

Response to Appellant's comments submitted on 24th November 2023

in relation to the refusal to make a
Definitive Map Modification Order for a claimed
public footpath at Park Copse, Compton Dando

1. Paragraph 1 of section 1 of the Appellant's comments submitted on 24 November 2023 ("the Further Comments") refers to '*a general routing through Park Copse*'; however, a DMMO must record a *specific* alignment for a path and it is unclear to the Authority what specific alignment and width the Appellant is now seeking to have recorded. Paragraph 6.3 of the statement appended to the Appeal Form dated 8 February 2023 ("the Appeal Form") stated that '*we are happy for the route marked out by B&NES to be the route under proposal*' and the Authority took this as indicating that the Appellant was seeking to claim that the Alternative Route was a public footpath. However, the Appellant now appears to be suggesting at paragraph 3(vi) of the Further Comments that it was the Application Route which was used throughout the Relevant Period and that the Alternative Route has only been used in '*very recent years*'.
2. The fallen trees shown in the photographs appended to the Further Comments appear to show either sections of the Application Route which run relatively close to the Alternative Route or the Alternative Route itself; they do not appear to show the sections of the Application Route which run 20 metres away from the Alternative Route and the fallen trees shown do not account for members of the public walking a route 20 metres away from their original course. Furthermore, this significant change in alignment and the use of the Application Route is not supported by the user evidence forms (see **OMA2**) and the telephone interviews which were carried out with each user (except User 5 who was not contactable) (see **OMA7**). In particular, each user states in response to question 8 of the user evidence forms that they have always followed the same line and the telephone interviews clarified that this line was that of the Alternative Route.
3. Furthermore, it is stated at paragraph 6.3 of the Appeal Form that the line drawn on the Application Plan was just a '*best guess*' and it appears to have been drawn without the benefit of any measurements having been taken on site to ensure that the line drawn accurately reflects an intended alignment; consequently, it is unclear how the Appellant can be confident that the Application Route drawn on the plan which accompanied the Application was the route used by the public.
4. At paragraph 3(viii) of the Further Comments, the Appellant queries how users were '*able over the phone to describe either Route clearly*'. Each user was asked if they used the worn route which was visible on the ground at the time of the telephone interview (i.e. the Alternative Route) or another route; each user (except User 5 who was not contactable) stated that they used the worn path (i.e. the Alternative Route) and the contemporaneous notes of these telephone interviews can be found at **OMA7**.
5. The Authority decided that a DMMO should not be made because there was insufficient evidence to show that the Application Route had been '*actually enjoyed by the public*' and, consequently, it was not necessary to determine whether the proviso relating to a lack of intention to dedicate had been demonstrated. However, the Appellant does state at 3(ii) that the Metal Sign was '*erected at a later date than the periods of use of the Route that the original statements of use covered.*' No evidence has been presented to support the assertion that the sign was erected after 2012 (the end of the Relevant Period of use under section 31 of the Highways Act 1980) and the evidence which is available (summarised in paragraphs 3.3 and 4.3 of the Authority's Statement of Reasons dated 22 September 2023) indicates that it was erected in 1980.