

Order Decision

Site visit made 11 May 2016

by Heidi Cruickshank BSc (Hons), MSc, MIPROW

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

Decision date: 12 July 2016

Order Ref: FPS/D3450/7/32

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as The Staffordshire County Council (Downgrading of Public Bridleway No. 19 Endon and Stanley Parish) Modification Order 2006.
- The Order is dated 21 September 2006 and proposes to downgrade the route recorded on the Definitive Map and Statement as a public bridleway within the Parish of Endon and Stanley to the status of public footpath. Full details of the route are set out in the Order map and schedule.
- There were two objections outstanding when Staffordshire County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation. Three later objections were received.

Summary of Decision: The Order is confirmed.

Preliminary Matters

Notice of Order to landowners

1. The Order route lies in part on an enclosed section running between properties on Hazelwood, Cedar Crescent, Kent Drive and Platts Avenue, Endon. Staffordshire County Council, the order-making authority ("the OMA"), indicated that the land crossed by the Order route was not shown on the deeds of the adjacent land and had no known landowner.
2. Paragraph 3.(2)(b)(i) of Schedule 15 to the Wildlife and Countryside Act 1981 ("the 1981 Act"), requires notice to be served on every owner and occupier of the land. Where there is no known owner, paragraph 3.(4) of Schedule 15 allows the OMA to serve notice by placing it on the land, having sought dispensation from the Secretary of State.
3. Reliance had been placed on the "*ad medium filum viae*" presumption, that an owner of land which abuts a public highway owns the soil of the adjoining highway to the centre line, as a reason not to give notice to an unknown owner. There was insufficient evidence that the adjacent landowners had been served notice and so, to ensure that all parties entitled to do so had the opportunity to present evidence, I asked that the Order be re-advertised on site.
4. The OMA gave notice in the period ending Monday 13 June 2016. No further objections or representations from landowners were received as a result of the re-advertisement. An objection was made by the North Staffordshire Bridleways Association ("NSBA"). Due to the re-advertisement there has been an unfortunate delay in issuing this decision.

Definitive line

5. This Order arose following an application made in August 1994 under Schedule 14 to the 1981 Act to downgrade Bridleway 19 ("BR19"), running from "Edge

Lane to top of Platts Ave (FPNo19)”, to the status of footpath. The applicant is also an objector and lived in the property Oaklands, which lies just to the south of point D¹. Another objection was raised by the then resident of Kerrilyn, which is the neighbouring property. I understand that Kerrilyn was sold relatively recently; the current owners were made aware of the Order but have made no comment on it.

6. The objections did not argue that the purpose of the Order, to downgrade the route to a different status, was incorrect, but focussed instead on the appropriate eastern-most termination point of the route. They argued that the public right of way ended at the junction with Footpath 20 (“FP20”), a little to the north-west of point D, rather than on Platts Avenue. The OMA commented on this matter and no further evidence was submitted by the objectors.
7. I agree with the OMA that there are some difficulties with the Definitive Map and Statement (“the DMS”) arising simply from the base mapping and technology then available. Some of the mapping is diagrammatic, for example road widths deliberately exaggerated to make them visible. The junction of BR19 and FP20 is seen to be on Platts Avenue, which is not shown with a narrow section at the north-western end, as is the case today. The Definitive Statement, which by reference to section 56 of the 1981 Act provides conclusive evidence as to the particulars contained therein, refers to BR19 finishing at “*NW end of Platts Avenue*”. The objectors have provided no explanation why, if BR19 ended at the junction with FP20 it did not say this, rather than Platts Avenue.
8. The Parish Survey Map, 1951, shows a claimed route, 72, as a continuation of BR19. This was then recognised to be a public road, Platts Avenue itself, and so not included on the DMS. The small section between FP20 and Platts Avenue alongside Kerrilyn was not included as a public road but recognised as a continuation between the road and the rest of BR19, which was recorded as a footpath at that time.
9. Correspondence from 1984 between the Staffordshire Moorlands District Council and solicitors acting for the former owners of Kerrilyn referred to a right of way recorded on the DMS. This was indicated to be “*...the public right of way within the boundaries and immediately in front of [Kerrilyn]...*”.
10. The former owner of Kerrilyn wrote to the OMA in 1994, possibly due to notices on site in connection with the application for this Order. At this stage he raised the issue of status, as the earlier correspondence had referred to the route as a footpath and there was clearly some confusion regarding the intention of the application. In addition, he raised the matter of the termination point of the route. The OMA responded to say that it was clear that the route of BR19 passes over the private vehicular driveway to connect to Platts Avenue.
11. I note that there is now a sign at the north-western end of Platts Avenue on the garden wall of Kerrilyn which says “*Private Driveway, Foot Access Only*” but there is no evidence as to when this was erected.
12. Taking account of all the evidence before me I am satisfied, on the balance of probabilities, that the Order as made correctly identifies the Definitive line of BR19 on Platts Avenue, at point D.

¹ Points A – B – C – D are shown on the Order map

Late Objections

13. Two objections were raised to the Order in early 2016, presumably arising due to awareness that the Order had been submitted to the Secretary of State. As noted, the NSBA also objected in response to the re-advertisement. These objections related generally to the principle and appropriateness of downgrading public bridleways, which is not a matter I am able to take into account.

Procedural Matters

14. No-one requested to be heard with respect to this Order and so I made an unaccompanied site inspection and dealt with the matter by way of the written representations procedure.

Main issues

15. The Order is made under section 53(2)(b) of the 1981 Act by reference to section 53(3)(c)(ii) which refers to whether a highway shown in the DMS as a highway of a particular description ought to be there shown as a highway of a different description. In order to show that the higher rights did not exist at the time when they were first shown on the DMS there must be new evidence, rather than simply a re-examination of evidence known at that time. The totality of the evidence must be of sufficient substance to displace the presumption that the DMS is correct.
16. The OMA rely on the evidence as a whole, including evidence from users and landowners, as well as documentary evidence, such as Ordnance Survey ("OS") mapping, surveys and correspondence, to show that the route was incorrectly recorded on the DMS.
17. Section 32 of the 1980 Act, *Evidence of dedication of way as highway*, sets out 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 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 is produced."
18. I will consider whether the evidence as a whole is sufficient to show that the route should be recorded as a public footpath, rather than a bridleway, as set out in the Order. My decision will be made on the balance of probabilities.

Reasons

Background

19. The application to record the status of the route as footpath appears to have arisen following the erection of new signposts indicating it as a bridleway. The applicant referred to documents and submitted statements from local people regarding their understanding and use of the route. The OMA referred to additional evidence in reaching their decision to make and support the Order.

Mapping & Photographs

Inclosure Award map, 1815

20. To fully evaluate Inclosure evidence, the relevant Inclosure Act should be examined and that is not available to me. On the basis of the information that I have it seems that the route of BR19 was a "*Public foot road or way*". I agree with the OMA that whilst this would not prevent higher rights being established at a later date, the Inclosure information indicates the route only as a footpath.

Ordnance Survey maps

21. The OS was formed in the late eighteenth century in response to a military need for accurate maps and over the years has developed a variety of products to meet the need for accurate and up-to-date mapping. Instructions for surveyors laid down that their task was to show what was on the ground at the time of the inspection and the depiction of a way on an OS map is not, of itself, evidence of a highway. Nevertheless, the inclusion of a route on a series of OS maps can be useful evidence in helping to determine the status of a route, particularly in conjunction with other evidence.
22. The route is shown on the OS maps dated 1888, 1900, 1925 and 1937, being annotated '*F.P.*' on all but the earliest. This practice of annotation arose from an instruction to surveyors: '*the object of... 'F.P.' being that the public may not mistake them for roads traversable by horses or wheeled traffic*'. It was the practice to show paths on the ground, irrespective of whether they were public or private. From 1888, OS maps 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, therefore, it cannot be said whether the route depicted was then seen as public or private. However, it can reasonably be said that it was not recognised as being suitable for use other than on foot.
23. The 1888 map shows a route passing through a field at the eastern end and continuing towards Endon Edge through two fields alongside a wall. By the time of the 1900 map there had been development at the eastern end, where Platts Avenue is now, whilst the remainder was unchanged. Between 1925 and 1937 Platts Avenue was developed whilst the fields to the west remained, with the route of BR19, annotated as FP, alongside the southernmost boundary.
24. The OS maps confirm the existence of the Order route as a physical feature and also assist with regard to corroborating evidence provided by witnesses as to the ground conditions and walls. They do not provide any evidence of use other than on foot.

Sales plans/ownership

25. A 1901 deed plan shows the land which was to become the northern properties on Platts Avenue as being owned by "*The Reps of the Late Mr H. Platt*". An undated deed plan shows the alignment of Platts Avenue but the copy is too dark to see if BR19 was shown. The northern part of FP20 is visible. The 1925 plan shows dashed lines representing BR19 and FP20, both annotated "*F.P.*". This is unlikely to have been a new survey and was probably copied from the OS mapping, however, it provides a little evidence that the understanding at that time was that the route was a footpath.

26. A building line map, thought to date from 1933, shows the intended development on the south-western end of Platts Avenue. What now exists on the ground differs in that the end property, Kerrilyn, extended north-east into what had been intended to continue as Platts Avenue. A feature is shown continuing from the end of Platts Avenue along the Order route.

Aerial Photographs

27. The 1945 aerial photograph shows the development of Platts Avenue with the two fields remaining undeveloped to the north-west. The 2005 photograph shows the area as now developed, with the line of the Order route generally discernible running between the property boundaries.

Evidence of features and use

28. The applicant submitted a number of letters regarding the use and physical features of the route. The information came from a number of people who had, or still, lived in the area over periods going back to the 1940s, from the early periods of development of Platts Avenue. There was reference to the fields to the north-west, which I understand to have been developed in the late 1960s. There was some difficulty remembering the number and type of stiles, however, the Parish survey, referred to below, indicated that it "*Traverses 2 fields – with 3 stone squeezer stiles.*" People said that horses could not have used the route, due to the stiles, and were not seen doing so.
29. A couple of people indicated that the footpath had been incorrectly signed as a bridleway and the bridleway as a footpath. This may be a reference to FP20, as there is mention of a route running along the school fence.
30. One of the late objections referred to use of the route over the past 27 years; it is a little unclear whether the use was actually with children on ponies but that appeared to be the implication. Such use would be from the late 1980s, which is after the time that the route was identified as a bridleway on the DMS. The NSBA referred to the route as a valuable access to BR18 but provided no evidence of actual use of this route by their members. This does not assist in providing evidence of use by horses in the relevant period which, as set out below, would be prior to 30 September 1969.

The inclusion of the Order route on the Definitive Map and Statement

The First Definitive Map and Statement

31. The National Parks and Access to the Countryside Act 1949 ("the 1949 Act") introduced the concept of the DMS and set out a specific legal procedure to be followed in their production. In Staffordshire, in common with many other County Councils, the Parish Councils were asked to meet the duty of the 1949 Act and submit a map and survey showing the rights of way to be recorded for their parish.
32. The original Parish survey map for Endon and Stanley, dated June 1951, referred to the route as a Footpath starting at the junction with paths 15, 17 and 18 and finishing at Platts Avenue. The grounds for believing it to be public were that it had been used for at least 20 years without dispute.
33. The Draft Map was published, apparently showing the route as a footpath and, as there were no objections, it was shown on the Provisional Map in the same

way. I understand this to have been published in 1954. The first DMS was published in 1965 and apparently recorded the route as a footpath.

Special Review

34. The production of the DMS under the 1949 Act was always intended to be subject to periodic review. However, before the County Council could carry out such a general review the introduction of the Countryside Act 1968 required a special review to reclassify roads used as public paths.
35. The First (General) and Special Review was prepared in 1969. Several hundred objections and representations were lodged to proposals put forward by this Review throughout the County. Determination of these objections lay with the Secretary of State for the Environment and this led to a series of public inquiries. By virtue of Section 55(1) of the 1981 Act the County Council were directed to complete the First Revised DMS. This was completed on 28 May 1987, with a relevant date of 30 September 1969. There was no application to question the validity of the Revised DMS, which was the first to show the route as a bridleway, rather than a footpath.
36. The proposal to upgrade footpath numbers 15, 17, 18 and 19 to the status of bridleway was made by the Parish Council. I agree with the OMA that the Parish Council minutes of 9 November 1965 are particularly relevant to this matter. It seems a request had been made to upgrade Footpath 15 and the County Council had pointed out that this would be a cul-de-sac. The Parish Council minuted "*It was then agreed that paths 17 and 18 needed to be made bridle paths...and that persons who had given evidence regarding path 15 be asked if they would be willing to give similar evidence regarding paths 17 and 18.*" The OMA interviewed one of the original witnesses who gave evidence of use, leading to the claim to upgrade. He was reported to have said that he had only referred to FP's 17 and 18 and had never used BR19.
37. The initial parts of the form "*ITEMS FOR THE FIRST QUINQUENNIAL REVIEW*" only refer to path No's 17 & 18 and it is not clear how BR19, then recorded as FP19, came to be included within the list.

Second Revised DMS

38. A Second Revised DMS was published on 27 February 1990, with a relevant date of 30 September 1989, showing the route as a bridleway. Again, there was no application to question the validity of the DMS.

Current DMS

39. I understand the consolidated DMS, with a relevant date of 30 September 1999, to be the current DMS, which still shows the route with the status of public bridleway.

Discussion

40. The evidence as a whole indicates that a route has existed as physical feature for over 200 years, as referred to in the Inclosure documentation and shown on subsequent mapping. The mapping evidence in conjunction with the letters from local residents indicates knowledge and use of the route as a public footpath, which is how the route was first recorded on the DMS.

41. The route was first recorded as a bridleway on the First Revised DMS, published in 1987, with the subsequent DMS's simply copying that information and no indication of objection. The First Revised DMS had a relevant date of 30 September 1969 and I consider that this is the date which needs to be considered in relation to whether or not the rights now recorded existed.
42. The upgrading to bridleway status occurred in response to the Review procedures. However, it is not clear how this came about as the Parish Council minutes do not refer to it and the witness whom the OMA were able to contact indicated that he had not used this route on horseback. Taking account of the 1965 Parish Council minutes there is no evidence of an intention on the part of the Parish Council to upgrade the status of this particular route.
43. There is a suggestion of a small amount of higher use in the period since the route was recorded as a bridleway, it having first being shown as such in the 1987 DMS and signed on the ground in 1994. However, there is no evidence of use as a bridleway prior to the relevant date of 30 September 1969. The original Parish Council survey in the 1950s provides clear evidence of the existence of stiles with no indication of gates to enable other access. Any use sufficient to have led to dedication of higher rights would have needed to occur in the period from the early – mid 1950s – 1969. This would be an insufficient time period to raise a presumption under the statute, which would require use over a twenty-year period, i.e., 1949 - 1969. The evidence as a whole is insufficient, on the balance of probabilities, to show higher rights having arisen at common law, with the documentary evidence supportive only of use on foot.
44. There is a presumption that the DMS is correct, with the opportunity to challenge what is recorded at the time of production provided by the legislation. If there were no evidence which made it reasonably arguable that such rights existed, they should not have been marked on the DMS in the first instance. However, in this case, there is no evidence supportive of higher rights at the relevant time and the recording appears to have arisen due to a mistake.

Other matters

45. I understand that there are concerns about the use of the route by cyclists and horse riders, as well as a desire that such users should be able to use the route, with mention of benefits to safety and tourism. These are not matters that I am able to take into account and I have not given them any consideration in reaching my decision.

Conclusions

46. Taking all the evidence together I consider, on the balance of probabilities, that the evidence displaces the presumption that the DMS is correct in recording this route with the status bridleway.
47. Having given careful consideration to the above and also to all other matters raised in the written representations, I conclude that the Order should be confirmed.

Formal Decision

48. I confirm the Order.

Heidi Cruickshank

Inspector

392100

392200

MAP NOT TO
ORIGINAL SCALE

Stoneyfields

Bridleway 15

Bridleway 18

The Outspan

Sunnymede
Woodlands

353000

Tennis Court

352900

A

B

C

D

Staffordshire County Council
Development Services Department
Environment & Countryside Unit
Rights of Way Section
Wildlife & Countryside Act 1981
Section 53.
Downgrading of Public
Bridleway no. 19
Endon & Stanley Parish
to Public Footpath
Status

- Rights of Way unaffected
- Bridlepath to be downgraded

Metres
0 3 6 12 18 24 30

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Fawn Thatch

Spring Lodge

The Bungalow

Platts Avenue

KENT DRIVE

GEORGES

352800

392100

392200