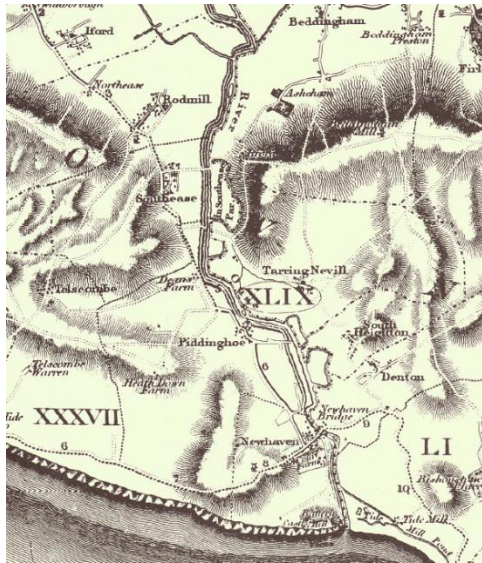
- a) The Applicant's Budgen map of 1724 looks more like the Overton and Bowles map of 1726 as the landowner states and as shown in the landowner's Statement of Case. The Council has its own version of the Overton and Bowles map, albeit listed as being of 1740, as shown below.



Below is the Council's version of the Budgen map of 1724.



- b) The Applicant's Overton and Bowles map of 1740 looks like it is actually the Greenwood and Greenwood map of 1825, as the landowner states. The Council's version of the Greenwood and Greenwood map is shown below, together with a close up.



The Council's version of the Overton and Bowles map of 1740 is shown above in a).

The difference between the 1825 and 1829 Greenwood and Greenwood maps might be the scale.

The Council's Yeakell and Gardner map of 1778 does not cover the subject area.

The Council does not have access to its own copy of Mudges map 1813.

To conclude, it can be difficult to use the historic maps of the County from the 1700s and 1800s to accurately determine the exact ways routes took and to know exactly what they intended to show. The scale and purpose of these maps is sometimes unknown, inaccurate and cannot be

relied upon. Overall, little weight can be applied to this maps in determining public rights of way unless perhaps supporting much stronger evidence.

iv. Tithe records

It is difficult to use tithe maps to determine the status of a way as they were designed to show if the land was subject to tithe tax and if so what proportion of tax should be paid. The route is listed in the tithe records as a driveway and pasture, suggesting that the route could be cultivated and therefore was taxable. It could still have been a public highway, or could also have been private.

v. River and Canal Records. Plans of the Glynde Levels 1791

It is difficult to know what is intended to be shown here in terms of the Order route, but certainly it is shown in some form. Similarly, it is uncertain what the colouring depict on the Levels maps.

vi. OS map, first edition, 1873

The faint tracks in the western half of plot 71 can be seen. It is hard to know what the status of the route was, but the term 'road' does suggest more likely to be public status, even with the 'rough pasture' comment.

vii. OS map, second edition, 1899

The field book to accompany this map is needed to help explain what is meant by plot 79.

viii. OS map, 1888

The order route seems too wide to be just a drainage ditch.

ix. OS map, 1945

The Order route is shown in white and connected to the rest of the public road network which favours the application.

x. Abstract of Title, 1936

While this map shows the western end of the Order route as connected to the rest of the public road network, its legal status and accuracy is questionable as it is hand drawn and without scale, key or further information.

xi. Other maps

Similarly to historic County maps, these maps are hard to use as evidence to support the application due to the accuracy and status being open to interpretation.

xii. Portrait of Piddinghoe

Using history books written by local authors as evidence of this type of application can be difficult. It would be ideal if the author could give a statement if still living and for the claims in the book to be backed up by others, other material or even peer reviewed.

Several items, such as OS maps, the River & Canal Records, and Finance Act 1910 have lines at or near the end of the Order route going across the route which could be some sort of barrier, but their nature and purpose are uncertain. These lines are not shown on the Tithe maps.

Another argument made has been that public routes have to go to another public route or place. While this is usually the case it is not impossible that public routes could be cul-de-sacs and simply take the traveller to places the public have public access to like a public field, but do not continue beyond.

xiii. Conclusions

In the Appeal the Inspector has already said that it can be reasonably alleged that the order route may subsist, hence why the Council was told to make the Order. The question now, to confirm the Order, is whether the route subsists on the balance of probability.

Statement of Case/comment by W D Carr partnership – dated 24 May 2023

The objection based on the grounds that there is already plenty of access in the area is not something that the Inspectorate can consider. The decision to be made is do the public rights of way exist on the balance of probabilities and the suitability and desirability of the Order route is not applicable in the decision-making process.

Final thoughts

The strongest piece of evidence in support of the application is the Finance Act maps and books, assuming it is (still) considered that the Order route is not part of a hereditament. This could possibly be supported to a lesser extent by the tithe maps which described the Order route as a droveway.

It remains to be seen if all this is considered strong enough, along with all the other evidence, for Test A to be passed and for the Order to be confirmed or modified. The Inspector who considered the Appeal didn't think it was strong enough. Further evidence has since come forward, such as the landowner's further material on the Finance Act, so to some extent the evidence has been tested at this Order stage. It is now for the Inspector to weight up all the evidence and to determine the fate of the Order.

Many thanks for your assistance.

Yours sincerely



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Rights of Way Map

An online Rights of Way Map showing footpaths and bridleways across the County is available on the East Sussex website at the following address:

<https://www.eastsussex.gov.uk/leisureandtourism/countryside/rightsofway/map/>

The map can be used to plan walks and rides on the Rights of Way network. It also provides the location and reference number of stiles, gates and bridges, as well as path numbers.

Privacy

Please visit our website for information on how we can manage personal information:

www.eastsussex.gov.uk/privacy/rights-of-way-and-countryside