

|  |
| --- |
| **Order Decision** |
| Inquiry opened on 8 December 2021 |
| **by Mark Yates BA(Hons) MIPROW** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 11 April 2022** |

|  |
| --- |
| **Order Ref:** **ROW/3254955** |
| * This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (“the 1981 Act”) and is known as the Warwickshire County Council Definitive Map Modification Order, Parish of Aston Cantlow, Sheets SP16SW, SP16SE, SP15NE, Order No.1 2019, Path No. AL223.
 |
| * The Order was made by Warwickshire County Council (“the Council”) on 10 July 2019 and proposes to add a bridleway (“the claimed route”) to the definitive map and statement, as shown in the Order Map and Schedule.
 |
| * There were twenty-seven objections and twenty-four representations in support outstanding at the commencement of the inquiry.
 |
| **Summary of Decision: The Order is confirmed.**  |
|  |

Procedural Matters

1. I held a public inquiry into the Order on 8-10 and 14-15 December 2021 and undertook visits to the site and surrounding area on 8 and 13 December 2021.
2. All of the points referred to below correspond to those delineated on the Order Map. The claimed route proceeds between the C100 Bearley Road (point A) and the D5341 Newnham Lane (point H).

**Legal Framework**

1. The Order relies on the occurrence of an event specified in Section 53(3)(c)(i) of the 1981 Act. This means the test to be applied when considering if the Order should be confirmed is whether there has been the discovery of evidence which, when considered with all other relevant evidence, shows on the balance of probabilities that a public right of way subsists. In considering this test, regard needs to be given to whether the evidence is supportive of the dedication of a public right of way under common law or statute.
2. Dedication at common law requires consideration of three mainissues: whether the owner of the land in question had the capacity to dedicate a highway, whether the evidence is supportive of an inference of the dedication of a highway by the landowner at some point in time and whether there was an acceptance of the dedication by the public. No issue is raised in relation to the capacity of the landowners to dedicate a right of way in this case.
3. Section 32 of the Highways Act 1980 (“the 1980 Act”) requires a court or tribunal to take into consideration any map, plan or history of the locality, or other relevant document tendered in evidence, giving it such weight as appropriate, before determining whether or not a way has been dedicated as a highway.
4. The relevant statutory provision for the dedication of a public right of way is found in Section 31 of the 1980 Act. This requires consideration of whether there has been use of a way by the public, as of right (without force, secrecy and permission) and without interruption, for a period of twenty years prior to its status being brought into question and, if so, whether there is evidence that any landowner demonstrated a lack of intention during this period to dedicate a public right of way.
5. In respect of the possible recording of the claimed route as a byway open to all traffic (“BOAT”), I need to have regard to the Natural Environment and Rural Communities Act 2006 (“the 2006 Act”). Subject to certain exemptions found in Section 67 (2) and (3) of this Act, unrecorded public rights for mechanically propelled vehicles over a way which, immediately prior to the commencement date (2 May 2006), was not shown in a definitive map and statement are extinguished.
6. The relevant exemption in this case is found in Section 67(2)(b) of the 2006 Act, whereby rights for mechanically propelled vehicles are not extinguished if “*immediately before commencement it was not shown in a definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980*” (known as the list of streets).
7. Section 66 of the 1981 Act defines a BOAT as “*a highway over which the public have a right of way for vehicular and all other kinds of traffic, but which is used by the public mainly for the purpose for which footpaths and bridleways are so used*”. This is distinct from a carriageway which would ordinarily be used mainly by vehicular traffic.
8. In terms of the potential dedication of a BOAT following use by mechanically propelled vehicles, consideration needs to be given to whether such use would give rise to a public nuisance for other users of the route.

**Main Issues**

1. It is apparent that there has been the discovery of evidence to warrant the making of the Order.
2. The claimed route is currently recorded in the list of streets as a highway maintainable at public expense and the issue between the parties is the extent of the public rights which exist over the route. The position of the Council and other supporters is that the route was dedicated as a public bridleway at some point in the past and should be added to the definitive map and statement. It is asserted by the objectors, in particular by the Trail Riders Fellowship (“TRF”), that the evidence points to the claimed route being a carriageway and the Order should not be confirmed. Their alternative position is that the more recent public use is supportive of the dedication of a BOAT and the Order should be modified accordingly.
3. It is logical to first determine the extent of any historical public rights that exist before considering the more recent evidence of use.

**Reasons**

***Consideration of the evidence to establish the extent of any historical public rights over the claimed route***

*Commercial maps*

1. The claimed route is not shown on a number of commercial maps publishedduring the eighteenth and nineteenth centuries, namely those producedby Beighton (1725), Cary (1787,1789 and1811),Haywood (1788),Yates (1789),Smith (1808),Dix (1820),Greenwood (1820-21, 1827 and 1830),Walker (1836), Pigot (undated)and Weller (c1861). This does not necessarily mean that a highway did not exist and there is some evidence during the period covered by the commercial maps that points at least to the physical existence of the claimed route. However, the omission of the route from various maps suggests that it was not considered to be a significant feature that warranted recording by the various surveyors. In contrast, some of these maps show the network of public roads that presently exist, which provide access between Aston Cantlow and Newnham, namely Bearley Road, White House Hill and Newnham Lane.

*Inclosure award*

1. Land in Aston Cantlow was subject to an inclosure award of 1744. The powers of the Inclosure Commissioners in terms of the award were derived from a local Act of the same year. These powers included the setting out of public and private ways. It is apparent that a distinction was drawn between public roads (to be at least 40 feet wide) and other highways. The private roads had to be at least 25 feet wide.
2. There is no surviving map to accompany the award which makes it difficult to identify particular features such as the awarded ways. The Council relies upon a reconstruction exercise undertaken in relation to inclosure awards in Warwickshire by a volunteer at the County Records Office as part of an academic exercise. A reconstructed map was produced as part of this exercise. The Council undertook a further comparison exercise which identified some additional features. The Council outlines that the two reconstructions produced consistent results. It is nonetheless recognised that it is not possible to identify all of the plots and ways in the award.
3. Reference is made by the Council to one of the ways included in the award. This is described as a “*Bridle or Churchway*” between Little Alne Road in meadow furlong field and Newnham Sally Lanes with a width of at least 25 feet. It is apparent from looking at the award that this way was viewed as a highway rather than one of the private ways. It is also distinct from the twelve public roads included in the award and does not have the required 40 feet width for a public road. Whilst there is uncertainty regarding the rights that may exist over a churchway, it is a type of highway included in Section 5 of the 1835 Highways Act. The award additionally refers to the relevant route having “*anciently been used*”, which is indicative of it being a pre-existing highway.
4. Both the Council and a supporter (Mrs Mallinson) believe this way is more likely to correspond to the claimed route. Reference is made to its starting point corresponding with the description of the awarded road now known as Bearley Road, which the claimed route joins at point A. It is acknowledged that there is some uncertainty about the location of Sally Lanes within the hamlet of Newnham. However, a description found in the Victoria County History (published 1945), suggests that Sally Lane commenced in Newnham and continued over the present Bridleway AL81.
5. The Council accepts that not all of the public roads in the award can be identified. In terms of the potential for one of the awarded roads to correspond with the claimed route, Mrs Mallinson gave her view on why this could not be the case for a number of the public roads included in the award. She also believes the present roads between Aston Cantlow and Newnham, including Bearley Road and Newnham Lane, corresponded with sections of three of the awarded public roads. From looking at the descriptions of these roads in the award I accept that this is likely to be the case. These roads are all described as being anciently used which is indicative of them being pre-existing roads.
6. I find that the relevant way is distinct from the vehicular highways in the award and would have encompassed public bridleway rights. There is an issue with identifying the alignment of the route in question in the absence of a plan. However, I place some reliance on the reconstruction exercises undertaken in relation to the award. Nothing of note has been provided by the objectors to place any significant doubt on the conclusions of the Council on this issue. Nor have they demonstrated that the claimed route corresponds to another way in the award. It is notable that the road network outlined above is depicted on the Yates map of 1789. Whilst it is possible that there was more than one vehicular routebetween Aston Cantlow and Newnham, there is nothing to suggest that anadditional public road was included in the inclosure award which served these two settlements.
7. Overall, the inclosure award will need to be considered in conjunction with the other pieces of documentary evidence. The evidence of the supporters providessome support for the claimed route being an awarded bridleway. However, the absence of a map means that this evidence cannot carry a significant amount of weight.

*Estate maps*

1. A map of the estate of Lord Abergavenny of 1804, which is a copy of a map of 1776, shows a proportion of the claimed route (between points E and H) where it crosses land within the estate albeit with a slight variation towards its northern end. It is likely that this route would have continued onwards over the adjoining landholdings. The Council draws a distinction between the depiction of this route and the known public roads. Reference is made to the claimed route being narrower and shown unbound. Another route (Bridleway AL81) is shown in the same way as this section of the claimed route.
2. I do not consider that this map should carry any significant degree of weight in terms of the section of the claimed route shown. It was a private map concerned with showing the extent of the estate and features within it. The depiction of a narrower unbounded route is more likely to represent its physical nature and is not necessarily indicative of a bridleway. There is no key or annotation to identify the status of any of the routes shown on this map. Nonetheless, the map does indicate that the route existed following the inclosure process in Aston Cantlow. It potentially provides support for the assertion that the claimed route corresponded to the awarded bridleway.
3. A map titled ‘*Plan One Deed*’ of 1858 shows the western section of the claimed route passing through various named plots until the point it meets land owned by Lord Abergavenny. It is annotated in two places with the words “*Bridle Road*” and at the eastern end of the section shown is the annotation “*to Newnham*”. The Council says the annotation was done in the same pen. The purpose of the plan is not certain, but its title suggests that it was used in relation to a deed. This plan provides some support for the claimed route being a bridleway between Aston Cantlow and Newnham. However, the uncertainty regarding the provenance of this map will limit its evidential value. When taken in conjunction with the 1804 estate map it provides support for the physical existence of the whole of the claimed route.
4. Rough plans of the area from 1859 and a survey of the Estate of Thomas Wood of 1874 do not appear to specifically show the claimed route. The same is applicable to the Sale Catalogue for Aston Cantlow Estate of 1918. In terms of the annotation “*BR*” on the base mapping used for the sale catalogue, this should be given no additional weight to the mapping outlined below. Nor is it necessarily the case that a minor road would have been excluded from the sale.

*Ordnance Survey (“OS”) maps*

1. The 1814 OS drawing and 1831 OS map provided by an objector (Mr Hobson) are at a small scale and appear to show only the G-H section of the claimed route. This suggests that the remainder of the route was not a particularly significant feature in the landscape. In contrast, the road network between Aston Cantlow and Newnham via Bearley Road, White House Hill and Newnham Lane is shown.
2. The whole of the claimed route is shown on various OS maps from the late nineteenth century and early twentieth century with the annotation ‘*BR*’. However, there appears to have been a slight variation in the worn route shown near to point H on some of the OS maps. It is noticeable that the majority of the G-H section is shown bounded on both sides. In contrast, the remainder of the route is unbounded or bounded on one side. This may be the reason for the whole of the route not being depicted on other maps such as the earlier OS maps.
3. There are solid lines shown at points which would be indicative of a feature such as a field boundary. Given that the route is shown continuing beyond the various boundary features, it is likely that there would have been some form of access at these points. No conclusion can necessarily be drawn from the possible existence of gates on the route. However, the potential need to open gates can impact on the convenience of the route, particularly for vehicular traffic. Additionally, in the absence of further information, it cannot be determined whether any use made of a section of the claimed route to access quarries to the south was by virtue of a public or private right.
4. In terms of the colouring of roads on one of the OS maps in comparison to the claimed route, this could possibly be reflective of the roads having a metalled surface. The ‘*BR*’ notation is indicative of the claimed route having the appearance of a bridle road and suggests the route was not considered by the surveyor to be suitable for wheeled traffic.
5. From 1888 OS maps have carried a disclaimer to the effect that the representation of a track or way on the mapis not evidence of the existence of a public right of way. Whilst there is some conflicting guidance from the OS during the latter part of the nineteenth century and early part of the twentieth century, these maps are generally taken to provide no confirmation regarding the status of the paths and tracks shown on them. Their evidential value is that they provide a reliable indication of the presence of particular physical features on the date of the survey. Nonetheless, the depiction of the claimed route in this manner may be of assistance when considered in conjunction with the other pieces of documentary evidence.

*1910 Finance Act documents*

1. The 1910 Finance Act was concerned with assessing various values in relation to land in order that a tax could be levied on the increase in the site value of land between its valuation as of 30 April 1909 and generally any sale or other transaction involving the land in question. The Act provided for certain deductions to be made in terms of the value of the land. The exclusion of a route from the surrounding hereditaments on a Finance Act map can provide a good indication of highway status, probably vehicular as footpaths and bridleways were usually dealt with by way of deductions in the accompanying field books.
2. The claimed route is not shown excluded from the relevant hereditaments on the Finance Act map, as would usually be the case for a vehicular highway. For instance, the connecting public roads are shown excluded from the surrounding hereditaments on the map. Nonetheless, this does not demonstrate that no public vehicular rights exist over the route. Further, these documents provide no meaningful information in support of the route being a bridleway. It cannot be determined that any of the deductions recorded for “*public rights of way or user*” in the accompanying records related to the claimed route given the existence of other paths shown on the OS base map. The ‘*BR*’ notation on the base map merely reflects what was shown on the OS mapping.

*Local authority minutes*

1. It is recorded in a minute of the meeting of Aston Cantlow Parish Council of 26 August 1895 that consideration of the bridle road from the village of Newnham to Aston Cantlow was adjourned until the next meeting. The subsequent minute of 23 September 1895 records it was resolved that the clerk should write to Messrs Bucknall and Hancox regarding material and drainage for the bridle road with a view to thework being undertaken as soon as possible. A minute of 23 December 1895 notes it was resolved that the bridle road from the green gate at the village of Newnham be temporarily repaired.
2. The minutes of 24 September 1900 record that a letter was read out concerning the condition of the bridle road from Newnham to Aston Cantlow, which in some places was “*inches deep with water and almost impassable*”. This meantthat children coming to school had wet feet all day. It was resolved that the clerk write to the Surveyor of the Alcester Rural District Council asking him to put it in proper repair at once.
3. In light of the other pieces of documentary evidence and the absence of any recorded public bridleway between Aston Cantlow and Newnham, it islikely that the minutes are referring to the claimed route or a substantial proportion of it. The currently recorded public bridleways in the locality alllink with the claimed route. These minutes are supportive of a locally held belief that the route was a public bridleway. They talk about public use and request that maintenance be carried out on the route. It also needs to be borne in mind that at the time of the earlier minutes the parish council had the responsibility for maintaining minor highways within the parish. This duty passed to the rural district councils in 1896 following the enactment of the Local Government Act 1894.
4. An Alcester Rural District Council minute from 17 May 1911 records that a statement had been received from Mr Gander regarding the footpaths repaired by him during the time he was the highway surveyor. Reference is made within the parish of Aston Cantlow to the bridle road to Newnham. When considered with the other pieces of evidence this is supportive of the claimed route being a publicly maintained bridleway.
5. There are references in the minutes from 1950 and 1951 to the surveying process in accordance with the National Parks and Access to the Countryside Act 1949. This matter is addressed further in paragraphs 47-55 below.

*Highway records*

1. The Local Government Act 1929 provided for the transfer of maintenance responsibility for highways from the rural district councils to county councils. Typically, a map and schedule were produced to record the ways that were maintained at public expense. It is apparent from reading through the relevant provisions of the Act that these records could encompass highways that did not carry public vehicular rights. Further, the use of the word ‘*road’* in the Act could relate to non-vehicular highways.
2. The claimed route is shown on the ‘handover map’ by way of a brown line and numbered 72. It is shown on a similar alignment at its northern end to the route shown on some of the OS maps. Again, I attach no additional weight to the ‘*BR*’ notation shown on the OS base map. The accompanying schedule records No. 72 under the heading ‘*Other roads, including Bridle Roads*’ and the further subheading ‘*unmetalled*’. It is described as ‘*Aston Cantlow-Newnham*’ with a length of 1.36 miles.
3. The claimed route has been included in subsequent highway maintenance records and referred to as an unclassified county road (“UCR”). The route is currently recorded in the list of streets held by the Council in accordance with Section 36 of the 1980 Act.
4. It is apparent that the mapssubmitted by one of the objectors (Mr Hawker) only record the roads maintained at public expense and they do not appear to add anything to the other records. Reference is also made to road mileage returns for maintained green lanes, which were forwarded by highway authorities to the Ministry of Transport. The 1963-64 returns onwards defined green lanes as “*unsurfaced roads with right of passage for vehicles, included on Ministry of Transport form 197(Roads)”.* In contrast, some earlier returns contain a definition of greens lanes which included bridleways. These records provide no specific information in relation to the claimed route. However, it is probable that the route was included within the overall mileage returns given that it was recorded as a UCR.
5. An article in the Rights of Way Law Review by John Sugden (titled ‘Highway Authority Records’ of September 1995) gives a view that it was the practice of highway authority officers to interpret a reference to a county road as meaning a vehicular highway. He nonetheless accepts that these records were internal documents and mistakes could happen. Mrs Mallinson outlines that she has experience of cases elsewhere where Orders have been confirmed to add a bridleway to the definitive map which was recorded as a UCR. I would add that whilst in my experience this is correct, there are other instances where a UCR has been found to be a carriageway or a BOAT.
6. Two letters from the former Department for the Environment, Transport and the Regions give a view on the interpretation of highway records. A letter of 24 August 1998 states that the term UCR may provide evidence of vehicular rights, but this must be considered with all of the evidence to determine the extent of those rights. The second letter of 14 May 2001 gives the view that the inclusion of a route in the list of streets is not proof of vehicular rights.
7. Guidance contained in paragraph 4.42 of Defra Circular 1/09 outlines the Secretary of State’s current view in relation to UCRs recorded in the list of streets to be that:

“*In relation to an application under the 1981 Act to add a route to a definitive map of rights of way, the inclusion of an unclassified road on the 1980 Act list of highways maintained at public expense may provide evidence of vehicular rights. However, this must be considered with all other relevant evidence in order to determine the nature and extent of those rights. It would be possible for a way described as an unclassified road on a list prepared under the 1980 Act, or elsewhere, to be added to a definitive map of public rights of way provided the route fulfils the criteria set out in Part III of the 1981 Act. However, authorities will need to examine the history of such routes and the rights that may exist over them on a case-by-case basis in order to determine their status”*.

1. The TRF says the Council has not attempted to demonstrate that any of the other routes in the roads part of the handover schedule are other than ways carrying vehicular rights. The TRF submits it is far more likely that the claimed route was included in the handover documents because it was known to be vehicular in the same wayas other roads which became UCRs. However, there appears to be little value in comparing the rights of way shown on the definitive map and the routes recorded as UCRs in Warwickshire given the issue outlined below. It is likely that any route included in the handover records as a UCR would have been omitted from the definitive map and statement.
2. The highway records are conclusiveevidence of the highway authority’s acceptance of its maintenance responsibility. They are clearly supportive of the claimed route being a highway. I accept that the inclusion of the route in the handover documents could be reflective of it being a vehicular highway. However, they are not a definitive record of the highway rights in connection with the ways shown. As outlined in the current guidance the status of these routes has to be considered in light of the available evidence. It also needs to be borne in mind that in 1911 the rural district council surveyor stated that he had maintained a bridleway between Aston Cantlow and Newnham.I consider that this reference is likely to relate to the claimed route.

*The compilation of the definitive map*

1. The process to compile the original definitive map for the area commenced in the 1950s in accordance with the National Parks and Access to the Countryside Act 1949. This made provision for the recording of three categories of highways, namely footpaths, bridleways and roads used as public paths. There is nothing to suggest that the route has ever been viewed as a footpath or road used as a public path.
2. It was generally the case that parish councils initially completed survey forms and maps showing the alleged public rights of way in the parish. These documents were considered by the surveying authority (in this case the Council) when it drew up a draft map showing the rights of way it believed subsisted or were reasonably alleged to subsist at the relevant date. There was an opportunity to object to any of the ways included or omitted from the draft map and modifications could be made to the map prior to the later stages involving the production of provisional and definitive maps.
3. The majority of the claimed route, along with Bridleway AL88, is shown coloured red on the survey map and numbered 22. A section between points G-H and Bridleway AL81 is shown in the same manner and numbered 24. The remainder of the route between the two connecting bridleways is not coloured but it is annotated “*Not Used*” and “*BR*” in red lettering. There is additionally pencil notation added which states “*Uncl Co Rd (unmetalled)*”. Again, no additional reliance should be placed on the depiction of a bridle road on the OS base map.
4. The accompanying schedule for 22 allocated it with a bridle road symbol but this has been circled and has the note “*Unmetalled County Road*” added. The route was alleged to have been used throughout living memory and to consist of a hard road in places, padded track in others, with a width of 4-5 ft. Reference was made to the existence of gates at points. The condition was said to be very rough in places but with no obstructions.
5. An objection was made to the omission of the claimed route from the draft map and the response of the County Surveyor on 9 November 1954 was that it was a UCR and hence not shown on the map. A note from the hearing held on 26 May 1955 into this matter records that an objector had referred to some old maps showing the route as a bridleway. This is followed by the observation that “*The route described appears to be an unclassified county road and as such cannot be included in the survey*”. It was recommended that no modification be made to the draft map. The connecting bridleways were subsequently recorded in the definitive statement as terminating with the Newnham to Aston Cantlow Road.
6. I find it more probable from the information supplied that a decision was made to exclude the route from the draft map on the ground that it was a UCR. It may have been the case that there was a general perception that the recording of a route as a UCR was indicative of it being a vehicular highway. However, there is nothing to suggest that any other information was considered to determine whether the claimed route was a vehicular highway.
7. When taken in context with the omission of the claimed route from the draft map and its recording as an UCR the descriptions of the termination points for the connecting bridleways in the definitive statement are understandable. Thisdoes not really add anything further in terms of support for the existence of public vehicular rights. It is supportive of the acknowledged highway status.
8. The evidence reveals that the parish council had viewed the majority of the claimed route to be a public bridleway on the ground of use. This evidence provides support for a locally held belief that the route was a public bridleway. As outlined in paragraph 67 below, there is some evidence of pedestrian use which pre-dates the parish survey. Whilst the hearing was not persuaded by the depiction of the claimed route as a bridleway on certain unspecified maps, given the observation outlined in paragraph 51 above, it is likely that the route was excluded mainly on the ground it was a UCR.
9. Some weight should be given to the omission of the claimed route given the process in place for the compilation of definitive maps.It must be assumed that the proper procedures were followed, and the evidence provided at the time was properly considered.However, I do not consider that this matter by itself should be given asignificant amount of weight. The 1981 Act provides a mechanism to modify the definitive map where evidence is discovered to show that a right of way should now be added to the map. This issue is distinct from cases where it is alleged that a way was included on the definitive map in error. It is not a case of determining if the Council originally made an error in omitting the route on the basis of the evidence before it, but whether it can be concluded from an examination of all of the evidence now available that a bridleway subsists.

*Bartholomew’s maps*

1. The claimed route is shown on the 1903, 1920 and 1941 editions of these mapsas an uncoloured road. On the keys to the first two maps this is stated to represent an “*inferior*” road which was “*not recommended for cyclists*” or “*not recommended*”. The 1941 map shows it under the “*other roads*” category. There is a separate category on the maps for footpaths and bridleways. However, there is a disclaimer that generally appears on these maps which is similar to the one on thelater OS maps. In my view little weight can be attached to the depiction of the claimed route on these maps as an uncoloured road.

*Land Registry documents*

1. Reference is made by the Council to Land Registry title documents referring to private rights to use a section of the route and an obligation to contribute towards the costs of maintaining it. In one case, there is a reference to a right of access being granted in 1960.
2. The route is clearly viewed as being maintainable at public expense. It is possible that it was considered necessary to reserve a private right of way for vehicular access because it was uncertain what rights existed. In such circumstances, it could reflect a precautionary approach being taken to ensure that access to the properties was maintained.

*Temporary Traffic Regulation Orders (“TTROs”)*

1. TTROs have been made which had the effect of prohibiting vehicles from using the claimed route for periods of time between 2007 and 2010 to prevent serious damage to the surface of the route. When taken at face value a TTRO to prohibit a certain type of user suggests that they ordinarily had a right to use the route.
2. The Council’s published policy is to operate a working presumption that all UCRs are vehicular highways unless proven otherwise. However, it is clear that the status of the route has been in dispute for some time and the present Order was made to resolve this matter. Given the strong feeling by some people that vehicles are permitted to use the route it is not surprising that the Council sought to prevent such use by means of TTROs.
3. In these circumstances, I am not satisfied that any significant reliance can be placed on the making of the TTROs when determining the status of the route.

*Maintenance*

1. The parish survey submitted in relation to the definitive map process indicates that the route was not particularly well maintained. There may be little difference in terms of the maintenance of a bridleway and a UCR and clearly a vehicular road may be unsurfaced. Details provided by the Council are also indicative of some parts of the claimed route being privately maintained in the past. Any such works may well have been undertaken to facilitate the passage of agricultural vehicles.
2. There is no information to suggest that any significant maintenance was undertaken until the 2000s. The Council has confirmed that re-surfacing works were carried out on a number of stretches in the 2000s with the most extensive being in 2009. These are stated to have been undertaken in response to reports from the parish council and members of the public regarding the surface in light of vehicular use. It is apparent from tender specifications of 2007 and 2009 for proposed works that the surface of the route should be suitable for pedestrians, horse riders and vehicles. On this matter the Council asserts that, pending a resolution regarding the status of the claimed route, there was a need to make the route useable for all groups to prevent any further damage in light of the vehicular use at the time.
3. It would be expected that some maintenance would be undertaken on the route given it is included in the list of streets. The more recent works needto be considered in the context of the uncertainty regarding whether the route carried public vehicular rights. This is evident in the email from Mr Williams of the Council to a representative of the Greens Lane Association (“GLASS”) of 2 April 2003. The email outlines the need to investigate the status of green lanes and Mr Williams’ initial view was that the route was a bridleway. This is consistent with the Council’s stated policy that there is a presumption that UCR’s may be vehicular, but there is a need to carry out an investigation to determine what rights exist.

*Signs*

1. For an unspecified period of time there has been UCR signage at the ends of the claimed route. The email of April 2003 makes it clear that the route has been correctly signed as a UCR, by reference to Defra Circular 1/09, but that it cannot be assumed it is a vehicular highway. I therefore place no additional evidential weight on these signs as an indicator of the historical legal status of the way.

*Historical user evidence*

1. A number of user evidence forms (“UEFs”) have been submitted in support of use of the claimed route. I address the more recent vehicular use later in this Decision.There is also evidence of significant use in recent years by people on foot and horseback.I take the historical use as falling before the decision to not include the claimed route on the draft map.In order to strike a consistent approach in terms of the user evidence, I consider that the weight of this historical evidence of use should be limited to some extent by the fact that it was not tested at the inquiry.However, the TRF did not seek to challenge the reliability of the relevant UEFs.
2. This evidence dates back to the early part of the twentieth century and is generally supportive of use by pedestrians.It is therefore consistent with the route being a public right of way. Additionally, this evidence provides support for the longstanding existence of a clap gate which would have limited the scope for vehicular use (see paragraphs 80-81 below). This evidence does not sit with the claimed route being considered a vehicular highway.

*Conclusion from the above evidence*

1. The early small-scale maps provide support for the local road network, between Aston Cantlow and Newnham, incorporating Bearley Road, White House Hill and Newnham Lane. It is evident from a reading of the inclosure award that the sections were awarded as public roads and were probably highways of some antiquity. Whilst the position is less clear in terms of the claimed route, evidence has been provided in support of this route corresponding with an awarded public bridleway. The absence of a plan to accompany the award will serve to limit the reliance that be placed on this evidence. However, nothing has been provided to indicate that this bridleway followed another route between Aston Cantlow and Newnham. Nor is there anything to show that the claimed route corresponded to one of the public roads in the award. Overall, the inclosure award provides some evidence in support of the route being a bridleway.
2. Two estate plans provide support for the existence of the claimed route as a through route. The one deed plan shows the route annotated as a bridleway and leading to Newnham. I do not consider that these maps alone should carry a significant amount of weight. However, they are consistent with the evidence put forward in support of the route being an awarded public bridleway. The depiction of only a section of the route on the early OS maps is likely to reflect the nature of the remainder of the route, which was not bounded on both sides. It is noteworthy that the road network referred to above is shown on the early OS maps. The later OS maps provide support for the route being viewed as a bridleway rather than used by wheeled traffic but the weight to be attached to these maps will be limited. I also attach limited weight to the depiction of the route as an uncoloured road on the Bartholomew’s maps.
3. The local authority minutes from the latter part of the nineteenth century and early twentieth century are supportive of the route being viewed as a public bridleway and maintained by the appropriate local authorities. These minutes should be afforded a significant amount of weight. The subsequent recording of the claimed route as a UCR on the handover documents in itself is not clear evidence of status. Although there might be an expectation that the recording of a route as a UCRprovides some support for the existence of public vehicular rights, there is a need to have regard to all of the available evidence to determine what rights exist. There is the potential for UCRs to carry only public bridleway rights. In this case, I have found it significant that the route was viewed by the rural district council surveyor as a bridleway in 1911. This would be wholly consistent with it being recorded in the handover schedule within the “*other roads, Bridle Roads*” category.
4. The survey undertaken by the parish council as part of the definitive map process is supportive of the majority of the claimed route being regarded locally as a public bridleway. The ground for believing this to be the case was use within living memory. Clearly, the Council took the view that the route should not be added to the draft map and this decision should be afforded some weight given the process that had to be followed at the time. However, the available evidence points to the main consideration involved in this decision being that the route was recorded as a UCR. The historical evidence of use is consistent with the claimed route being a public right of way. It is also evident that a clap gate would have served to limit the scope for use by vehicular traffic for a proportion of the twentieth century.
5. The making of TTROs and the recent maintenance undertaken could be suggestive of a recognition by the Council of public vehicular rights. However, these actions need to be considered in the context of the disputed status of the route. I place little reliance on the recent action of the Council when considering the historical status of the route.
6. I find that when taken together the evidence is of sufficient weight to show on the balance of probabilities that the claimed route is a historical public bridleway. It follows that the issue to now determine is whether public rights for mechanically propelled vehicles have subsequently been dedicated over the route.

***Consideration of the evidence of vehicular use***

*Statutory dedication*

1. The first issue to be determined is when the status of the claimed route was brought into question. In considering this issue, I have had regard to the House of Lords judgment in the case of *Godmanchester Town Council and Drain v Secretary of State for Environment, Food and Rural Affairs [2007]* UKHL 28 (“*Godmanchester*”).
2. The TRF submits that there has been no event that brought the status of the claimed route into question prior to the present process and certainly not before the commencement date of the 2006 Act (2 May 2006). It is accepted that reliance cannot be placed on evidence of use by mechanically propelled vehicles after this date. There is no specific statutory provision whereby the commencement date for the 2006 Act serves to bring the status of vehicular rights into question. Moreover, as outlined below, there are other earlier events that could have potentially brought the status of the route into question that warrant consideration.
3. Reliance is placed by the Council on the submission of documents in April 2001, in accordance with Section 31(6) of the 1980 Act, by the then owner of land crossed by a proportion of the route (the late Mr A. Suffield). Section 31(6) sets out the procedure a landowner can undertake to demonstrate that they have no intention of dedicating any additional ways across their land. This involves depositing with the appropriate local authority a statement and plan showing any public rights of way acknowledged to exist followed by a statutory declaration within the required timeframe to declare that no additional ways have been dedicated over the land in question.
4. Lord Hoffman states in paragraph 37 of the *Godmanchester* judgment “*I do not say that all acts which count as negativing an intention to dedicate would also inevitably bring the right into question. For example, I would leave open the question of whether notices or declarations under section 31 (5) or (6) will always have this effect. I should think that they probably would, because their purpose is to give notice to the public that no right of way is acknowledged. But we do not need to decide the point. I do not even say that acts which would indicate to reasonable users of the way that the owner did not intend to dedicate will inevitably bring the right into question, because one cannot foresee all cases. But the Act clearly contemplates that there will ordinarily be symmetry between the two concepts*”.
5. The obiter dicta comments above (a view on a point not essential to the decision and therefore not binding as precedent) are supportive of there being symmetry between acts that are sufficient to bring the status of the way into question and those that demonstrate a lack of intention to dedicate a way. They are supportive of declarations made under Section 31(6) constituting such an act. Lord Hope outlines at paragraph 53 of *Godmanchester* that a Section 31(6) deposit will demonstrate a lack of intention to dedicate if it is backed up by a statutory declaration.
6. The TRF’s position is that the wording of Section 31(6) is such that it only serves to show a lack of intention to dedicate additional rights of way and it would not prevent the dedication of higher public rights over an existing right of way. However, given the purpose behind Section 31(6), I take the view that it is likely that the documents submitted by Mr A. Suffield served to show a lack of intention to dedicate higher public rights beyond those he acknowledged existed. In practical terms he identified the claimed route as a bridleway and made a declaration that no additional ways existed over the land. This action would be sufficient to demonstrate a lack of intention to dedicate a vehicular highway and bring the status of the route into question.
7. There is evidence of a clap gate previously being in place just to the east of point E. I note that there are some variations in the statements of when this gate was removed. However, I place reliance on the oral evidence of Mr N. Suffield who witnessed the incident and the contemporaneous correspondence from the National Farmers Union (“NFU”) which places the removal of the gate to have occurredin around 1984. There is evidence in the UEFs submitted by some of the supporters of this gate being in place during a good proportion of the twentieth century.
8. The details provided reveal that the gate was in place at the boundary of land owned by the Suffield family and facilitated passage by pedestrians and horse riders. It is apparent that this structure would have prevented use by four-wheeled vehicles until it was removed. There was a general acceptance at the inquiry that it is possible that somemotorcyclists would have been able to continue beyond the gate by pushing their vehicle through the self-closing gate. However, no evidence was provided from motorcyclists on this matter.
9. The evidence of Mr N. Suffield is that he and his brother encountered a group of people with three vehicles who were taking action to remove the gate and surrounding vegetation. A heated discussion ensued, and Mr Suffield blocked the route with a tractor and stated that he would call the police. Only when one of the people claimed that they were a police officer was the tractor removed. It is clear that the vehicular users viewed the route to be a road and believed they were entitled to remove thegate. Mr Suffield’s response was that it was a bridleway.
10. The TRF asserts that this event did not bring the status of the route into question given that it was a recognised highway. It may well be the case that the group of motorists believed they were taking action to assert their right to use the route. However, it was open to someone to question the extent of the rights that existed over the route. Mr Suffield clearly challenged the right of the motorists to use the route. It matters not that there is some evidence of use by motorcyclists prior to the removal of the gate. The issue to be determined is whether the incident in 1984 was sufficient to bring the vehicular use of the route into question.
11. It seems to me that the removal of the gate also served as the catalyst for subsequent events where the status of the route was further questioned. The NFU wrote to the Council on 17 December 1986 referring to problems involving vehicular use of the claimed route during the year and requested that the route be officially classified as a bridleway. It is apparent that the status of the route was a matter the parish council pursued with the Council from the 1990s. It is also notable that a rights of way survey undertaken by Mr Tidley for GLASS in December 1998 records that the landowner from Holmlea Farm (presumably Mr A. Suffield) wanted to know why they were driving along a bridleway and took some details. As outlined above, Mr A. Suffield lodged documents with the Council in 2001 in accordance with Section 31(6) of the 1980 Act. A later complaint by Mr Tidley to the Council was answered by Mr Williams by way of the email of 2 April 2003, which is outlined in paragraph 64above. A motorcyclist (Mr Archer) reported to the Council incidents of being challenged and on one occasion a neighbouring landowner (Mr Harris) had challenged a group of users in 1992.
12. Clearly a group of motorists were challenged when they took action to remove the gate in 1984. Such action would have served to bring vehicular use of the route into question. It is evident that there were subsequent incidents involving individuals and groups of riders, which prompted a representative of GLASS to complain to the Council. It is thereforelikely that a proportion of vehicular users would have been directly or indirectly aware that the status of the route was disputed. It also appears to me that the status of the claimed route was a live issue for other people who used the route on foot or horseback.
13. Having regard to the above I find on balance that the events surrounding the removal of the gate in around 1984 served to first bring the status of the claimed route into question. Additionally, the statutory declaration of 2001 demonstrated a lack of intention by Mr A. Suffield to dedicate a vehicular highway over his land and means that there is no potential twenty-year period available after 1984. Therefore, the relevant period year period for the purpose of Section 31 of the 1980 Act is 1964-1984.
14. In the absence of any other evidence of use, it cannot be presumed that there was use by vehicles prior to the earliest documented evidence of vehicular use in approximately 1970. This means that dedication under statute cannot succeed as there is no evidence of vehicular use taking place during the whole of the relevant period. It follows that consideration will need to be given to whether the evidence is supportive of the common law dedication of a vehicular highway before or after 1984.

*Common law dedication*

1. I have concluded above that the documentary evidence is supportive of the claimed route being a bridleway. However, clearly the status of the route has been a matter of some uncertainty and the objectors believe it to be a vehicular highway. In these circumstances I find there to be little merit in the Council’s assertion that the use by motor vehicles was illegal and could not give rise to the dedication of a BOAT. Moreover, it is apparent, in light of the case of *Bakewell Management Ltd v Brandwood [2004] UKHL 14*, that it was possible for a landowner to dedicate a vehicular highway over their land, even if such use would normally be a criminal offence. The relevant provisions of the 2006 Act were enacted to address this matter.
2. A number of UEFs have been provided in support of vehicular use of the claimed route since approximately 1970. As outlined above, in the absence of any actual evidence of earlier public vehicular use, it cannot be assumed that there was any significant use by motor vehicles before 1970. This contrasts with the evidence of use by pedestrians and horse riders going back over a number of years. Some additional references have been made to vehicular use by other people. However, the limited amount of information in relation to their use means that this evidence carries little weight.
3. Various criticisms have been made about the quality of the evidence contained in the UEFs submitted by the vehicular users. In considering these issues, it was only possible to clarify information contained in the UEFs from three of these users at the inquiry. A proportion of the forms were obtained electronically, and these already had certain information marked on them. Whilst other parts of the relevant forms have been completed, this raises doubts regarding the extent to which all of the information was within the knowledge of the user concerned.
4. Additionally, some of the forms do not contain a map showing the extent of the route the person actually used. Reliance is placed on the standard description of the claimed route. I note a few of the users who did attach a map to their UEF showed use of a proportion of the claimed route in conjunction with Bridleway AL88. This evidence clearly indicates that the person did not continue over the G-H section.
5. There are some variations in the information supplied where a person has submitted more than one piece of evidence. I accept that there will be difficulties in recalling when certain events occurred given the periods of time involved and minor variations may be expected in such circumstances. However, I have concerns about the reliance that can be placed on the evidence of use of a particular person where there are significant unexplained variations in different pieces of evidence they have provided. In one case a partial UEF specifies that the person’s use commenced in 1982 but a separate single pagestates that this use began in 1974. The objection from the same person specifies that they began using the route in 1990. Two people state that they used the route on two and four occasions within periods of seven and eight years and this means it is not possible to know which particular years these people actually used the route.
6. Neither of the two witnesses at the inquiry who state that they used the route on a motorcycle prior to 1984 recalled the clap gate. Although there was a general acceptance by the supporters that it would in theory have been possible to push a small motorcycle through the gate, there is a lack of evidence of this actually happening. Nonetheless, I proceed on the basis that there is some evidence of use of the route by motorcyclists prior to the removal of the gate.
7. Having regard to my assessment of the UEFs, the evidence of use by motorcyclists prior to 1984 is limited to eight people. Until around the mid-1970s there was only one person who claims to have personally used the route and most of the relevant users’ state that they commenced using the route in the early 1980s. The use was mainly stated to have occurred on a monthly basis. Overall, I find the evidence regarding the extent of the claimed use by motorcyclists prior to 1984 to have been fairly limited and not on balance sufficient to infer the dedication of public vehicular rights over the route.
8. The evidence of vehicular use after 1984 is more significant. Despite the issues raised regarding the quality of some of this evidence, local residents acknowledge that there has been vehicular use of the route in recent years. However, Mr A. Suffield lodged documents in 2001 in support of there being no intention to dedicate higher public rights to those he acknowledged to exist in respect of the claimed route. It is also apparent that the act of removing the clap gate could be interpreted as force, certainly in terms of the initial use by four wheeled vehicles.
9. It is clear that members of the Suffield family challenged the removal of the gate in 1984 and asserted that the route was a bridleway. This view was endorsed by Mr A. Suffield in 2001. These acts run contrary to the dedication by the landowner of a vehicular highway. I do not accept that the use by motor vehicles in the intervening period was by the acquiescence of the landowners. It is apparent that the status of the route was disputed, and this is clearly reflected in the recorded challenge by the landowner (presumably Mr A. Suffield) in 1998. This was noted by a representative of a vehicular user group. It is also evident that the Suffield family were told by the Council to remove an obstruction placed on the route in the 1990s. As Mr A. Suffield has passed away it is not possible to confirm the extent to which he challenged people on the route. Nonetheless, the evidence before me is supportive of overt action being taken on occasions to indicate that he had no intention to dedicate any additional rights over a route he considered to be a bridleway.
10. I am not persuaded that the later maintenance of the claimed route and making of TTROs by the Council are supportive of the acknowledgment of public vehicular rights given the circumstances in this case. However, this action is stated to have occurred after the Council had received the documents deposited in accordance with Section 31(6) of the 1980 Act. There is no evidence that the Council took any action to facilitate or deter access by vehicles prior to Mr A. Suffield’s statutory declaration. Ultimately, it is the action (or lack of action) by the landowner that needs to be considered in conjunction with the user evidence when determining whether there has been the dedication of a highway. Mr A. Suffield’s actions are not supportive of him dedicating a vehicular highway.
11. Having regard to the above I do not find on balance that the evidence is supportive of the dedication of a BOAT over the claimed route. In light of this conclusion there is no need for me to consider whether the dedication of a BOAT would constitute a public nuisance.

**Overall Conclusion**

1. Having regard to these and all other matters raised at the inquiry and in the written representations I conclude that the Order should be confirmed.

**Formal Decision**

1. I confirm the Order.

Mark Yates

**Inspector**

**APPERANCES**

|  |
| --- |
| **The Case for the Council:**  |
| Ms R. Crail She called: Ms M. BormanMr R. BarnardMr J. MorrisMs G. NeedhamMr J. Harris Ms S. HarrisMr B. EvansMr N. Suffield | Of Counsel Rights of Way Team LeaderRights of Way OfficerClient Manager for County Highways |
| **Additional Supporters:** |
| Mrs D. MallinsonMr A. TylerMr D. HannafordMr P. Summerfield Mrs P. Holmes**For the TRF:** Mr A. PayHe called:Mr G. StepneyMr G. Williams**Additional Objector:** Mr R. Hawker | On behalf ofthe Green Lanes Environmental Action Movement Of Counsel  |
|  |  |

**DOCUMENTS**

1. Opening statement for the Council
2. Bundle of documents relating to the management of the route
3. Photograph of the route
4. Email of 25 June 2018 from Mr Archer to the Council
5. UEF completed by Mr Williams
6. Statement of Mr and Mrs Hannaford
7. Statement of Mr Hawker
8. Written note by Mr Archer
9. Closing statement by Mrs Mallinson
10. Closing submissions for the TRF
11. Closing submissions on behalf of the Council

**ORDER MAP – COPY – NOT TO SCALE**

