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| **Order Decision** |
| Site visit made on 24 May 2022 |
| **by Gareth W Thomas BSc(Hons) MSc(Dist) DMS MRTPI** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 30 June 2022** |

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| **Order Ref: ROW/3272268** |
| * This Order dated 11 August 2020 is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Herefordshire Council (Addition of Footpaths LR39 Ledbury Rural and DN8 Donnington) Modification Order 2020. |
| * The Order is dated 11 August 2020 and proposes to modify the Definitive Map and Statement for the area by recording footpaths within the Herefordshire Council area. Full details of the routes are given in the Order maps and schedules. |
| * There were two objections outstanding when Herefordshire 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** |
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Procedural Matters

1. No party requested an inquiry or hearing into the Order. I have therefore considered this case on the basis of the written representations submitted to me. I made an unaccompanied site visit on 24 May 2022, and I was able to walk the entire routes.

Background and Main Issue

1. The Council was directed to make the Orderfollowing an appeal by the applicant in accordance with Schedule 14 to the 1981 Act. At the Schedule 14 stage, for such an Order to be made, it only needs to be found that a public right of way can be reasonably alleged to subsist. The test I need to apply in determining whether the Order should be confirmed is set out in paragraph 4 below.
2. The Council has adopted a neutral stance regarding whether the Order should be confirmed, and written representations have been submitted on behalf of the objector. The applicant’s views in support of the original appeal have been taken into account.

**Main Issues**

1. The Order relies on the occurrence of an event specified in Section 53(3)(c)(i) of the 1981Act. Therefore, I need to determine whether the discovered evidence shows that a right of way which is not shown in the map and statement subsists on the balance of probabilities.
2. Reliance is placed by the applicant on various historical maps and documents in support of the dedication of a public footpath at some point in the past.
3. The Order submitted for consideration relies upon historical documentation. Section 32 of the Highways Act 1980 requires that documentary evidence is taken into consideration ‘before determining whether a way has or has not been dedicated as a highway’ – and that such weight is given to this evidence as ‘justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it was produced.’
4. Issues about loss of privacy, safety and security, suitability of the route and the existence of other alternatives are not relevant to the main issue.

**Reasons**

*Documentary evidence*

1. Neither the Ledbury Tithe Map of 1841 nor the Donnington Tithe Map of 158 depicts the Order route. However, the fact that highways were incidental to the tithe process and may or may not be depicted will usually serve to limit the evidential weight of tithe maps in any case.
2. The Ledbury Inclosure map depicts in detail the lines of boundary hedges or fences, drains and roads. The Order route between points F-G-H was depicted in the same way as a public road and shaded in terracotta colouring in the same manner as the main road between Ledbury and Newent (B4216). From the details prepared by the OMA at the time of the appeal into the application, whilst the road itself is not referred to in the text of the award, this was true of other roads in the awarded area with only stopped up and diverted roads being actually mentioned. There is no reference to any road numbering however and no reference is made to this ‘road’ within the Award.
3. The annotation “*FP*” appears on large scale OS maps from 1883 and arose from an instruction to surveyors which stated ‘*the object of….”F.P. being that the public may not mistake them for roads traversable by horses or wheeled traffic”.* The Ordnance Survey mapping dating from the 1st and 2nd editions of the 6” map in 1887 and 1904 respectively, show a mostly double pecked line along the route as a whole with the annotation f.p. to denote a footpath. OS maps more generally, sought to depict physical features on the ground rather than the status of a route. From 1888 OS maps have carried a disclaimer to the effect that the representation of a track or way on the map was not evidence of the existence of a public right of way. Nonetheless, it reinforces that a track existed along the whole route, part of which is known from the Inclosure maps to be an historic road albeit with its public status inconclusive.
4. Following from the above, 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 Order route in this manner may be of assistance when considered in conjunction with the other pieces of documentary evidence.
5. The Argus Farm Plan of 1795 supplemented by an undated Argus Estate Plan shows in various levels of detail parts of the route as either a track or road with particular reference to a road from Argus Farm to Hazle Mill and coloured similarly to public roads including the B4216. That said, the OMA noted in the appeal particulars that there was some discrepancy between the base plan used for the Farm Plan and the OS maps. Either way, there is no indication as to whether they were public or private accommodation roads. Where footways are included, no conclusion can be reached as to whether they have public or private rights
6. The Dinch Hill Farm Plan although undated but could be from around the time of the Donnington Tithe Map as the field numbering is the same and published before the canal being built depicts the route I-H-G and marked “Road from Lower Mill to Ledbury”. No footways are depicted. The same conclusion can be deduced as paragraph 12 above.
7. Similarly, the Manor of the Hazle (Farm) Survey of 1720 shows the route of F-G-H as an enclosed road although this route falls outside of but adjacent to the Manor of Hazle. Again, the same conclusion can be deduced as paragraph 12 above.
8. Both the Canal Plans and Railway Plans are inconclusive despite showing elements of the Order route.
9. The process to compile the original definitive map for the area commenced in the 1950s. Parish councils completed survey forms and maps showing the potential ways for inclusion on the draft map. There were in effect three main stages involving the production by the surveying authority of draft, provisional and definitive maps.
10. The applicant’s main evidence comprises the parish submission form from Ledbury Rural Parish Council for footpath Ledbury 6 and part of a longer route in the adjoining Donnington Parish comprising in part Order route I-H. This describes the Order Route as “from Parkway to the Old Canal via Highbridge Farm”. Subsequently however, Herefordshire County Council, following a hearing, determined that the route was not a public footpath with Donnington 7a noted as “impassable”. No evidence has been presented to demonstrate that the correct formalities were not followed.
11. That part of the Order route within the Donnington Parish (I-H) was claimed by the Parish as connecting to LR6. However, this was also deleted on the grounds that there was no connection into Gloucestershire and that it was considered that there was no right over the railway.
12. 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 with public roads generally excluded. The Finance Act Maps are based on OS County Series 1904 2nd Ed and any identified footpaths are depicted on these Maps. Those footpaths that are shown are within the apportionments coloured and not excluded from these areas. This evidence is inconclusive that any public rights existed.
13. Taken as a whole, the evidence is insufficient to support the historical existence of a highway over the entire route.

**Conclusion**

1. In such cases as this, there is a higher test that must be employed. From the above reasons, the evidence is largely inconclusive, and the balance is weighted against the Order route having status other than private. Whilst the routes are depicted on some maps, there is little or no evidence to suggest that they were public. Where surveys by the respective Parishes sought to include the routes within the DMS, subsequent procedures determined that they should not be so included. There is no evidence to suggest that formal procedures were not followed correctly.
2. Therefore, based on the evidence before me I am satisfied on the balance of probabilities that public footpaths - Footpaths LR39 Ledbury Rural and DN8 Donnington - do not subsist along the entirety of the route and that the DMS should not be modified accordingly.

**Formal Decision**

1. For the reasons stated and, having regard to all other matters raised, I do not confirm the Order.

Gareth W Thomas

INSPECTOR

