



Order Decision

Site visit on 7 February 2014

by Mark Yates BA(Hons) MIPROW

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

Decision date: 8 April 2014

Order Ref: FPS/B3600/7/104

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the 1981 Act") and is known as the Surrey County Council Bridleway No. 636 (Limpsfield) and the upgrading of part of Footpath Nos. 55, 56 and the whole of 61 (Limpsfield) to Bridleway Status Definitive Map Modification Order 2012.
- The Order was made by Surrey County Council ("the Council") on 23 May 2012 and proposes to upgrade sections of footpaths to bridleway status and add a section of bridleway to the definitive map and statement, as detailed in the Order Map and Schedule.
- There were five objections outstanding when the Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.

Summary of Decision: The Order is not confirmed.

Procedural Matters

1. I have determined the Order on the basis of the written representations forwarded to me and I made an unaccompanied visit to the site on 7 February 2014.
2. Reference has been made to the approach taken by the Inspector in the determination of an appeal in accordance with Schedule 14 to the 1981 Act. The decision of the Inspector was that an Order should be made. However, I need to determine the Order under Schedule 15 to the Act. The tests I have to apply are set out in paragraph 5 below.
3. The Council has subsequently adopted a neutral stance and the case in support is made by the applicant for the Order, Mrs Sleeman, who is a representative of the British Horse Society.
4. All of the points referred to below correspond to those delineated on the Order Map. In addition, I shall refer to the route included in the Order as the "claimed route".

Main Issues

5. This Order is made under Section 53(2)(b) of the 1981 Act, relying on the occurrence of events specified in Section 53(3)(c)(i) and (ii) of the Act. Therefore, if I am to confirm the Order, I must be satisfied that evidence has been discovered which shows on the balance of probabilities, in relation to the relevant sections, that:
 - a) a right of way which is not shown in the map and statement subsists; and

- b) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description.
6. An implication of dedication may be shown at common law if there is evidence from which it may be inferred that a landowner has dedicated a right of way and that the public has accepted the dedication. Therefore, I shall consider whether the documentary evidence provided enables an inference of the dedication and acceptance of a right of way of a particular status to be drawn over the claimed route.
7. Section 32 of the Highways Act 1980 requires a court or tribunal to take into consideration any map, plan or history of the locality, or other relevant document which is tendered in evidence, giving it such weight as appropriate, before determining whether or not a way has been dedicated as a highway.

Reasons

Background

8. The majority of the claimed route is currently recorded as sections of public footpaths. Mrs Sleeman has made reference to various historical documents in support of her view that higher public rights exist over these sections. The same rights are alleged to exist over the unrecorded section of the route. At its northern end, the claimed route proceeds over land known as Little Heath to join Kent Hatch Road. The route links at its southern end with Bridleway No. 54, which in turn continues through to Itchingwood Common Road. Most of the claimed route is also known as Tenchley's Lane.

The evidence

Commercial maps

9. The earliest map provided was produced by Senex in 1729. This map shows part of a through route by way of solid lines between Itchingwood Common Road and Kent Hatch Road which appears to generally correspond to the claimed route. The one clear distinction is near to the northern end where the route shown continues easterly from point B rather than northerly towards point A.
10. A 1768 map by Rocques shows the claimed route, including a section continuing to Kent Hatch Road in the general locality of point A. It is shown towards its southern end passing buildings annotated as "*Tensley Farm*". There is no continuation depicted over the common to the south. The section running towards Kent Hatch Road is less distinctive and represented by dashed lines which would suggest that it was unenclosed. This section appears to differ slightly from the alignment shown on the Order Map. A 1793 map produced by Lindley and Crossley has a smaller scale but it shows the route in a similar way to the Rocques map.
11. It appears to me that the 1823 Greenwood map does not depict a section of the claimed route towards its northern end. This map also shows the alignment of the route in a more general manner. Towards the northern end "*Tensley Park*" is now shown. At its southern end the claimed route is shown leading into the common just beyond Tensley Farm.

12. The commercial maps detailed above generally depict the claimed route. However, there is some doubt regarding the historical alignment of the A-B section. It is also apparent that the continuation beyond point M is likely to have been less well defined. In both instances this could be because they crossed commons. I do not rule out the suggestion by an objector, Mr O'Donovan, that the route would have been used by vehicular traffic in relation to three former quarries in this locality but there is no evidence to corroborate that this was the case.
13. Whilst the depiction of a route on small scale maps could be supportive of the route having a higher status than a footpath, regard needs to be given to the other pieces of documentary evidence. The purpose of the map makers was not to determine the status of the routes which existed at the time of the survey. Reference is also made by another objector, Mr Pearson, to some routes shown on the commercial maps that are now public or permissive footpaths. Overall, I do not find that the commercial maps alone carry a significant amount of evidential weight.

Tithe documents

14. The claimed route is shown between Itchingwood Common and Little Heath on the Limpsfield tithe map of 1841. There is no sign of the section of the route between points A-B. In contrast, a continuation to the south of point M appears to be shown. It is apparent from the tithe map that the route shown was not given an apportionment number. Mrs Sleeman states that in this area none of the commons/manorial waste, public roads and other public rights of way are listed in conjunction with the tithe map. They were in effect not subjected to the payment of tithes. However, she says that private roads were included along with hedgerows, buildings, farms and stackyards, all of which were titheable. Mrs Sleeman submits that this is supportive of the claimed route having public status. Whilst Mr Pearson says that this tithe map was a second class map, this does not necessarily impact upon its evidential weight in terms of the view put forward by Mrs Sleeman.
15. A copy of the tithe award has not been submitted which lessens the weight that can be attributed to Mrs Sleeman's submissions regarding this document. It should also be borne in mind that the tithe process was concerned with the assessment of land for taxation purposes and highways were incidental to this process. Nonetheless, the tithe map could be supportive of the existence of public rights over the claimed route. What cannot be determined from the submissions is the status of any highway over this route.
16. Mrs Sleeman has provided a Certificate of Capital Value of 1889. This was produced in connection with the Extraordinary Tithe Redemption Act 1886. It appears that this has been provided in relation to the issue of the extent of the land attached to the property subsequently known as Tenchley's Farm. The red line shown is supportive of at least a proportion of the claimed route being outside of the ownership of the farm. The farm is stated to have been owned at the time by William Hensman Teulon. Overall, I do not find that this document has any direct bearing on the status of the claimed route.

Ordnance Survey ("OS") documents

17. A small scale OS map of 1809-10 shows a proportion of the claimed route to around point B. There is no clear continuation shown across Little Heath or

Itchingwood Common. The OS First Series map of 1856 appears to show the route in a similar manner.

18. The 1869 OS First Edition 25 inch map shows the claimed route forming part of a through route between Itchingwood Common Road and Kent Hatch Road. It is shown by a mixture of solid and pecked lines which I take to correspond to the existence or otherwise of boundaries. Mrs Sleeman refers to the claimed route being the only one named on the extract provided, which she believes indicates that it was a route of some significance. There are solid lines shown across the claimed route at particular points. However, it is probable that gates would have existed at these points to facilitate access in relation to the rights that existed over the route. I note that the farm towards the southern end of the claimed route is now called "*Tenchley's Farm*". This map shows that the route was given the parcel number 346 and the accompanying book of reference lists this parcel as a "*Private road*". Mrs Sleeman draws attention to a current public bridleway being listed in the book of reference as a "*Public Road*". It is suggested that the OS cannot be relied upon as a record of the legal status of the way.
19. Whilst OS maps generally provide a reliable indication regarding the physical features shown on the date of the survey, they do not confirm the status of any of the routes shown. Nor can it be determined that the naming of a route carries any particular significance in terms of its status. In respect of the book of reference, it can be presumed that some form of enquiry was made in relation to the entries made and a view formed that it was more likely to be a private road. However, the level of investigation cannot be determined. Further, the OS were not concerned with the determination of the status of the routes on the ground. This means that I do not give any substantive weight to the entry in the book of reference by itself.
20. The claimed route is similarly shown on the OS 6 inch map of 1883 (surveyed 1868). An OS 25 inch map of 1897 generally shows the route in the same way as the 1869 OS map. However, the parcel number 346 has been removed and a short section of the route between points D-C has the parcel number 271. Mrs Sleeman has been unable to establish the significance of these changes.
21. The 1912 OS 25 inch map shows Footpath 55, where it diverges from the claimed route, annotated "*FP*". Mrs Sleeman asserts that this could indicate that it was a new path linking with another highway. I consider that the limited distance between the claimed route and the relevant section of Footpath 55 may suggest that pedestrians were diverting away from the route at this point rather than there being two distinct highways in the locality. The written testimonies addressed later in this decision are supportive of the claimed route being in a poor condition. The possible deviation by pedestrians sheds no light on the status of the claimed route.
22. An OS object name book from 1880 describes Tenchley's Lane as "*A lane extending from Limpsfield Common to Itchingwood Common*", revised in 1910 to read "*An old lane and FP extending...*". In my view, these issues are only clearly supportive of the nature of the features present on site at the time. A subsequent entry of 1933 indicates that it was owned by Mr Leveson-Gower.

Highway records

23. Reference has been made to an account and measurement of the turnpike roads and highways in the parish of Limpsfield of 1850. Mrs Sleeman states

that there is nothing to lead to a conclusion that the claimed route was a turnpike road. I note that Mr Pearson says that the route is not included in this document as a parish highway for carriages. In addition, he refers to the widths specified in the 1773 and 1835 Highways Acts for particular highways. I noted from the Inspector's decision at the Schedule 14 stage that it is stated that Tenchley's Lane was also not recorded in this document as a bridleway. Therefore, before reaching my decision, I asked if the parties had any further comments they wished to make regarding this document. In response, Mrs Sleeman points to some highways in another parish in Surrey which are not publicly maintained.

24. I am not satisfied that I can rely on the widths that have been available relatively recently to determine the status of the claimed route. However, as noted above, the information previously provided indicates that the route was not recorded in a document that served as a record of highways in the parish of Limsfield. Although a copy of the document has not been provided, none of the parties dispute the information originally supplied.
25. I accept that there will be cases of highways which are not maintained at public expense. However, I find the absence of the claimed route from this document to be a significant issue given the nature of the route. Highways in existence prior to the enactment of the Highways Act 1835 continued to be maintainable by the public at large. Clearly, the map evidence dating back to 1729 is supportive of the claimed route, at least as far as Little Heath, existing as a physical feature. The absence of the route from the highway account list is consistent with the entry contained in the OS book of reference.

Estate documents

26. A handwritten estate plan shows the claimed route, as far as point B, to be separate to the numbered fields. There appears to be some numbering on a section of the route but there is no explanation for this annotation. The route shown is depicted leading into Little Heath and Itchingwood Common. A second plan shows this route but Mrs Sleeman draws attention to the pecked line, which appears to correspond to the section of Footpath 55 as it deviates from Tenchley's Lane. The date of these plans is uncertain but they have been estimated to originate from around 1781.
27. Two accounts written by the owner of the estate between 1806 and 1844, Thomas Anthony Teulon ("Teulon"), have been provided. Mrs Sleeman says that these were completed some time prior to 1841. It is apparent that Teulon addressed issues arising out of the claimed route, which is referred to as Tenchley Hill Lane. However, the reasons for these written accounts are not known.
28. In the first account Tenchley Hill Lane is described as forming the western boundary of the estate and being "*the only public communication to Tenchley House*" (the old Manor House located near to point M). A subsequent reference states that he thought it was "*a private lane belonging to his house*". This is followed by the statement that Peters (a Steward) had replied that it was a public way and referred to the butcher present. The butcher is reported to have stated that this had been the case since he was a child when he often galloped down to carry meat to his master's customers.
29. Teulon describes the physical nature of the route and includes the statement that "*It may be observed that an ancient footpath went down it with a hedge*

- on the right hand to guard the foot passengers from the danger of Carriages owing to the narrowing of it".* He also says that it is not in its original state when it was probably kept in order as the road to the Manor House. Reference is made to a John Loveland who was born on the estate recalling his father mending the route; however, he did not know whether this work was funded by the parish.
30. The second account describes the poor condition of the route and states that it was almost impassable for carriages. This was certainly the case in the wet seasons. Teulon says that the lane was between 6 and 8 feet wide but there were semi-circular openings for vehicles to pass each other. He also states that the entrance to the lane was open at both ends and had been for half a century.
31. Teulon continues by saying that *"every one who has dared has unmolestedly travelled up and down it with Carriages and with Horses, the Tenant has performed Statute duty upon it, every Tenant has occasionally repaired it, the high constable, has called upon Grants Farm as well as Tenchley's Farm to trim the hedges in the lane, Richard Sandiland the Miller having threatened to indict it and compel the Parish to repair it"*.
32. It is clear from these accounts that the claimed route was in a poor condition. Whilst it is acknowledged that the route had been used by equestrians and carriages, it cannot be determined whether the use was of a public or private nature. I find that there are references which point to the view that the route was private. However, the text detailed above would generally be supportive of the route having public status.
33. In my view, parts of the Teulon accounts could be supportive of the claimed route being a highway that had fallen into a poor state of repair. The type of traffic stated to have used it could point to the existence of a vehicular highway. However, it cannot be determined when exactly these accounts were written. In particular, it is not known for what purpose they were written. These issues will serve to limit the weight of the documents. The subsequent highway list and OS book of reference are not supportive of the claimed route being viewed as a highway. In respect of the former, it does not indicate that the route was publicly maintained.

The 1910 Finance Act

34. Extracts have been provided in relation to a map compiled under the Finance Act. However, it is difficult to determine the location of a section of the claimed route in relation to the numbered parcels, known as hereditaments, to the south of Tenchley's Wood. Copies of the relevant pages from the Field Book compiled under this Act have also been provided.
35. There is a claimed deduction of £20 for *"Public Rights of Way or User"* in the Field Book for hereditament 87 and Mrs Sleeman says that there is no right of way currently recorded over the land in question. However, it is not certain that the claimed route was located within this hereditament. In addition, the entry does not identify the location of the way for which a deduction was claimed. Further, a second page in respect of this hereditament appears to have the initials *"FP"* in relation to the £20 claimed deduction.
36. Hereditament 90 is stated to consist of two parts with a £100 deduction claimed for public rights of way or user. However, Mrs Sleeman notes that

today it contains several public rights of way. My comments above are generally applicable to the deduction claimed in respect of this hereditament. It is also the case that a second page appears to have the initials "FP" in respect of the £100 claimed deduction.

37. A proportion of the claimed route, northwards from around point F, is shown excluded from the surrounding hereditaments. This would usually be good evidence of the existence of a highway but it is not necessarily indicative of a vehicular highway. A further issue arises in that only a proportion of the route is shown excluded. Mrs Sleeman says that the lane seems to be an extension of hereditament 536. This hereditament was the subject of a number of claimed rights. However, it does not assist with determining what public rights exist over the claimed route.
38. It is not possible to infer from the Finance Act evidence that public rights were considered to exist over the whole of the claimed route. Whilst the relevant Field Book entries point to deductions claimed in respect of footpaths, it cannot be determined where the paths concerned were located. The records may possibly reflect the current recorded status of the majority of the claimed route. In respect of the excluded section, this could be supportive of the existence of higher rights but it only relates to a proportion of the route.

Correspondence

39. Copies of letters have been provided from the latter part of the nineteenth century and early part of the twentieth century. The exchange of letters primarily involves William Teulon and his daughter Helena Sonnenschein¹ their tenants and neighbours. There is also a letter from Limpsfield Parish Council of 1904 which states that the parish council had recorded the footpaths in the parish considered to be public rights of way on an OS map. In respect of an article written by Mr Hudson, who was the tenant at Trenchley's Farm, I do not find that it assists with my determination of the status of the claimed route.
40. The majority of the correspondence involved the maintenance of the lane and rights of access over it. There is no reference to the route being maintained by the relevant local authority. The main issue appears to relate to access over the northern section following the locking of a gate in 1898-99. This hindered access to the new Pastens Road and Pastens Cottage. In some cases keys were supplied for the gate. It is apparent that rights of access were being asserted for the benefit of particular parties rather than for the public. Mr Jones of Pastens Cottage hinted that it was a public right of way but he wanted it to remain private.
41. Mrs Sleeman states that Helena Sonnenschein did not own the land crossed by the claimed route. However, this would only indicate that William Teulon, who erected the gate, did not have the right to restrict access. The only parties who appear to have raised concerns about the locking of the gate were those who lived in the immediate locality. There is nothing to suggest that any complaint was made by others who wished to use it as a through route. Mr Jones states in a letter of 15 September 1925 that: "*There has been little traffic down this road these last (25) years excepting the Huntsmen 3 or 4 times a winter when 40 or 50 horsemen come up the Wood, occasionally other old local riders come down but only just to keep the way open.*" This would suggest that access was available for horse riders. It is nevertheless not

¹ Later Helena Stallybrass

possible to determine from this statement whether the user was as of right. Clearly the use by the hunt is likely to have been of a permissive nature.

42. Overall, the correspondence provided is not supportive of the claimed route being viewed at the time as a public bridleway or vehicular highway. In respect of the letter from the parish council, a copy of the plan is not available. Mrs Sleeman says that higher rights would not have been noted. However, the purpose of the exercise was to identify the footpaths in the locality. It should be presumed that the ways shown were considered by the parish council to be footpaths at that time. This does not mean that higher rights could not exist. Nor is it clear what matters were considered when the footpaths were marked on the map. I note Mrs Sleeman's other comment regarding ways across commons often not being recorded.

Other evidence and submissions

43. Mrs Sleeman has provided extracts from an article contained in a 1944 publication titled "*Surrey Archaeological Collections*". It is submitted that the article provides support for a proportion of the claimed route being part of a longer ancient track. Mrs Sleeman says that it supports her view that the route pre-dated the settlement at Tenchley's, and that the Manor was built next to an existing public road of great antiquity. I am not convinced that I am able to rely on this article to determine the status of the claimed route. However, I accept it could be supportive of a proportion of the route being a track of some antiquity. I do not find that the subsequent publications provide any further assistance on this matter.
44. An undated parish map² shows the claimed route as far as point B. Mrs Sleeman says that, aside from two short sections, the other routes shown on this map are bridleways or roads. I accept that this map could be supportive of the majority of the claimed route having higher public rights. However, the provenance of the map is unknown. This means that it is difficult to place any significant reliance on it.
45. I am not satisfied that the width or gradient of the claimed route would have impacted upon its historical status. As noted earlier in this decision, there are references in particular documents to use by equestrians and vehicles. Nor am I convinced that Mr O'Donovan's submission regarding the location of the earth banks in relation to the claimed route has any material bearing on the status of the route.
46. Limpsfield Parish Council states that there are references in the parish council minutes, between 1894 and 1925, to the route being a footpath. Copies have not been provided but it appears to fit with the view adopted by the parish council during this period. Reference is also made to the route being shown as a footpath on maps of 1937 and 1947/8. Again this would be consistent with the status of the majority of the claimed route subsequently recorded on the definitive map.
47. Documentation has been provided in relation to an agreement for sale of 1935 in connection with land forming part of Tenchley's Farm. I do not find that the references to rights of access in the agreement can be attributed to a right for the public. Mrs Sleeman points to the annotation on the accompanying plan which states: "*boundary the foot of the bank leaving not less than 10 feet*

² It is stated to date from the eighteenth to nineteenth centuries

Bridle Path". However, there is nothing in the agreement which points to an acknowledgement of a public bridleway. The same issues arise in relation to subsequent documentation in relation to the land. It should also be borne in mind that the majority of the claimed route was subsequently recorded as a footpath on the definitive map, presumably on the basis of the view held at the time. Whilst a deed under the Law of Property Act 1925 provided for public rights of access over the commons, it provides no clarification regarding the status of the claimed route.

Conclusions

48. It is clear from the evidence that the claimed route, at least as far as point B, is a feature of some antiquity. However, there is doubt regarding whether this route originally continued through to point A. In respect of the commercial maps, I am not convinced that they carry a significant amount of weight in the determination of the status of the claimed route. Nor do the OS maps assist on this issue. The later annotation "*FP*" relates to the section of Footpath 55 which does not form part of the claimed route.
49. The tithe evidence could be supportive of the claimed route being a highway. However, regard needs to be given to the purpose of the tithe process. In addition, it is not possible to conclude that a view was taken that the route was a particular class of highway. The Teulon accounts are supportive of equestrian and vehicular use of the claimed route. This evidence is not clear regarding the status of the route but it could be suggestive of the existence of a vehicular highway. However, there is a lack of information regarding the purpose of these documents. In contrast, the document mentioned in relation to the measurement of highways in the parish is not supportive of the claimed route being viewed as a highway maintained by the parish. The later OS book of reference points to the route being considered a private road.
50. I find the Finance Act evidence to be inconsistent. However, it does not support a finding that the whole of the route was viewed as a vehicular highway or a public bridleway. The Finance Act evidence could possibly be supportive of the route being a footpath. The remainder of the twentieth century evidence is generally indicative of the route being considered a footpath with the possible exception of the map with the agreement for sale.
51. There is evidence that could be supportive of the claimed route being a historical vehicular highway or possibly a public bridleway. However, there is also some evidence that points to the opposite view. Overall, having regard to the conclusions reached regarding the documentary evidence, I am not convinced that its weight is sufficient to infer on the balance of probabilities the dedication of a bridleway or a vehicular highway over the claimed route. It follows that I do not consider a right of way subsists over a section of the route and that the sections of footpaths ought to be highways of a different status.

Other Matters

52. Issues relating to the suitability or desirability of the claimed route being recorded as a bridleway are not relevant to Orders made under the 1981 Act.

Overall Conclusion

53. Having regard to these and all other matters raised in the written representations I conclude that the Order should not be confirmed.

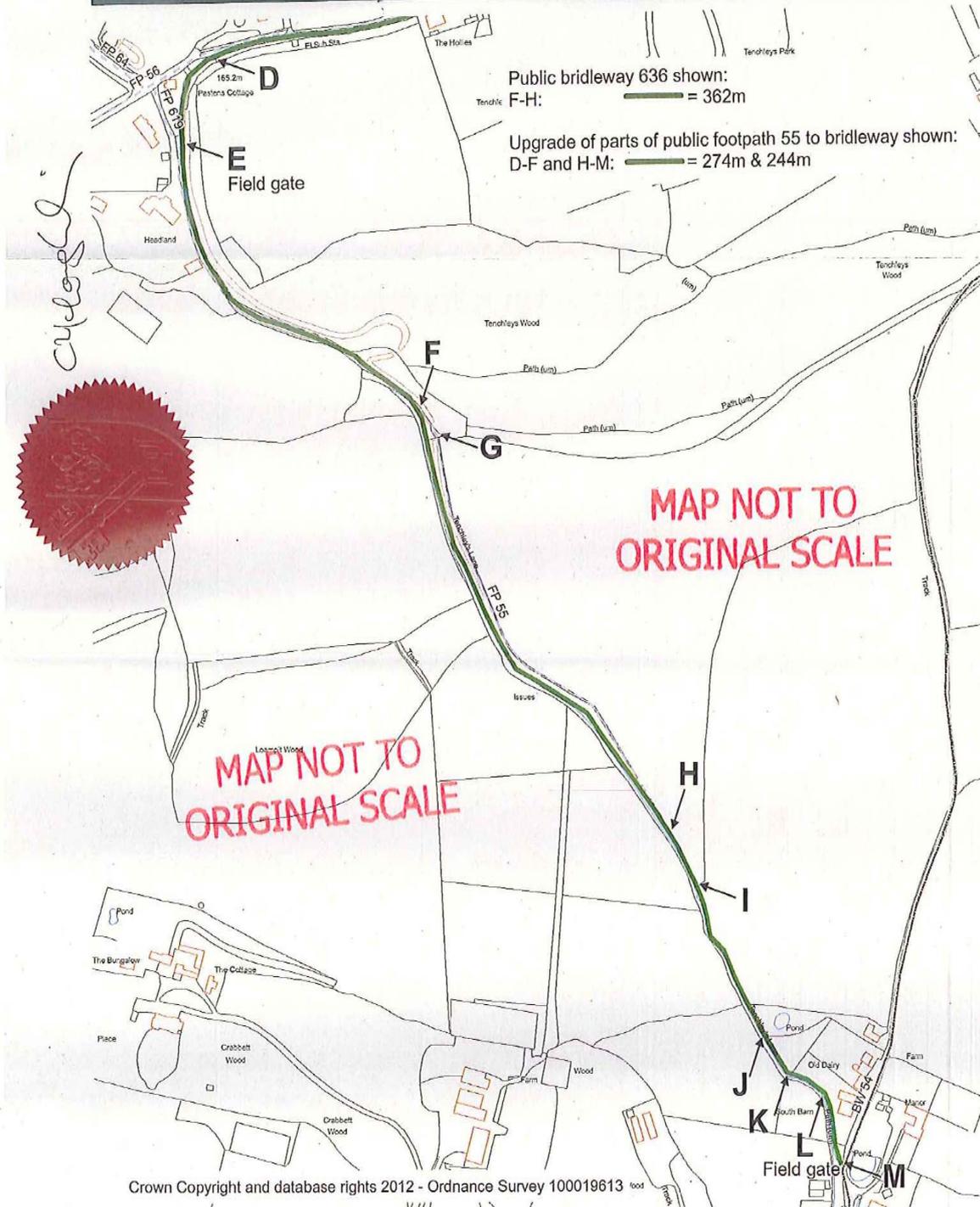
Formal Decision

54. I do not confirm the Order.

Mark Yates

Inspector

Wildlife and Countryside Act 1981 Map Modification Order 2012



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Parish of Limpsfield District of Tandridge