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# Order Decision

by **K R Saward Solicitor**

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

**Decision date: 16 September 2020**

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## Order Ref: ROW/3237045

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 ('the 1981 Act') and is known as the Kent County Council (Bridleway EE488 at Goodnestone & Eastry) Definitive Map Modification Order 2019.
- The Order is dated 7 February 2019 and proposes to modify the Definitive Map and Statement for the area by adding a bridleway running from Knowlton Lane to Straight Mile, including the upgrading to bridleway of public footpath EE261, at Goodnestone and Eastry, as shown in the Order plan and described in the Order Schedule.
- There were 5 objections outstanding when Kent County 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. The original application for a Definitive Map Modification Order was made on behalf of the British Horse Society ('BHS') for a restricted byway. The Order as made is for the addition and upgrade of the claimed route to a bridleway. The BHS objects to the precise alignment of the Order route in two locations and the width in part. It does not object to the principle of the Order recording the claimed route as a bridleway.
2. I draw no inferences from the Council as Order Making Authority ('OMA') reaching a different conclusion from the BHS on the same evidence. Both concluded that the entire route carries public rights but for different types of traffic.
3. As I have found it convenient to refer to points along the route, a copy of the Order plan is attached for reference purposes.
4. If confirmed, the effect of the Order would be to add two sections of bridleway from A-E and G2-M and to upgrade the entire length of the existing footpath known as EE261 to a bridleway which lies between E-G1 to create one continuous bridleway.

## Main Issue

5. The Order has been made under Section 53(3)(2)(b) of the Wildlife and Countryside Act 1981 ('the 1981 Act') in consequence of the occurrence of an event specified in Section 53(3)(c)(i).
6. The main issue is whether the discovery by the OMA of evidence which (when considered with all other evidence available) is sufficient to show:
  - in relation to A-E and G2-M, that a right of way which is not shown in the DMS subsists over land in the area to which the map relates (section

53(3)(c)(i));

- in relation to E-G1, that a highway shown in the DMS subsists as a highway of a particular description which ought to be there shown as a highway of a different description (section 53(3)(c)(ii)).
7. Whilst it suffices under section 53(3)(c)(i) for a public right of way to be *reasonably alleged* to subsist, the standard of proof is higher for the Order to be confirmed. At this stage, evidence is required on the balance of probabilities that a right of way subsists. That is the same test which applied for the Order to be made to upgrade the existing footpath under section 53(3)(c)(ii). In that regard, the test is not whether the existing path was inaccurately recorded in the DMS, but whether the evidence suffices to upgrade its public status.
  8. The burden of proof lies with those who assert the existence of a public bridleway.

### **Reasons**

#### **Background**

9. The Order route extends approximately 2960m between Knowlton Lane to the west and Straight Mile to the east crossing the parish boundary between Eastry and Goodnestone. It is intersected in places by Thornton Lane, Venson Bottom (Pike Road)<sup>1</sup> and the A256 Dover Road which all run broadly north-south. A section of the Order route is an existing footpath which follows part of a sunken lane and across a dismantled light railway to connect with Thornton Lane. The BHS describes the route in its entirety as Black Lane and claim it is part of a historic way between Canterbury and Deal.
10. The application was made on the basis of historical documentary evidence only. Following pre-Order consultation, a local representative of The Ramblers provided some evidence of use on foot only. This related to part of the route along Black Lane circa 1982-83 and by the East Kent Rambling Club along parts of the western section from September 1983–January 1995 although their use was challenged in 1994. This evidence does not influence whether a bridleway existed historically along the entirety of the route. There does not need to be evidence of use in order for a public right of way to subsist.
11. Several different landowners are affected by the Order route. The historical physical existence of a track, either in whole or in part, which is on or in proximity to the Order route is not in issue. One objector (a local landowner) acknowledges that there is a consistent, unambiguous depiction and alignment of a track which might add weight to it being a highway but argues that in this case there are significant inconsistencies in the evidence which undermine the case for a historic highway.
12. Extensive documentation was submitted with the application and presented using a scoring system. I shall not refer to each and every document although I have obviously considered all evidence provided. Not all of those documents show the claimed route or the position is uncertain and some duplicate other maps. For the purposes of this Decision I shall focus on the core strands of evidence relied upon by the OMA in reaching its decision along with the matters in dispute.

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<sup>1</sup> The correct name is uncertain

13. Section 32 of the Highways Act 1980 requires that documentary evidence is taken into consideration 'before determining whether a way has or has not been dedicated as a highway' – and that such weight is given to this evidence as 'justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it was produced.'

### **Documentary evidence**

#### *Miscellaneous early mapping & records*

14. Eastry Court Estate Map (1728) shows the Order route coloured sienna between J-M. It is labelled 'Shire Way'. The eastern end is annotated 'To Betshanger'<sup>2</sup> and 'To Knowlton' at the western end. Other known highways are shown in the same manner. There is disagreement over whether 'shire way' was a term used at that time for a bridleway. The fact that the route is not only so labelled, but also coloured and with destination markers indicates it was thought to have public status, most likely as a bridleway.
15. The BHS maintains that the route is shown as part of a principal way between Canterbury and Deal on the Parochial map of the Canterbury diocese (1782). However, given the scale of the map and limited details shown it is not possible to tell if it is the Order route or not.
16. The Updown Park Diversion Order (1789) did not concern the Order route but the eastern end is shown coloured sienna between double pecked lines. The BHS believes that a public footpath is depicted as a single dashed line. Known roads are coloured between solid parallel lines. The OMA agrees that the section of Order route was likely to be considered as having public status, most probably as a bridleway. This seems a reasonable interpretation.
17. The Barlow-Hasted *History and Topographical Survey of Kent* (1797-1801) shows the entire route uncoloured as a through route described in the text from 1800 as a bridleway to Eastry and Deal. Notably, the principal (coloured) route from Canterbury to Deal is Thornton Road which lies to the south.
18. Boteler was a local historian. His sketch map contained within '*Collections for the Hundreds of Bewsborough, Cornilo and Eastry and part of Ringslow*' (1790-92) shows the route from A-G1 annotated 'Bridleway to Knowlton'. Other known highways are also shown. The absence of a route shown beyond point G does not diminish its value as evidence of a bridleway between A-G.
19. The Mudge-Faden 1" Map (1801) shows the entire route coloured sienna as part of a longer route continuing in each direction. From point A the route is initially shown enclosed by bold double parallel lines changing around point B to a bold line on one side only. The route was again shown coloured on the half inch Mudge-Faden map of Kent c1807. The OMA points out that the map was produced for military purposes in the event of invasion to record all routes whether public or private. As such, it is not good evidence in isolation of public rights.
20. On Baker's map within Laurie and Whittle's *New and Improved English Atlas* (1806) there is a route coloured pink and identified in the key as a 'principal

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<sup>2</sup> Later known as 'Betteshanger'

travelling road'. Whether this is the Order route or perhaps Thornton Road is unclear given the scale and alignment.

21. Greenwood's map of Kent (1819-20) shows the whole route continuing from Knowlton Lane as solid parallel lines changing around point E to double pecked lines over the remainder. The key on the map indicates that the route is a cross road which could be indicative of a public way.
22. A road from Canterbury to Deal avoiding Sandwich is described in Cary's New Itinerary (1821) going via Knowlton and Knowlton Court on the right of the route. This corresponds with the alignment of the Order route. There is no map but there does not appear to be another route matching that description.
23. The extract of the Upper Venson Estate plan (1821) shows a short section of Black Lane either side of point G where it is intersected by Thornton Lane. Both are coloured and identified in the table as 'roads'. The section of Black Lane is annotated 'From Knowlton' at one end and 'To Betshanger' at the other end.
24. Knowlton parish terrier (1833) refers to three pieces of pasture land in the parish of Knowlton bounded on the north-east by the bridle road leading from the Church to Deal. The Church is at point A. It seems clear that this must be the Order route. It provides evidence of a track from the Church to Deal. It seems unlikely that the route would be described in this way if its use was limited as a church way for use by the Church or parish, as the objector suggests. The more plausible interpretation is that it was a bridle road available to the public between those points.
25. 'The contracted map of principal roads in Eastry' (1838) is thought to provide a record of maintained roads within the parish. The principal roads appear to be coloured on the map. The route is shown as a single or double pecked line from E-M and is annotated 'Supposed Road to Knowlton'. Different interpretations may be given to this. Clearly, it was not recorded as a principal road. It may be because it did not have public status, it was a lesser route or that its status was unclear. The BHS surmises that it records the decline of Black Lane. As evidence, all that it shows is that a route existed which was thought to be a road but not one maintained as a principal route. Its evidential value is neutral. It does not undermine other maps prepared over a comparable period.
26. In the Eastry Rural District Council highway committee report of 22 July 1913 reference is made under the subject of 'East Kent Light Railways' to the 'Bridle Rd from Betteshanger<sup>3</sup> to Knowlton is obstructed with high embankment of Chalk'. This would have been at point F where the light railway crossed the route. It is suggested that 'this should be diverted a few yards towards Eastry and over the line where the embankment is not so high'. The comment in the margin records that the suggestion is 'approved subject to diversion being satisfactory'. The objector argues that the purpose of the report was simply to ensure that the public right of foot over the private bridle road was maintained and nowhere does it refer to a public bridleway. The report supports the belief of the time that at least part of the route was a public bridleway. If the Council's concern related to public rights on foot only then logically it would have said so rather than use the term 'bridle road'.

27. A notice published in the London Gazette in 1923 for a Special Order under the

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<sup>3</sup> Also known as Betshanger

Electricity Supply Acts 1882-1922 gives notice of intention to lay apparatus across certain level crossings. It includes the level crossing over 'the road leading from Thornton Road to Knowlton' in the parish of Eastry. The OMA flags up that there must be an error because the level crossing would have been from Thornton Lane rather than Thornton Road. If that is so, it supports the section of route from A-G1 being a road of some description.

*Tithe records*

28. Tithe maps officially recorded the boundaries of all tithe areas on which tithe rent-charge was apportioned. Their purpose was not to identify highways.
29. The Tithe Map for Knowlton (1840-41) is a first class map showing the route as a continuation of Knowlton Lane between A-E and coloured sienna with the eastern end annotated 'From Betshanger'. It is not shown as titheable. Comparisons are drawn by the BHS with other known public roads which are similarly labelled as routes 'To' or 'From' a particular place but this is by no means conclusive.
30. The Eastry Tithe Surveyor's Field Books 1840 were drawn in connection with the preparation of the tithe map. There is a sketch which appears to show the route from Knowlton continuing through points A-M and beyond. The BHS highlights the field book entry for 'Roads' but it cannot be gleaned with any level of certainty that this refers to the claimed route.
31. The whole route is shown on the extract produced of the Tithe Map for Eastry (1841), but not all details are clear due to the small scale and print quality. From point A to midway along the existing public footpath the route is enclosed by solid lines. The remainder of the existing footpath has a solid line to the southern side and pecked line along the northern side. As the route continues between G-I the route appears as double pecked lines. It changes again from point I onwards to a single pecked line braced to two tithed parcels listed in the accompanying Schedule as 'Sheepdown, arable'. There is no apparent colouring of routes on the map.
32. Depiction of the route outside the titheable land from A-I could be indicative of a route with public status up to the carriageway at Venson Bottom. Another explanation advanced by an objector is that Black Lane provides, in part, access to a number of holdings located along its length and so its role was as an 'occupation road'. Where it served as a field access to various owners it is submitted that the road had no separate productive value and so did not fall to be assessed for tithe.
33. Tithe would not be paid because the land was unproductive. It is most likely to be excluded due to the use of the land which in this case could be public or private or both.
34. The objector notes that the route crosses Thornton Road which is annotated as 'To Deal' and 'From Knowlton'. It is suggested that the absence of any annotation on the Order route infers it does not serve a purpose for public passage. However, if inferences are to be drawn from the annotations then it follows that the currently unrecorded section of route from A-E has public status as it is annotated as being 'From Betshanger' on the Knowlton Tithe Map. The provision or absence of directional annotations on the map extracts is not compelling evidence either way but a consideration among many other factors.

35. Tithe maps are rarely conclusive evidence of the status of a route. An un-tithed route can give a good indication that the route is a public highway, but in this case only between A-E.
36. Support can be found in the Order of Exchange made in 1870 when certain glebe land adjoining part of the route was surrendered under section 5 of the Tithe Act 1842. The route from A-D and continuing at each end is shown coloured sienna on the plan with the eastern end annotated 'to Betshanger'.

#### *Railway records*

37. In the Ramsgate Sandwich Deal and Dover Railway deposited plans (1861-1864 and 1872) the alignment of the proposed railway crosses Black Lane between G-H. It is described in all five books of reference as an 'occupation road'. The BHS points out that the railway was not built and none of the plans were enacted, the Bills having been withdrawn. The BHS relies upon *Trail Riders Fellowship v SSEFRA* [2015] EWHC 85 (Admin) as authority that the plans attract less credibility. On my reading of the judgment, the Court was not so explicit. The point arising was that the plans for the construction of a railway were never put before Parliament and so there was no detailed consideration of the issue of whether the line would cross a route carrying vehicular rights. The Inspector's conclusions were accepted to the effect that the railway evidence was supportive of the claim that the route was a vehicular highway but was not conclusive. I take the same view here. It might be expected that if the occupation road carried public rights it would have been a relevant factor for the proposed railway and identified as such, but the matter was not explored further. As evidence, the railway plans indicate the route was an occupation road only but it is not conclusive. They are but one strand of evidence to be considered in the round.
38. East Kent mineral light railway deposited plan (1910) shows a short section of the route crossed by the railway at point F. It is described in the book of reference as a public footpath. This corresponds with the existing recorded status of the route from E-G1 as a public footpath.

#### *Ordnance Survey ('OS') mapping*

39. The 1" surveyor's drawing for Canterbury (East)(1797) shows the entire length of the Order route continuing from Knowlton Lane. The map was prepared for military purposes when the country was under threat of invasion. The OMA accepted that depiction of the route was highly likely to indicate it was a public way capable of use by military transport.
40. The Old Series 1" map of Kent (1831) is based on the same survey as the earlier Mudge-Faden map. It shows the entire route starting as solid parallel lines changing to a solid and pecked line followed by double pecked lines from point G. Thornton Road is also shown. The OMA accepted that the depiction on this map is indicative of a public way. In objection it is pointed out that private driveways are shown to the main house at Knowlton in similar manner which remain private. It is argued that this demonstrate the tracks cannot be evidence of highways. What weighs against that argument is the depiction of the Order route as a continuation of Knowlton Lane being a known highway.
41. Knowlton OS boundary records 1866-69 aimed to capture parish boundaries for use on subsequent OS maps. The parish boundary is identified as being along

the centre of the 'Bridle Road' between D-E. On the face of it this supports public status along at least part of the route.

42. The County Series 1<sup>st</sup> edition 25" map (1871-72) shows the route from point A as a continuation of Knowlton Lane. It is coloured as far as point C and numbered as parcel 10 which is described as a 'Road' in the Book of Reference. The remaining route proceeds uncoloured up to point K (being the current intersection with the A256 road) where it stops. Midway along the route it is annotated as 'Black Lane'. The depiction changes around point D from double solid lines to a solid line above and pecked line below which then reverses before becoming double pecked lines of slightly narrower width from G-K. The section after point G is numbered 211 and is also described as a 'Road' in the Book of Reference.
43. As these OS maps identify physical features only, the objector maintains that the reference to 'Road' could equally mean an occupation road.
44. On the 2<sup>nd</sup> (1898) and 3<sup>rd</sup> (1907-1923) County Series 25" editions the route from A-K appears as a physical feature but along a different alignment between H-I from the 1<sup>st</sup> edition, connecting with Venson Bottom at a point further south. The existing footpath E-G1 is annotated F.P. to denote a footpath. The section from is J-K is similarly annotated. The route is not shown to continue into the wooded area beyond point K.
45. The objector asserts that the change in alignment is consistent with a private track which the landowner was free to move with the agreement of those with a private right to suit his own purposes unlike a public right which required a formal process. It is pointed out that there is no evidence of a diversion and the alignment remained the same on the 1938 25" OS map.
46. However, it is not unusual to find some discrepancy in historic maps as the alignment of a track could change over the years depending upon what was taking place on the land. There could be all manner of reasons why a route used by the public began to veer along another line e.g. cropping. The OS maps record what was present on the ground. The application was made for a route along the alignment shown on the large scale OS map of 1871-72 and not as shown in subsequent editions. This earlier map provides evidence of the existence of a road between A-K albeit a short section had changed alignment several years later. The fact a feature is shown is not determinative of its status.

#### *Finance Act 1910*

47. The Finance Act map uses the 3<sup>rd</sup> edition OS map as a base with the Order route shown up to point K. Known public highways are not normally shown as included in the hereditaments and where excluded they are usually, but not necessarily, vehicular.
48. The route from A to midway between C-D is clearly excluded from the adjoining hereditaments. The OMA suggests that the route may also be uncoloured in the sections that follow up to point G, but it is unclear from the copy provided. A deduction is recorded in the Valuer's Field Book for the hereditaments along the next section up to and beyond point E for 'paths' and a 'path'. A deduction is also recorded for 'footpaths' for the hereditament from J-K with a note 'rights of way claimed'. Footpaths and bridleways were usually dealt with by deductions

recorded in Field Books in this way. Where the route is clearly included within the hereditaments from G-I, no deductions are made.

49. The evidence suggests there was a road carrying public rights along Knowlton Lane continuing up to a point midway between C and D. The route from A-G passed through several different hereditaments with others lying to the south likely to have been served by the route. The objector suggests that the route served this propose only. If that was the case, the first section of the route is unlikely to have been shown as a 'white road' indicative of public rights. As deductions were only claimed for two of the hereditaments through which the route passes up to point G, the objector asserts that it is more likely those deductions related to paths elsewhere within the hereditaments which covered substantial areas. On the other hand, there could be reasons why deductions were not claimed for the other land potentially affected by a public right of way. The BHS accepts that the evidence carries limited weight only.
50. The objector further produces enlarged copy maps to highlight several points from G2-H where there is a solid line across the route which it is suggested denotes a gate. That may be so, but it would necessarily deter all public use. Moreover, much of the evidence relied upon is for an earlier period.

#### *Definitive mapping*

51. The requirement for county councils to produce a DMS was introduced by the National Parks and Access to Countryside Act 1949. In the first instance a survey was undertaken of every public path at parish level. The Parish Map for Goodnestone (1950) identified part of the Order route for inclusion as an alleged public right of way from Knowlton Church at point A to Thornton Lane (point G). It is described in the accompanying statement as 'Track about 7ft wide used' with the words 'unclassified road' added in pencil. The Parish Map for Eastry includes the route from E-G as 'Upper Venson Road, through Black Lane, to Knowlton Boundary'.
52. The Draft Map prepared by the County Council shows Knowlton Lane coloured up to the parish boundary with a pencilled comment and line to the church 'u/c ends here'. When the first DMS was published (relevant date 1 December 1952) it reflected the Draft Map for Eastry with the route from E-G shown only as a public footpath. The position remained the same in subsequent editions i.e. the Draft Revised Map published in 1970, the 1987 DMS and the current 2013 DMS.

#### *Analysis of the documentary evidence*

53. The BHS argues that Black Lane is part of a long distance route which traverses several parishes. The OMA acknowledges that evidence over the western section of the route is stronger than the eastern length. One objector argues that the picture is inconsistent as to both the alignment and status of the route.
54. There is no single piece of compelling evidence, but that is not unusual when investigating historical records. A few of the earlier documents show the route in its entirety. Clearly, a route physically existed over the whole length, the issue is determining its status and alignment.
55. The earlier maps are small scale, but the route is clearly identifiable in those featured in this decision unless the contrary is stated. As the extracts are small, an objector argues that it denies comparison with other areas beyond that chosen to be depicted. The maps are available for public inspection and

enlarged copies of some documents were reproduced in the BHS' statement with hyperlinks to others. Where the Order route is shown in the same way as other known highways in the immediate vicinity then that provides some evidence of public status.

56. When the DMS was prepared it was on the basis that only the section from E-G1 had public status and as a footpath only. That does not preclude a finding of higher rights over a longer route. There is reasonably good evidence of public rights of a bridle road from A-G when the documents are considered collectively. Most notably the Tithe Maps support public status reinforced by Boteler's sketch map, The Old Series 1" OS map of Kent amongst others. Reference to the route, or part thereof, as a bridleway or bridle road is found in numerous documents including the Barlow-Hasted map, Boteler's sketch map, the Knowlton parish terrier and the Knowlton OS boundary records. The Eastry Court Estate Map refers to a 'shire way'.
57. There is inconsistency where the OS maps identify part of the route as a footpath only, but this is on later editions whereas the earlier maps from 1866 and 1871-72 identify a bridle road or road.
58. The objector argues that an indication of highway rights along one section does not imply the whole length can be similarly judged when it passes through historic parishes and interchange with other routes may interrupt the status of the route. As a principle that must be right – assumptions cannot be made. It is a question of weighing up the available evidence.
59. The argument that the route was an occupation road only is supported by the railway maps. There were also landholdings which would have used the route for access. The East Kent Light Railways book of reference indicates that part of the route already recorded as a public footpath was a footpath only. However, some 3 years later the highway authority described the same section as a bridle road. The most likely explanation is that public and private rights existed alongside each other.
60. Various maps appear to indicate a through route, such as Mudge-Faden, Greenwoods and Cary's New Itinerary. These maps were not produced to identify highways but they do show what was thought to exist at the time. Of course, it does not mean automatically mean that the route was public, but given how the route links with highway at Knowlton Lane at one end leading towards Betteshanger at the other to link with other highways, it adds to the likelihood of this being a public right of way.
61. On several maps where part of the Order route is shown it is annotated as a destination route leading to or from another place. They include the Eastry Court Estate Map (1728), Boteler's sketch map (1790-92), Upper Venson Estate plan (1821), Tithe Map for Knowlton (1840-41), the Order of Exchange (1870) and OS County Series 1<sup>st</sup> edition 25" map (1871-72). These give credence to it being a through route rather than one serving as access only to landholdings along the route itself. An objector points out that the route is very long, divided into several sections and intersected by other known public roads to which parts of the route could link without going any further.
62. That is possible, particularly for those with horse and cart wishing to use the connecting carriageways. It is just as likely, if not more so, that walkers and horse riders heading to or from Betteshanger and Deal to the east would

continue along the Order route as the most direct way. The evidence tells us that the routes shown are 'From Knowlton' and/or 'To Betshanger' lying to the east and west rather than any other destinations to the north or south. Indeed, the two estate maps from 1728 and 1821 mark the destinations in this way at each end.

#### *Conclusion on the documentary evidence*

63. There is a degree of inconsistency in the evidence. However, there are a lot of consistent documents supporting the existence of a bridle road probably carrying public rights. When taken in totality there is a sufficient body of evidence to support the existence of an ancient bridleway over the entire route.

#### *Alignment of the route*

64. A site visit revealed a drop from a high bank at point M which appeared to be of some considerable age. The Order route cannot be plotted on the basis of what exists on the ground now when land features have changed over time and can be influenced by works to roads in the vicinity and suchlike.

65. Having conducted further research, the BHS, as applicant, has suggested two other possible alignments between Dover Road and Straight Mile (L-M) resulting in a different termination point. There are variances in the earlier small scale mapping at this end of the route making the precise alignment difficult to ascertain. Inevitably with older maps there will be some discrepancies especially those that are hand-drawn.

66. Most reliance is placed by the BHS on the Eastry Tithe Map which shows the termination point at the junction with Cater Road, a short way further east from point M. I am minded to place more reliance on the OS maps which were drawn for the purpose of plotting physical features. Those showing the entire route are the earlier small scale maps. Close inspection might lead to a conclusion that the termination point was further west as supported by Greenwoods map. However, the alignment is broadly straight in these maps which corresponds with point M. They do not show a change of direction after point K which would be the case if point M was moved west.

67. The documents indicate that the alignment is more akin to that as drawn which reflects the alignment applied for and which was carefully plotted in the application. On the balance of evidence, I cannot be satisfied that a change in the alignment as plotted on the Order map is appropriate.

68. With reference to point F, the BHS contends that there should be a revised alignment across the dismantled former light railway. However, there is nothing to confirm that any formal diversion took place in response to the Eastry Rural District Council highway committee report of 22 July 1913. Certainly, no evidence is produced of a route along the revised alignment claimed.

#### **Other considerations**

69. Concerns are raised over the measures required to overcome major obstructions for the safe passage of users. In particular, where the route crosses the busy A256 road with four lanes and central barrier. The OMA recognises that the presence of the A256 renders any public right of way at the eastern end effectively un-useable. Nevertheless, the route must be recorded

where the historical evidence dictates rather than a more convenient alternative.

70. The BHS considers that the recorded width should be 3.5m between points G-M instead of 2.5m. In the absence of contrary evidence, this width was selected by the OMA as adequate for a bridleway to allow two horses to pass. The BHS disputes that 2.5m is wide enough for two horses to pass safely. For certain purposes under the Highways Act 1980 the minimum width of a bridleway which is not a field edge path is interpreted as 2m and a maximum width of 3m. There is no evidence of width in this case and the OMA was unable to scale this section from the larger scale OS maps. The approach taken by the OMA seems reasonable in the circumstances.
71. It is suggested that a gate should be recorded as a limitation at point E on the basis of the OS maps. Whilst conceding that this may be the case, the OMA notes that the limitation would need to have been present at the time of dedication. The evidence indicates the existence of public rights prior to the 1st edition 25" OS map 1871-72 and it cannot be gleaned if any structure existed at point E on the earlier small scale maps. In the circumstances, there is insufficient evidence for me to modify the Order.
72. Concerns are expressed over the destruction of a section of ancient woodland between L-M and the effects of wildlife. Whilst noting these concerns they cannot influence the issue of whether or not public bridleway rights exist over the Order route. The Order does not create any new public rights of way but simply records those already in existence in accordance with the OMA's duty to keep the DMS up-to-date.
73. The issue of compensation for affected landowners is raised, but the Order does not create a new route but records an existing route of bridleway status.

### **Conclusion**

74. Based on the evidence before me I am satisfied on the balance of probabilities that a bridleway subsists along the entirety of the route and that the DMS should be modified accordingly.

### **Formal Decision**

75. I confirm the Order.

*KR Saward*

INSPECTOR