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# Appeal Decision

**by Susan Doran BA Hons MIPROW**

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

**Decision date: 12 October 2017**

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## **Appeal Ref: FPS/A2470/14A/2**

- 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 Rutland County Council not to make an Order under section 53(2) of that Act.
- The Application dated 22 September 2016 was refused by Rutland County Council on 28 April 2017.
- The Appellant claims that the appeal route from Cold Overton Road, Langham to the Parish/County boundary with Cold Overton, Leicestershire should be added to the definitive map and statement for the area as public bridleway in part, and upgraded to a public bridleway in part.

## **Summary of Decision: The appeal is allowed**

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### **Preliminary Matters**

1. I have been directed by the Secretary of State for Environment, Food and Rural Affairs to determine an appeal under Section 53(5) and Paragraph 4(1) of Schedule 14 of the Wildlife and Countryside Act 1981.
2. I have not visited the site but I am satisfied I can make my decision without the need to do so.
3. Additional evidence has been submitted by the Appellant during the appeal process, and I have taken into account all the material available to me in reaching my decision.

### **Main issues**

4. The application was made under Section 53(2) of the 1981 Act which requires the surveying authority to keep their Definitive Map and Statement (DMS) under continuous review, and to modify them upon the occurrence of specific events cited in Section 53(3).
5. Section 53(3)(c)(i) of the 1981 Act specifies that an Order should be made following the discovery of evidence which, when considered with all other relevant evidence available to them, shows "*that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates...*". In this regard, the cases of *R v Secretary of State for the Environment ex parte Mrs J Norton and Mr R Bagshaw* [1995] and *R v Secretary of State for Wales ex parte Emery* [1998] clarified that the statutory test to be applied to evidence at this stage involves two questions: does a right of way subsist on a balance of probabilities, or is it reasonable to allege on the balance of probabilities that a right of way subsists? In considering whether a right of way subsists there must be clear evidence in

favour of the Appellant and no credible evidence to the contrary. However, in considering whether a right of way is reasonably alleged to subsist, if there is a conflict of credible evidence, and no incontrovertible evidence that a way cannot be reasonably alleged to subsist, then the answer must be that it is reasonable to allege that one does subsist, and accordingly an order should be made<sup>1</sup>. This is the test applicable to that part of the appeal route not currently shown on the Rutland County Council ('the Council') DMS, between Cold Overton Road and Footpath D85 (part) to the north-west of Ranksborough Hall.

6. Section 53(3)(c)(ii) of the 1981 Act specifies 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*". This is the test applicable to that part of the appeal route which is already shown on the Council's DMS, Footpath D85 (part), between the route described above and the Parish/County boundary.
7. It is possible that applying two different tests to the two sections of the appeal route may result in only part of it meeting the minimum standard necessary to trigger the making of an order, notwithstanding that the same evidence is under consideration. The Council's Report into the application notes that the application of the two tests could result in the recording in the DMS of a cul-de-sac bridleway (or restricted byway) terminating at Footpath D85.
8. The application relies on documentary evidence. Section 32 of the Highways Act 1980 requires a court or tribunal to take into consideration any map, plan or history of the locality, or other relevant document which is tendered in evidence, giving it such weight as is appropriate, before determining whether or not a way has been dedicated as a highway.

### **Reasons**

9. The appeal route commences at Cold Overton Road and proceeds in a generally north-westerly direction through Ranksborough Hall and across fields to meet Footpath D85 (part). It then follows the alignment of Footpath D85 (part) to the Parish/County boundary at Cold Overton, Leicestershire where it meets public Bridleway D85. In this decision I have found it convenient to refer to a map showing the route<sup>2</sup> whereby points A-B-C-D represent that part of the appeal route not recorded in the DMS, and D-E represent Footpath D85 (part).
10. The Appellant's case is that the appeal route through Ranksborough Hall, its grounds and Ranksborough Farm is the historic route of a bridleway prior to Ranksborough Hall being built, and should have continued as a bridleway to the Parish/County boundary, the remainder of the route having been incorrectly recorded in the DMS as a public footpath.

### *Early Maps*

11. A 1624 Map of Langham is thought to be an accurate representation of the parish, and dates to the time when the greater part of it had been enclosed by agreement. The Map shows a track or road coloured in like manner to other known highways leading from Cold Overton Road to a windmill, and this equates to points A-B. The Appellant suggests it is possible it continued as a

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<sup>1</sup> The higher test would need to be satisfied to confirm an order, if made

<sup>2</sup> Attached as Appendix 1

bridleway across the fields, but no continuation is shown to the Parish/County boundary. The same route features on a c1760 parish map<sup>3</sup>, although the windmill is no longer depicted. These maps are held in a private collection and were not available for public scrutiny until after 1987.

12. King's 1806 Map of the area around Belvoir Castle was produced for the Duke of Rutland. It depicts a 'Bridle Road' on a similar alignment from A to roughly C, where it terminates. The windmill (apparently struck by lightning in 1806) is not depicted. This map was sold as a hunting map (perhaps the earliest such example), although the route it depicts here stops short of Ranksborough Gorse, a fox covert. A new source indicates it was the practice of landowners who created new fox coverts to establish permanent bridleways to access them. However, there is nothing to indicate the appeal route (or part of it) was created for this purpose, or if it was that it enjoyed a public right rather than a private right for those engaged in fox hunting. An extract from a book about the Earl of Lonsdale (1946) refers to 'second horsemen' riding with the Hunt and Lord Lonsdale's requirement that they keep as much as possible to tracks and bridle paths, although it does not specify whether these were public or private.
13. I consider these maps provide some indication that the appeal route between A and roughly C, or one very similar to it, was considered to be a road or bridleway, possibly public, the mill being a possible destination. However, they provide no evidence of its continuation to the Parish/County boundary, or beyond on the alignment of Bridleway D85.

#### *Tithe records*

14. The Appellant states the 1841 Langham Tithe Map is a 'First Class' map, although the Council's investigation suggests the relevant map showing the appeal route is not to this standard. It shows the appeal route from A to roughly C, where it terminates, partly bounded on both sides and partly by parallel pecked lines, coloured in like manner to known roads. The Apportionment does not list the roads it depicts as separate entries. The Appellant suggests the route continued to the Parish/County boundary as there would have been no purpose for a public bridleway to be a cul-de-sac at this location. Such a scenario is possible where a route's existence had no effect on the titheable value of land, although here, there is no earlier evidence to support the existence of such a route that was not being shown.
15. The Council says the Cold Overton Tithe records do not show a route on the line of Bridleway D85. However, both this Map and the 1806 King Map show a bridleway in Cold Overton south-west of the appeal route (from Cold Overton to the road to Langham).
16. Although the colouring may be suggestive of a public status, the records for Langham do not identify the routes it depicts as public or private. Neither does the Map indicate a continuation of the appeal route to the Parish/County boundary, nor the Cold Overton Tithe Map show a continuation.

#### *Ordnance Survey maps*

17. The 1824 Ordnance Survey (OS) 1-inch map shows a route equivalent to that shown on the 1624 Parish Map. The 1885 map shows a bounded land parcel,

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<sup>3</sup> Drawn by E Dipper, but the map in poor repair

gated at either end. Beyond, a track continues initially bounded to one side with a pecked line to the other, and then as parallel pecked lines annotated 'B.R.' or bridle road. The Appellant acknowledges that the route shown does not exactly follow the alignment of the current Footpath D85. She further suggests that it is not credible for the fox covert to have existed without legitimate access to it for people on horseback. Further, that the appeal route would have served as a link between Langham village and Northfield Farm on Whissendine Lane when horses were an important form of transport. Whilst it is arguable for there to have been a through route linking Langham with Whissendine Lane, I do not consider that its ultimate destination, if public, would have been a private farm.

18. The Council's investigations show that Ranksborough Hall was built in 1893 and partially obstructed the appeal route. Accordingly post-1893 OS mapping shows a different route alignment here. There is no evidence of any legal diversion as Quarter Sessions records for the relevant period have been destroyed. The Appellant believes the post-1893 mapping shows the diversion of the original route around the Hall and its grounds.
19. Twentieth century OS mapping shows Footpath D85 as a 'footpath' or 'bridleway and footpath', some maps not having a separate symbol to denote a bridleway.
20. The Appellant points out that OS maps were bought and used by the public as a means of finding their way around whether on foot, horseback, cycle or motor vehicle. Notwithstanding the instructions to Surveyors and the OS disclaimer that the routes depicted were not necessarily public, it is suggested that most of those shown, unless they went only to a private dwelling or farmstead, were likely to be public. Nevertheless, OS maps do not provide evidence of status but are useful evidence of the physical existence and alignment of the routes recorded at the time.

#### *Finance Act Map 1910*

21. The relevant landholdings fall within the ownership of Major General Brocklehurst (later Lord Ranksborough) and contain reference to "one footpath on holding of 550a" and a £25 deduction for a footpath which the Appellant considers likely to be a public footpath recorded south of Langham Brook. She speculates that present public rights of way over Major General Brocklehurst's land may not have been afforded a deduction as they were private or for the use of employees; but that it was unlikely he would have barred access to footpaths and bridleways considered by local people to be public.
22. These records provide no evidence to support the existence of a public bridleway over the land, although it remains a possibility that a deduction was not claimed for the appeal route by the landowner. It is not possible from the available evidence to conclude which route the deduction claimed for a footpath concerned. The Council's investigation concluded it could refer to what is now Footpath D85.

#### *Newspaper report*

23. In a report of a Rutland Rural District Council Meeting of 1913, reference is made to 'blind roads' of which three were to be found at Langham, which had in the past been maintained by the Parish Surveyor. However, the Council had

declined to take them over. The reference could imply the appeal route was publicly maintained from A to C, as the Appellant asserts. However, I consider the reference provides limited support for the appellant's case: the appeal route is not described specifically. Further, the Council's search of the Minutes of Parish Meetings provided no reference to such roads; and there is no evidence of any exchange between the two Councils, Parish and District, about the existence of such routes.

#### *The 1949 Act and Survey of Rights of Way*

24. The Parish claim for Knossington and Cold Overton includes a bridleway now recorded as D85. It is described from Whissendine Road near Northfield Farm continuing through Ranksborough to Langham Road. It was recorded as known to local residents and used occasionally, as well as used and observed by several members of the Parish Council. Lt. Col. Sir Henry Tate who rode with the Cottesmore Hunt in the 1940s and 50s was a member of the Parish Council. His is one of the two names of those who "Recollected and observed" the claimed route<sup>4</sup>. His personal use of the appeal route is suggested by the Appellant, although there is no direct evidence of this from the document. However, the claim for a bridleway which continued into Langham is consistent with the 1885 OS map which shows a bridle road, even though the later OS sheet used as the base map for the Parish Survey carried no 'FP' or 'BR' annotation. Whilst there is no 'Langham Road' in Langham, Cold Overton Road is apparently known as Langham Road in Cold Overton. The Council, though, suggests it could refer to the present A606, via Ranksborough Drive, which also runs into Langham village, thus likely to represent the path alignment post-dating the building of the Hall.
25. There is no Parish claim surviving for Langham, but Parish Council Minutes for 1951, referring to the Survey, describe a path from Ranksborough Drive through Ranksborough Gorse to the Cold Overton boundary, this appearing to refer to the present Footpath D85. It had fallen into disuse at the time and was recommended for closure. Because of this and that later OS maps adduced did not identify bridleways (paragraph 19) the Appellant suggests that enquiries may not have been made of its status.
26. Further, the Parish Minutes state that all the known footpaths were marked on the OS map for the parish. The Appellant considers that the 2½-inch OS map of 1950, contemporary with the Survey and which marks the appeal route as 'FP', is likely to be the OS map referred to by the Parish Council. There is no evidence that this is the case. Whilst some of the OS maps adduced by the Appellant do not identify bridleways in their keys, others annotate part of the appeal route as a bridleway (paragraph 17). It is not known which OS map the Parish Council was referring to, but I note that the Survey map annotated with the Knossington and Cold Overton Parish Claim was a 1904 edition.
27. The Knossington and Cold Overton Parish Claim does, however, lend support to the Appellant's case of the existence of a bridleway continuing in Langham parish, although its precise route is unclear. It is possible that it followed the appeal route, or alternatively the line of Footpath D85 (which includes the appeal route from D-E) following the construction of Ranksborough Hall. However, against this is the fact that Langham Parish Minutes record that the

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<sup>4</sup> The words "Recollected and observed" substituting the text on the Form which reads "Surveyed by"

Parish Council regarded the route as one that had fallen into disuse, but only of footpath status, and this view was upheld during the Survey process.

28. There is no evidence as regards what enquiries were made locally or what documentary sources were considered by the Parish Council: although they would have received the relevant advice on carrying out the Survey which included comparing older OS maps with the latest available edition, and the evidence of older witnesses. It remains possible that they did not initiate enquires into its status as it had fallen into disuse, but there is no evidence to demonstrate this.
29. Langham Parish Council suggests the appeal route was probably used by landowners and employees to access land for agricultural purposes. It provides no evidence to support this view, which appears at odds with the view held in 1951 regarding the survey of public rights of way. Nevertheless, as they comment, there is no reliable evidence to suggest it has been used as a bridleway in living memory.

#### *Sales particulars*

30. Ranksborough Hall was sold in 1956/7, but the particulars make no mention of public rights of way. A private easement was granted over A-B which, as the Council's investigations state, would not have been necessary if it was a public road.

#### *Other sources*

31. A 1956 Conveyance to the Trustees of the Cottesmore Hunt concerned the northern part of Ranksborough Gorse and the granting of a private right of way to it (from the north-east). This, the Appellant suggests, was because the land being transferred was not accessible from the appeal route which is shown on the 1885/1904 OS maps as a bridle road – in other words a private right of way was granted because the public one did not access the land being conveyed. However, conveyances deal essentially with private property rights. It was also contemporary with the 1949 Act Survey when the appeal route was considered to be a footpath only, and with the sale of the Hall whereby no public rights of way were referenced.
32. The Appellant asserts that the Council did not take all the Noel family information supplied into consideration but does not say what was not considered or what she believes it to show. She submits the Noel family, who had owned the land for hundreds of years, would have dedicated that part of the route not already a public highway. Further, given that they were heavily involved with the Cottesmore Hunt, and that the appeal route accessed the fox covert, it must have been a bridleway. Nevertheless, this assertion is not evidence that the appeal route was a public bridleway rather than a private route used by the Hunt.

#### *Conclusions on the documentary evidence*

33. It is possible that a route continued to the Parish/County boundary beyond the one shown in the documentary sources reviewed above between A and C prior to the late 1800s. However, the early mapping up to the 1840s provides no evidence to substantiate this view. It does indicate the presence of a route leading to a windmill, of at least bridleway status, which may have been public. However, no information has been supplied as to the type of mill and whether

- or not it was one to which the public would have enjoyed access. Little can be gleaned from the Tithe records as regards status.
34. The 1885 OS map annotates the appeal route between C and D as a bridle road and this appears to have been a through route. However, the OS disclaimer means that the annotation demonstrates only that the route surveyed was one suitable to be traversed by horses, rather than providing evidence of its status.
  35. The Hall built in 1893 obstructed the appeal route and it is not possible to establish whether or not any pre-existing public right of way was legally diverted to accommodate this. No deductions for public rights of way can be unequivocally attributed to the appeal route (or any part of it) under the Finance Act. By the early 1950s Langham Parish Council recognised a footpath (now D85) that had fallen into disuse and was considered should be closed. Yet Knossington and Cold Overton Parish Council believed there was a bridleway crossing the Parish/County boundary and passing through Langham, although its precise route is unclear. It is possible that it followed the appeal route, or alternatively the alignment of Footpath D85. This resulted in an anomaly as a through route between on the one hand a footpath, and on the other a bridleway.
  36. It seems unlikely, as the Appellant asserts that there would have been a change in status part-way along a through route, or from a bridleway to a footpath and then to a bridleway if it is accepted that A-C was a bridleway on the basis of the early mapping. In that respect the bridleway annotation on the 1885 OS map provides some support for a route capable of enjoying a single status throughout. It is also consistent with the existence of a bridleway accessing the fox covert, although not of its status.
  37. The evidence for the claimed upgrading of Footpath D85 (part), (D-E), is largely based on bridleway annotations on OS maps and the Parish Claim for Knossington and Cold Overton of a bridleway continuation which may or may not have followed the appeal route, together with the practice of landowners to provide bridleways to access fox coverts, which it is not clear were for use by the public. In my view, on balance the available evidence does not lead to the conclusion that the higher threshold has been met.
  38. As regards the claimed addition of a bridleway, (A-D), there is conflicting evidence. Essentially this comprises early maps showing a route that may have been public and bridleway annotations on OS maps. Against is the construction of Ranksborough Hall and its grounds over part of the appeal route (A-C) with no apparent evidence of a legal diversion, and the reference in the Parish Minutes regarding the Survey of Rights of Way to a footpath rather than a bridleway. However, there is no incontrovertible evidence that might preclude the existence of a bridleway along this part of the appeal route. It follows in my view that it is reasonable to allege that a bridleway subsists.
  39. As mentioned above (paragraph 7), the application of different tests to the same evidence for the appeal route may lead to different conclusions. In view of my findings above, the appeal should be rejected, or allowed only in part. However, that would result in a length of bridleway ending as a cul-de-sac. It seems to me that a pragmatic approach would be for an order to be made for the appeal route as a whole. Then, in the event that objections and representations are made to it, the whole of the evidence can be examined, and a finding as regards whether or not a bridleway subsists over the appeal

route in its entirety can be reached.

### **Conclusion**

40. Having regard to these and all other matters raised in the written representations I conclude that the appeal should be allowed.

### **Formal Decision**

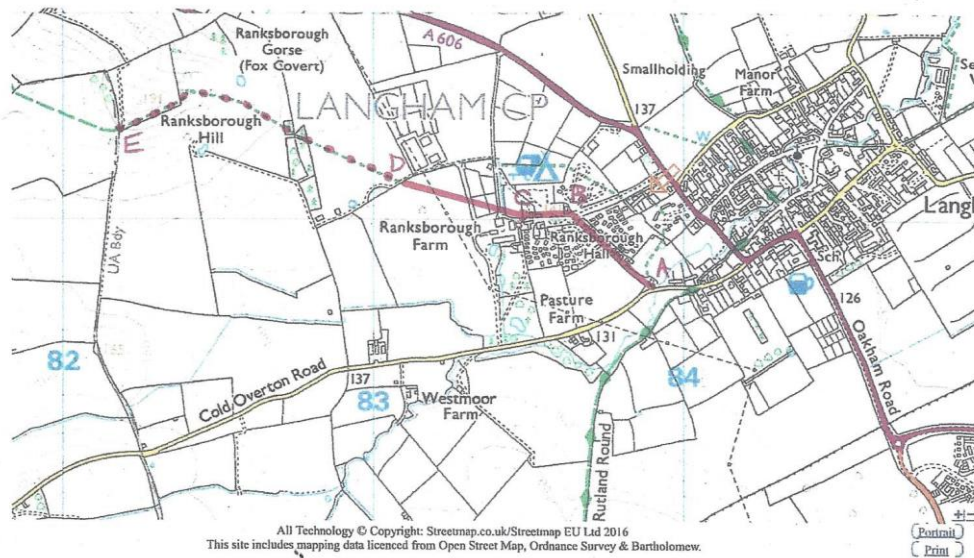
41. In accordance with paragraph 4(2) of Schedule 14 to the 1981 Act Rutland County Council is directed to make an order under section 53(2) and Schedule 15 of the Act to modify the definitive map and statement for Rutland County Council to add a public bridleway and to upgrade part of Footpath D85 as proposed in the application dated 22 September 2016. This decision is made without prejudice to any decisions that may be given by the Secretary of State in accordance with her powers under Schedule 15 of the 1981 Act.

*S Doran*

**Inspector**



# APPENDIX 1



A to D not recorded on Definitive Map —————

D to E part of Footpath D85 - - - - -