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Dear sir,

I write again to correct an assertion made by counsel for the applicant during Wednesday's hearing that because the second footpath running north-south across Bested Hill does not on the Definitive Plan, "it is not something that we need concern ourselves with."

Legally, as he will surely know, it very much is.

The definitive map of rights of way is not definitive of what is not recorded on it. While the definitive map is a legal record of public rights of way (PROW) in a specified area and serves as conclusive evidence of the rights shown on it, it does not preclude the existence of additional unrecorded rights. The absence of a way on the definitive map is not proof that the public has no rights over it.

The Wildlife and Countryside Act 1981, section 56, specifies that the definitive map is conclusive evidence of the particulars contained therein, such as the existence of a footpath, bridleway, or byway open to all traffic — but it does not negate the possibility of other public rights of way existing that are not recorded on the map. Additionally, the Countryside and Rights of Way Act 2000 acknowledges that unrecorded rights of way created before 1949 will be extinguished after a cut-off date, but until then, valid rights of way may exist even if they are not recorded on the definitive map.

Edf have included in their own application evidence of the footpath's existence. The path also appears on historic maps and the Ordnance Survey maps after 1949.

The burden therefore falls on EdF to show that the footpath has been stopped up. Despite being asked throughout this process, they have not so far been able to do so.

May I ask that you seek advice from your Department's legal team on this point? The Applicant proposes to obstruct this right of way with fencing and solar panels. Thus their appeal cannot stand if they fail to prove that the footpath has been stopped up.

Edward Evans
Feb 6, 2025.