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## Order Decision

Site visit made on 5 January 2021

**by Alan Beckett BA MSc MIPROW**

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

**Decision date: 28 January 2021**

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### **Order Ref: ROW/3239332**

- This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Staffordshire County Council (Public Footpath from Town End Road Foxt to Ipstones Footpath 47, Ipstones Parish) Modification Order 2019.
- The Order is dated 21 February 2019 and proposes to modify the Definitive Map and Statement for the area by adding a public footpath as shown in the Order plan and described in the Order Schedule.
- There was 1 objection outstanding when Staffordshire County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for determination.

### **Summary of Decision: The Order is confirmed.**

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#### **Procedural Matters**

1. None of the parties requested an inquiry or hearing into the Order. I have therefore considered this case on the basis of the written representations forwarded to me. I made an unaccompanied inspection of the path at issue on Tuesday 5 January 2021.

#### **The Main Issues**

2. The Order has been made under Section 53(2)(b) of the 1981 Act in consequence of the occurrence of an event specified in Section 53(3)(c)(i).
3. Therefore, the main issue is whether the Council have discovered evidence which, when considered with all other relevant evidence available, is sufficient to show that a right of way which is not shown in the definitive map and statement subsists over land in the area to which the map relates such that the definitive map and statement require modification.

#### **Legal Framework**

4. Whilst it suffices under section 53(3)(c)(i) for a public right of way to be *reasonably alleged* to subsist for an Order to be made, the standard of proof is higher for the Order to be confirmed. At this stage, evidence is required which demonstrates, on a balance of probabilities, that a right of way subsists.
5. Dedication of a public right of way through a long period of use can be deemed to have occurred under Section 31 of the Highways Act 1980 ('the 1980 Act'). Section 31 provides that where a way has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, that way is deemed to have been dedicated as a highway unless there is sufficient evidence that during that period the landowner had no intention to dedicate it. Use 'as of right' is use which has been without force, secrecy or permission.

6. The period of 20 years is to be calculated retrospectively from the date when the right of the public to use the way was brought into question, either by a notice or otherwise.

## **Reasons**

### ***Documentary evidence***

7. I have had the opportunity to study the copies of maps and plans which have been submitted in support of the claim that the Order route is a public right of way. The earliest of these documents is the map attached to the 1841 tithe apportionment for the parish of Checkley; the remaining documents comprise extracts from Ordnance Survey maps at both 6 inches to 1 mile and 25 inches to 1 mile which were published between 1880 and 1970.
8. All the documents submitted show the Order route as being separate from adjacent land and running between physical boundaries. Having had the benefit of inspecting the site, it is likely that the solid lines used to mark the northern and southern boundaries of the path represent the stone walls which remain on site today. I note here that part of the path which runs through the parcel of land containing the Manor House barns is currently open to the north, but the remainder of the route remains bounded by stone walls throughout its length.
9. As noted above, the tithe map of 1841 and the Ordnance Survey 25 inch to 1-mile map of 1880 show the Order route as running between physical boundaries. These maps also show certain features in colour; the OS map shows buildings in red, ponds in blue, for example. Both these documents show the road network within Foxt by means of ochre or yellow colouring. The tithe map does not differentiate between Town End Road, the Order route or footpaths 47 and 48; all are shown coloured yellow. Similarly, the 1880 OS map shows the Order route and Town End Road coloured in the same way; in contrast to the earlier tithe map, only the northern part of footpath 48 is coloured.
10. No keys to these maps have been provided, and no conclusions can be drawn with regard to the status (public or otherwise) of the routes shown. An extract from a local history "*Foxt: The Story of a Moorland Village*" contends that the Order route formed part of a network of foot and packhorse routes which provided communications between Foxt, Ipstones and Froghall.
11. What can be drawn from the documentary evidence submitted is that since at least 1841 (and in all probability for much longer) there has been a substantial walled track leading south-east from Town End Road which would have provided access to the walled paths and tracks radiating out from the village. Whilst none of the documents provide conclusive evidence as to the status of the Order route, they demonstrate the existence for at least 180 years of a route which would have been capable of supporting pedestrian traffic.

### ***Evidence of use and section 31 of the 1980 Act***

#### ***The date on which the right of the public to use the footpath was brought into question***

12. The application to add a public right of way to the Definitive Map and Statement was submitted to the Council in May 2015 in response to the erection of prohibitive notices denying the existence of a public right of way

and the locking of 3 gates by the owner of Bolton Farm. The locked gates prevented access between the southern end of Town End Road near Bolton Farm and the walled track beyond the Manor House barns. I saw from my site visit that whilst the gates have remained in position across the Order route, a small wicket gate was present at each gate which provided a means of pedestrian access along the route.

13. The majority of the user evidence forms submitted in support of the application state that the route had been open and ungated until 2014. An image captured from Google Street View dated 2009 shows the northern end of the path to be open with the grass surface of the path running between stone wall boundaries. Undated photographs of the northern end of the path also show an ungated entrance. The Street view image also shows that Bolton Farm was for sale at the time and the presence of a 'for sale' board in the image supports 2009 as being the date of the image as it is known that the current owner of Bolton Farm purchased the property in 2010.
14. No evidence has been submitted from which it could be concluded that use of the Order route by the public was challenged prior to 2014. The evidence before me is that the locking of gates and erection of notices which read "No public footpath / right of way" effectively prevented public access between Town End Lane and footpath 47 and triggered the application to record the route as a public right of way. I conclude that these actions brought public use of the Order route into question. Consequently, the relevant 20-year period for the purposes of section 31 (2) of the 1980 Act is 1994 to 2014.

***Whether the claimed right of way was used by the public for a period of not less than 20 years ending on the date the public's right to do so was brought into question***

15. The application to add the claimed path to the definitive map was supported by 19 user evidence forms (UEFs). The UEFs were completed during 2014 and 2015 with respondents describing the erection and locking of gates in 2014.
16. All the UEFs were accompanied by a map showing the route claimed. Although the maps attached to five of the forms show a route running from footpath 47 to Foxt Road as opposed to connecting with the Town End Road at point A, the written evidence in those forms described the obstructions on that section of the claimed path in the vicinity of the Manor House barns. Consequently, I am satisfied that the evidence of use submitted relates to use of the disputed section of the Order route.
17. Of the 19 UEFs submitted, 8 respondents claim to have walked the Order route throughout the relevant 20-year period which ended in 2014. One respondent failed to specify the years during which the path had been used but had known of the path for 70 years. Six respondents stated that their use of the Order route had ceased prior to 2014; of these only 1 respondent had not used the path during the relevant 20-year period under consideration. Whereas this respondent had commenced use of the Order route in 1958, her personal use had ceased by 1985. All other users had used the Order route for varying periods during the period 1994 to 2014.
18. The claimed frequency of use varies amongst the users with 3 claiming to have used the path on a daily basis, 8 users having used the path weekly and 3 walking the route once a month. The remaining respondents describe their

uses as being occasional or seasonal. The earliest use of the Order route is claimed to have occurred in the 1930s; the commencement date of use from each respondent varies depending upon their age and the length of time they have been resident within the area.

19. The user evidence demonstrates that there has been general public access along the Order route throughout the bulk of the twentieth century and that such public use continued until gates were erected and locked in 2014.

***Whether use was as of right and without interruption***

20. The evidence before me is that there were no physical obstructions to access along the Order route prior to gates being erected in 2014. Although the photographic evidence submitted is undated, the appearance of an unrestricted and unobstructed gateway near the turning head on Town End Road is consistent with the submissions made that the route was unobstructed until 2014. The Street View image which shows the 'for sale' board at Bolton Farm demonstrates that the route was unobstructed in 2009. There is no evidence before me that use of the Order route had been interrupted during the 20-year period under consideration.
21. The available evidence points to the Order route having been open and unobstructed at all material times. In addition, users have not had to break down or climb over fences or gates in order to access the path. Although due to local topography the Order route would not have been visible from Manor House, use of the Order route would have been conducted in full view of anyone who may have been able to observe such use and respond to it if they so chose. None of the witnesses recalled having been challenged when using the path, and there is no evidence of prohibitory notices having been erected along it prior to 2014. I conclude that the use by the public described above was use as of right.

***Conclusions regarding the evidence of use***

22. There is a substantial body of evidence which demonstrates the uninterrupted public use on foot of the Order route as of right throughout the 20-year period under consideration. I conclude that the evidence adduced is sufficient to raise a presumption that the Order route has been dedicated as a public footpath.

***Whether there is sufficient evidence that there was during the 20-year period under consideration no intention to dedicate the claimed right of way***

23. For a lack of intention to dedicate to be demonstrated a landowner is required to have taken action to make the public aware that he, she or they had no intention of dedicating a public right of way. 'Intention' in this context is an objective test of what a reasonable user of the path would have understood the landowner's intention to be; that is, whether a reasonable user would have understood that the owner intended to disabuse the user of the notion that the way was a public highway.
24. The sole objector submits that there had been many occasions on which users had been advised that the route was not open to the public. However, there is no indication from those who have provided evidence of use of the path of any challenge being made to that use. Whilst it is possible that such challenges had taken place, they do not appear to have been undertaken with such frequency to have become notorious in the local area, or that they had been directed at

- those frequently using the path. The retrospective assertion of action having been taken to dissuade or deter public use of the path is not supported by evidence contemporaneous with the relevant period under consideration.
25. The most common way in which the landowner's intentions could have been brought to public attention would have been by the erection on the path of a notice or notices denying the existence of a right of way, or to place a suitably worded notice in the local newspaper. Whilst there is ample evidence of the locking of gates and the erection of notices in 2014, there is no evidence that any such action was taken by the relevant landowners at any point prior to that date.
26. It has been suggested by a member of the family of the previous owner of Manor House that the Order route was not conveyed as part of the property when Manor House was sold to the current owner in 1968. No evidence of title to the land crossed by the Order route has been submitted. I understand that from the southern end of Town End Road, approximately 85 metres of the Order route is considered to be the property of Manor House with the remainder of the Order belonging to The Heights. Although the current owners of the southern part of the Order route only purchased their land in 2014, they submit that the path has not been obstructed to their knowledge since 1978 and they have no objection to it remaining open. It is not disputed that no part of the Order route is owned by Bolton Farm.
27. The identity of the owner of the land crossed by the Order route is however not critical in the determination of this Order. There is no evidence before me that prohibitory notices were erected during the relevant 20-year period and only a retrospective assertion that the owner or owners of part of the route (whoever he, she or they may have been) took any overt action during that period to disabuse the public of the belief that the way had been dedicated to public use.
28. I conclude that there is insufficient evidence of actions having been taken by the landowners to rebut the presumption of dedication raised by the user evidence.

### **Conclusions on statutory dedication**

29. I conclude that the evidence of use of the Order route on foot by the public as of right and without interruption throughout the period between 1994 and 2014 is sufficient to raise a presumption of dedication of the Order route as a public footpath.
30. There is no evidence to suggest that prohibitive notices had been erected on the Order route at any time during the relevant period. In addition, there is no contemporaneous evidence of challenges to public use having been made, or that the owner of the land at the time brought to the attention of the public using the path that there was no intention to dedicate. For the above reasons, I conclude that the presumption of dedication raised by the user evidence has not been rebutted.
31. It follows that I am satisfied that the evidence before me is sufficient to show that, on a balance of probabilities, a public footpath subsists over the Order route.

**Overall Conclusion**

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

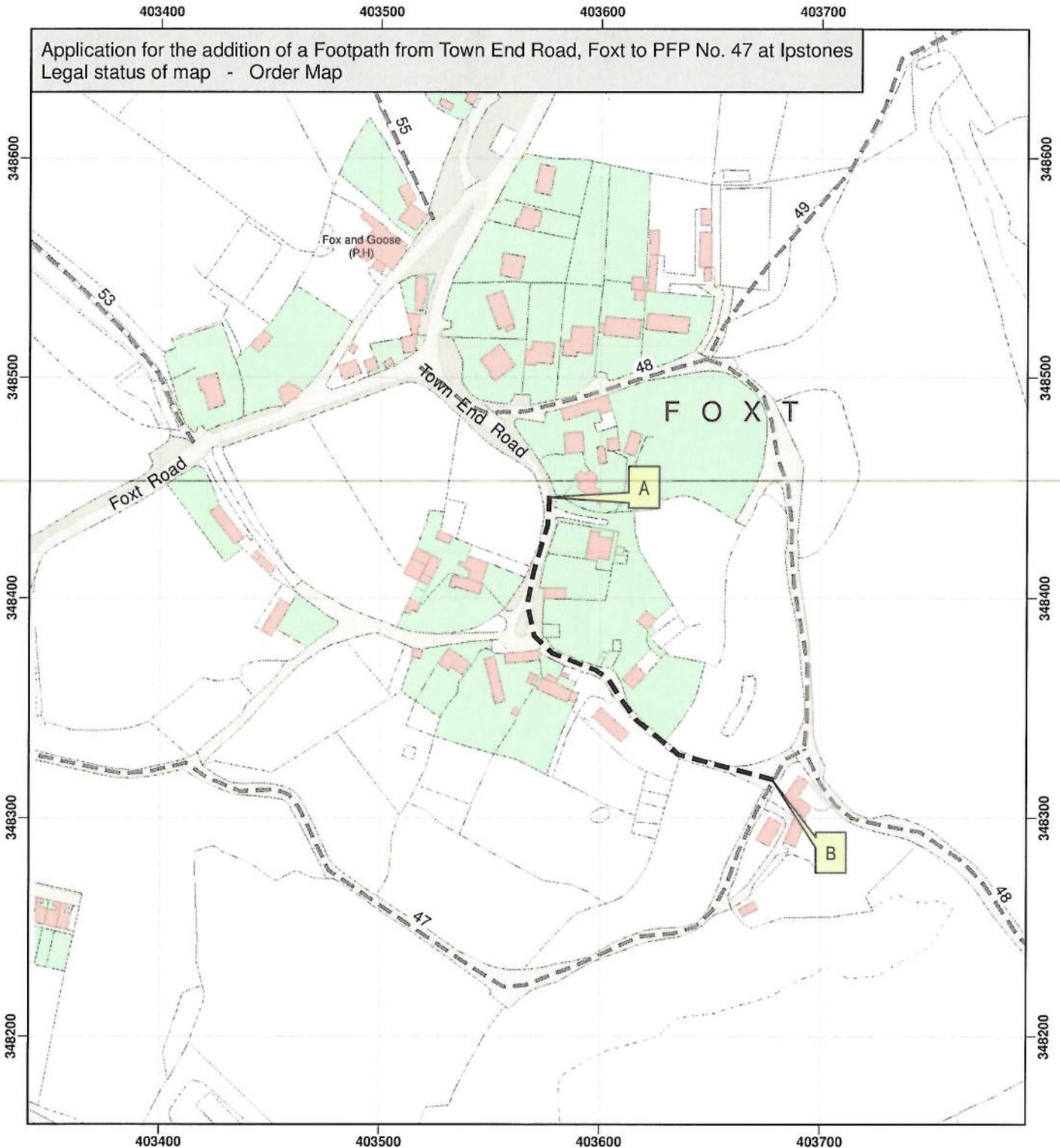
**Formal Decision**

33. I confirm the Order.

*Alan Beckett*

Inspector

Wildlife and Countryside Act 1981, Section 53A(2)(b)  
 Ipstones Parish, Staffordshire,  
 Addition of Footpath to  
 Definitive Map and Statement.



Map created at the scale of 1:2500  
 (facsimiles may vary)

- Right of Way to be added ( A - B )
- Rights of Way Unaffected
- Footpath

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