



# Appeal Decision

**by Alan Beckett BA MSc MIPROW**

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

**Decision date: 7 September 2018**

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## **Appeal Ref: FPS/Q2371/14A/16**

- This Appeal is made under Section 53 (5) and Paragraph 4 (1) of Schedule 14 of the Wildlife and Countryside Act 1981 (the 1981 Act) against the decision of Lancashire County Council (the Council) not to make an Order under section 53 (2) of that Act.
- The application dated 6 March 2017 was refused by the Council on 3 October 2017.
- The Appellant claims that the definitive map and statement of public rights of way should be modified by upgrading footpaths 54 and 55 in the parish of Coppull to bridleways (shown by bold broken line on the plan attached to this decision).

**Summary of Decision: The Appeal is dismissed.**

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## **Preliminary Matters**

1. I have been directed by the Secretary of State for Environment, Food and Rural Affairs to determine this appeal under Section 53 (5) and Paragraph 4 (1) of Schedule 14 of the 1981 Act.
2. This appeal has been determined on the basis of the papers submitted.

## **Main Issues**

3. The need for an Order to be considered when evidence is submitted in support of a claim that a public right of way which is already shown in the definitive map is subject to additional public rights is dealt with under section 53 of the 1981 Act. Section 53 (3) (c) (ii) of the 1981 Act provides that an Order should be made on the discovery of evidence which, when considered with all other relevant evidence available, shows 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.
4. Limited evidence of use of the claimed route by the public has been submitted by the Appellant who principally relies upon the documentary evidence adduced. When considering whether documentary sources provide evidence of the existence of a public highway, the provisions of section 32 of the Highways Act 1980 (the 1980 Act) are relevant.
5. Section 32 of the 1980 Act provides that: "*A court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the*

*tendered documents, 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."*

6. The main issue in this case is whether the available evidence demonstrates that a public right of way on horseback subsists over footpaths 54 and 55.

## **Reasons**

### *Documentary evidence*

7. The appellant claims that the two footpaths at issue have the physical appearance of a former carriageway which formed part of the road between Chorley and Wigan which was in existence prior to the turnpiking of that road in 1727 and which was superseded by the creation of a new section of turnpike road which now forms part of the A5106.
8. A description of the road between Wigan and Chorley was included in Kuerden's Itinerary of Lancashire written in around 1686. Part of the description reads "*you leave a fair built Fabric also belonging to the sd. Merchant call'd Adlington Hall. Passing by a little bridge over the Perburn Brook having gone thro' the watery lane leaving Coppull Hall a little on the left & going easterly until you reach the oblique road from Manchester to Preston*".
9. In a report on the landscape history of the former Ellerbeck Colliery site, this description was interpreted by Dr Alan Crosby as referring to the appeal route prior to the construction by the Turnpike Trust of a more direct route along the current route of A5106 Wigan Lane. In Dr Crosby's analysis, 'Perburn Brook' is now Bucknow Brook with the 'little bridge' being Coppull Mill Bridge. The 'watery lane' to which Kuerden refers is said to be a well-established local name for the appeal route, access to Water Lane House and Water Lane Cottages having been taken from it for many years. In Dr Crosby's analysis, the turnpike road was extensively improved and upgraded in the 1760s with a section of new road being created between the Grey Horse and the Duxbury Sawmills which replaced the circuitous route via Jolly Tar Lane, Coppull Hall Lane and Watery Lane.
10. In 1715 a petition entitled '*Standish, Worthington, Coppull and Duxbury – lands needed for widening of highways*' was lodged in the Quarter Sessions. The petition is in longhand and although it describes parcels of land required for the widening of the roads, without a contemporaneous map which identifies the various parcels of land mentioned in the petition, it is not possible to determine where the road ran at that time or where it was considered to be too narrow for the traffic of the day. There is nothing in the petition which assists in determining whether the order route was or was not part of the pre-turnpike highway network.
11. A document dated 1724 entitled '*Coppull – narrowness of road between Coppull Mill Bridge and Grimshaw Bridge*' is a record of the condition of a road at that date. The document is in manuscript and is a little difficult to decipher. As far as can be made out, it reads "*Mr Roger Bradhaigh Barratt one of His Majesty's Justices...confirm that I have viewed the Common Highway in Coppull in the sd County between a Certain Bridge called Coppull Mill Bridge and another Bridge called Grimshaw Bridge or New Barn Bridge leading between the Market Towns of Wigan and Chorley in the said County and thereupon find that...is so narrow*

*for a space of half a mile that it is not safe for His Majesty's Subjects to pass that way with their Carts and Carriages unless the same be enlarged.....is insufficient and it cannot be sufficiently Repaired and Amended without Enlargement and further that the.....of the said Township of Coppull ought to Repair and Enlarge the same.....and....of the sum of forty pounds at the least will be....for purchasing of the Ground to be taken into the Highways and for the sufficient repairing and Amending the same. Given under my hand this day and year aforesaid".*

12. Coppull Mill Bridge is on the current line of the A5106 Wigan Road and is to the south of the appeal route. Grimshaw Bridge (named on the Ordnance Survey first edition 6-inch to 1-mile map) is not on the A5106 but currently carries a public footpath over the Eller Brook. The 1724 certificate suggests that a route which travelled over Grimshaw Bridge was part of the pre-turnpike road network which passed through Coppull. It is likely that this route was the one referred to in the 1715 petition and which in 1724 still required widening and amending to accommodate the public vehicular traffic of the day. No plan is attached to the 1724 certificate and it is not evident from the certificate alone the alignment taken by the road between Coppull Mill Bridge and Grimshaw Bridge.
13. The Chorley and Wigan Turnpike Trust was created under the provisions of the 1726 Act for "*Repairing, Widening and Amending the Roads from Wigan to Preston in the County of Lancaster*" which provided authority for the Trustees to widen "*any of the narrow places in the said Highways or Roads*" subject to the land being taken into the highway did not exceed eight yards and did not result in the pulling down of any house or appropriation of any garden. The 1726 Act did not provide authority for the diversion of existing roads or for the creation of new sections of roads.
14. The 1726 Act provided that the tolls were to continue for 21 years from 1 June 1727 but would cease earlier if the Justices certified that the roads had been sufficiently repaired and amended. If a new section of road had been created in the 1760s, as suggested by Dr Crosby, it is likely to have been set out under further parliamentary authority (assuming the Trust was renewed in or around 1748 and at further dates). The terms on which any new road was created and what powers the trustees may have had for the stopping up or disposal of earlier roads under subsequent Acts is unknown as only a copy of the 1726 Act has been submitted.
15. A certificate of repair dated 1756 from the Ormskirk Quarter Sessions shows that the "*King's Highway in the Township of Coppull in the said County from a certain bridge there called Coppull Mill Bridge unto a certain other bridge diving the Townships of Coppull and Duxbury in length half a mile leading from the market town of Wigan to the market town of Chorley*" had been viewed by the justices and found to have been "*well and sufficiently repaired enlarged and amended*". There is no map accompanying the quarter sessions record and it cannot be ascertained from this record to which route north from Coppull Mill Bridge the justices were referring; however, as Grimshaw Bridge crosses the Eller Brook at the parish boundary and as the road at issue was described as being a half mile in length, it is more probable that not that the route being referred to was the same route which had been the subject of the 1724 Justice's certificate.

16. As noted above, the 1726 Act provided for the tolls to cease if at any time during the initial 21 year lifespan of the turnpike the roads had been sufficiently repaired. It is not known whether similar provisions were made in subsequent turnpike acts, and the 1756 Justice's certificate could not trigger the termination clause of the 1726 Act as that Act would have expired in 1748.
17. There is no mapping evidence which pre-dates the 1726 Act which assists in the determination of the status of the appeal route. All the maps which have been adduced date from 1786 and all show what is now the A5106 Wigan Road on its current alignment or a reasonable approximation thereof.
18. Yates Map of Lancashire (1786) shows a road extending south westerly from Chorley which is consistent with Wigan Lane and is depicted as a turnpike road. A route which approximates to the appeal route is shown connecting to Wigan Lane although there is no connection to Coppull Mill Lane or Jolly Tar Lane. That part of the appeal route shown by Yates is not depicted as a turnpike road.
19. A survey of the boundaries of the manor of Coppull of 1797 describes part of the boundary as being "*on the east side of the same brook unto the old Turnpike Road now belonging to Mr John Vause of Wigan and running from thence along the west side of the same brook across the new turnpike Road thro other lands of the said John Vause*". No map of the boundary of the manor is appended to the survey although it suggests that land of the old turnpike (whatever course it had followed), was by 1797 in private hands. This record suggests that the Turnpike Trustees had been granted the authority to (a) create the current Wigan Road and (b) to stop up and dispose of the land which had formerly been part of the turnpike; such powers may have been granted under turnpike acts subsequent to 1748.
20. Small scale commercial maps such as those produced by Smith (1804) and Hennet (1830) show the appeal route as a through route with access to property part way along it. These maps show the appeal route as connecting to the turnpike at its eastern end and to Coppull Hall Lane at its western end. In contrast, Greenwood's map of Lancashire (1818) does not show the appeal route as a through route and only shows the western end of the route where it joins Coppull Hall Lane.
21. In the 1842 Coppull tithe map and award the appeal route is recorded as being in private ownership and listed in the apportionment as '*lane to house*' and '*pasture*' on which a tithe was payable to the Rector of Standish. The record of the private ownership of the appeal route is consistent with the survey of the boundary of the manor of Coppull conducted 50 years earlier and shows that by the middle of the nineteenth century the appeal route was not considered to be a public vehicular highway.
22. Ordnance Survey maps from 1848 show the appeal route as a hedged or fenced track leading from Coppull Hall Lane to Water Lane House with a spur track leading to Wigan Road. The 25 inch to 1 mile map of 1894 shows a gate or other barrier across the appeal route at or around point C on the appended plan with a route heading north into the colliery from the appeal route on the eastern side of the gate or barrier. The map annotates the path within the enclosed part of the lane between C and D as '*F.P.*' and the principal means of access to Water Lane House appears to be along what is now footpath 55. The map suggests that the appeal route existed as a feature in the landscape and

- may have been accessible from either Coppull Hall Lane or Wigan Road although the use appears to have been predominantly on foot between points C and D.
23. The 25-inch to 1-mile map of 1908 shows that Water Lane House was now known as Water Lane Cottages and that the boundary on the north side of the route between points C and D had been removed with a path annotated 'F.P.' running through an open field. The route is shown gated or fenced at point C; with the principal access to Water Lane Cottages being along footpath 55.
  24. The 1928 edition of the 25-inch to 1-mile map shows that the colliery spoil heap runs adjacent to the appeal route. Although the map shows the appeal route to have been narrowed as a result of the encroachment of the spoil heap, a means of access along the appeal route is shown by a single peck line between points C and D. What had been Water Lane Cottages are now recorded as being Vose Farm with access to the farm being along a bounded track between points D and E.
  25. Whilst Ordnance Survey maps provide good evidence of the physical existence of features on the ground, they do not provide evidence of the status of any track or way shown. Although successive Ordnance Survey maps show a route which was capable of accommodating pedestrian traffic, they are of little assistance in determining the status of the appeal route.
  26. The appeal route is shown to be part of privately owned land in the Finance Act 1910 records. The Finance Act map shows that section of the appeal route between points A and D as part of hereditament 226 which was described as being owned and occupied by the Ellerbeck Colliery Company. The section of the route between points D and E was part of hereditament 235 occupied by James Bond and owned by Dickinson and Stringfellow. No deductions are recorded for the existence of public rights of way or user.
  27. The private ownership of the land crossed by the appeal route is consistent with documentary evidence from 1797 onwards; the inclusion of the appeal route within privately owned hereditaments suggests that the route was not considered to be a public carriageway at the time of the survey; the absence of a claim for a reduction in tax liability suggests that a public right of way over the appeal route was not acknowledged. The Finance Act documents are neutral as to the status of the appeal route.
  28. Bartholomew's half inch cycling maps of 1904 and 1920 show the appeal route as an uncoloured track running between defined boundaries. Although the appellant submits that the appearance of the route on such maps shows that the route was in use by cyclists as members of the CTC provided feedback to the map publisher, the key to the maps clearly shows which routes are suitable for cyclists and which are not. Those routes which were 'passable for cyclists' were shown by two parallel lines with red dots, whereas uncoloured roads (such as the appeal route) were described as "*inferior and not to be recommended*". Whilst Jolly Tar Lane (then known as Rag Whistle Lane) was shown as an '*indifferent road passable for cyclists*' in 1920, the appeal route was described as '*inferior*' in 1904 and remained so in the 1920 edition. Although members of the CTC may have provided useful information to the publisher which would have been of benefit to other cyclists, the 1904 edition or the 1920 edition demonstrate that the appeal route was not considered to be suitable for cyclists.

29. The survey of public rights of way under the provisions of the National Parks and Access to the Countryside Act 1949 was carried out by Coppull Parish Council in October 1950. The appeal route between points A and D was described as a '*cart road mainly used as footpath*' (CRF) with the section between B and D being completely obstructed, overgrown and flooded. Footpath 55 was described as an occupation road from Wigan Road to Vose Farm.
30. The appeal route was shown in the draft, provisional and first definitive maps as a public footpath; there were no objections or representations made to the inclusion of the appeal route or to its status at the draft or provisional map stages. The definitive map was reviewed in 1975, there was no evidence put forward to suggest that the route was incorrectly recorded as a public footpath.

### ***Conclusions on the documentary evidence***

31. The appellant contends that the appeal route formed part of the road between Chorley and Wigan which was turnpiked under the provisions of the 1726 Turnpike Act. Although the 1726 Act provided for the widening of the existing road there are no contemporaneous maps of the area to show the alignment of the road which was present and in use at that time. The interpretation placed on Kuerden's description of the road between Wigan and Chorley suggests that the appeal route (or some part of it) had formed part of the road travelled in 1686.
32. This interpretation appears to be substantiated by the Quarter Sessions records of 1724 and 1756 which demonstrate that in the first half of the eighteenth century, a public road ran between Coppull Hall Bridge and Grimshaw Bridge. A route incorporating part of Jolly Tar Lane, Coppull Hall Lane, the appeal route and a route to Grimshaw Bridge (on the alignment of footpath 56) could have formed part of the pre-Turnpike road between Wigan and Chorley which was taken over by the Turnpike Trust for repair and enlargement. The appellant notes that the western part of the appeal route has the physical appearance of an old road with drainage ditches on both sides and a surface similar to that advocated by Macadam.
33. The 1726 Act did not provide for the creation of new roads or the stopping up of existing roads; if such powers were available to the Turnpike Trustees, those powers are likely to have been provided by subsequent Acts which renewed the turnpike. Other than a copy of the 1726 Act, no other turnpike acts have been submitted for consideration. If the appeal route had been part of the pre-turnpike road network and had been taken over by the Turnpike Trust, the 1797 description of the boundary of the manor of Coppull suggests that by that date an alternative route (the 'new turnpike') had been laid out and that the 'old turnpike' (on whatever course it had taken) had been discontinued and the land sold off ("*the old Turnpike Road now belonging to Mr John Vause of Wigan*"). The Tithe and Finance Act documents are consistent with the land crossed by the appeal route being in private hands and not being considered to be a public carriageway.
34. Whereas the appellant notes that the physical characteristics of the appeal route are such that it resembles an old road, if the appeal route had been part of the old highway network which was subsequently stopped up and the land sold then its physical appearance would not be indicative of the extent of public rights over it. The evidence from the Coppull manor boundary survey suggests

on the one hand that the appeal route may have been part of the 'old turnpike' road, but on the other hand also suggests that the route had been stopped up and the land sold.

35. The documentary evidence from the nineteenth and twentieth centuries is of a route which remained as a defined feature within the landscape but which was primarily used by pedestrians, was not recommended to cyclists and which only had the reputation of a public footpath.
36. The majority of the documentary evidence is neutral as to the nature of the public rights over the appeal route or is of no assistance in determining the status of the route. Kuerden's description of the pre-turnpike road and the quarter sessions records provide evidence which sits in the balance in the appellant's favour but which is counterbalanced by the manor boundary, the tithe and Finance Act evidence which suggests that from 1797 the route of the 'old turnpike' had been stopped up was in private ownership.
37. Little evidence has been submitted of the process which led to the construction of the current A5106 at some point between 1756 and 1797 or which establishes what happened to the route originally taken over by the Turnpike Trust in 1727. The test to be applied under section 53 (3) (c) (ii) is that a route shown as a highway of one description *ought* to be shown as a highway of another description. This requires the balance of the evidence to be tilted in favour of a higher right subsisting. In my view, the evidence adduced is evenly balanced and does not demonstrate, on a balance of probabilities that public bridleway or carriageway rights subsist over the appeal route.

### **User evidence**

38. Only three user evidence forms were submitted in support of the application. In the absence of any other event, the date on which the application was made can serve as the date upon which public use of the way was brought into question. As noted above, the application was made on 6 March 2017; accordingly, the relevant 20-year period for the purposes of section 31 (2) of the Highways Act 1980 is 7 March 1997 to 6 March 2017.
39. Two of the respondents who completed a user evidence form claim to have ridden a pedal cycle along the appeal route on a monthly basis during 2015 – 2016. The remaining respondent had walked or ridden a bicycle along the appeal route approximately four times a year between 1985 and 2016. Although the third respondent appears to have ridden or walked the appeal route over a 31-year period, he acknowledges that there may have been one or two years when he didn't use the route.
40. No further clarification was given as to which years the third respondent did not use the appeal route, but if those missing years occurred during the relevant 20-year period then use throughout the relevant 20-year period could not be established. The evidence of use is, in any event, sporadic and use by one person 4 times a year in some years and by two others on a monthly basis in the final year of the 20-year period is insufficient to demonstrate that a public right of way was being asserted, either under the statutory scheme or at common law.
41. Evidence of use by pedal cycles cannot raise a presumption of dedication of the route as a public bridleway, although such use could give rise to a restricted

byway. However, the user evidence adduced is insufficient in terms of quantity and quality to raise a presumption that the appeal route has been dedicated as a public vehicular way.

**Overall conclusion**

- 42. The documentary evidence does not demonstrate that footpaths 54 and 55 ought to be shown as a public bridleway and the user evidence is insufficient to raise a presumption of dedication.
- 43. It follows that there is insufficient evidence to demonstrate that the appeal route ought to be shown as a highway of a description other than that of a footpath; consequently, the appeal should be dismissed.

**Formal Decision**

44. I dismiss the appeal.

*Alan Beckett*

Inspector

APPENDIX



