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## Appeal Decision

by Alan Beckett BA MSc MIPROW

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

Decision date: 20 AUG 2015

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### Appeal Ref: FPS/D3450/14A/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 Staffordshire County Council (the Council) not to make an Order under section 53 (2) of that Act.
- The Application dated 2 May 1997 was refused by the Council on 13 February 2015.
- The Appellant claims that the definitive map and statement of public rights of way should be modified by adding the footpath shown by a bold black line between points A and B on the plan attached to this decision as Appendix A.

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### 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 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. Section 53 (3) (c) (i) of the 1981 Act provides that a modification order should be made on the discovery of evidence which, when considered with all other relevant evidence available, 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.

#### Reasons

4. In arriving at my conclusions I have taken account of the evidence submitted by the parties; the relevant part of the Wildlife and Countryside Act 1981 and the findings of the High Court in the *Bagshaw and Norton*<sup>1</sup> case.
5. The need for an Order to be considered when evidence is submitted as to the possibility of rights of way existing is dealt with under Section 53 of the 1981 Act. Section 53 (3) (c) (i) 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 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. As made clear by the High Court in *Bagshaw and Norton*, this involves two tests:

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<sup>1</sup> *R v Secretary of State for the Environment ex parte Bagshaw and Norton* (QBD)[1994] 68 P & CR 402, [1995] JPL 1019

**Test A** - Does a right of way subsist on the balance of probabilities? This requires clear evidence in favour of the Appellant and no credible evidence to the contrary.

**Test B.** Is it reasonable to allege on the balance of probabilities that a right of way subsists? If there is a conflict of credible evidence, and no incontrovertible evidence that a right of way cannot be reasonably alleged to subsist, then the answer must be that it is reasonable to allege that one does subsist.

6. The Appellant bases his case upon an interpretation of documentary evidence from the nineteenth and twentieth centuries and has not provided any evidence of use of the claimed path by the public. The evidence available to me comprises documents submitted by the Appellant together with other documents consulted by the Council when investigating the application to add the path to the definitive map. Correspondence was received from the owners of the land over which the claimed path would run and from the Stowe-by-Chartley Parish Council; neither of these parties submitted any documentary evidence in relation to the case.

### **Documentary evidence**

#### *Tithe map and awards*

7. The 1847 Weston upon Trent tithe map shows a route labelled 'footway' running over part of the claimed route from the Uttoxeter turnpike road to and over the parish boundary. At the parish boundary this 'footway' is annotated 'to Amerton'. No mention is made of the 'footway' in any of the entries describing the plots of land crossed by it. The 1850 Stowe Tithe map shows a 'footway' from the parish boundary to the Uttoxeter turnpike running generally across fields before joining an enclosed track that leads to the turnpike road. There is no mention of the 'footway' in those parts of the apportionment which relate to the fields crossed by the path.
8. It is likely that the 'footway' was not mentioned in the apportionment as irrespective of status, the existence of the 'footway' is unlikely to have impacted significantly upon the productivity of the fields through which it ran. The tithe documents do not indicate the status of the 'footway' shown running through those fields being assessed as part of the tithe commutation process but the tithe maps provide evidence of the existence in the mid-nineteenth century of a path on the general alignment of the claimed footpath.

#### *Ordnance Survey (OS) maps 1836 - 1971*

9. An OS map of 1836 shows a track at the eastern end of the claimed path but does not show any feature leading from that track. The 1882 6 inch to 1 mile map shows the claimed footpath by means of a single peck line linking to a track at the eastern end of the path near to the Plough Inn; a footbridge is shown crossing a ditch or drain near to the parish boundary. The 1890 six-inch edition shows the path in the same manner whereas the 1901 edition shows the path annotated 'F.P.' and a footbridge further towards Amerton and not at the parish boundary. Other than the enclosed section of track leading to the Uttoxeter road at the eastern end, the claimed path is not shown on the 1924 6 inch map.
10. The 1883 25 inch to 1 mile map shows the claimed path on the same alignment as the 6 inch map but at a greater level of detail; the path is

represented by a double peck line and the footbridge is clearly shown (and labelled) as spanning the ditch or drain that formed the parish boundary. The 1901 map shows the path annotated 'F.P.' and shows a means of crossing the ditch at the parish boundary. This crossing is not annotated on the map but a ditch crossing further to the east is labelled 'F.B.'. The 1971 1:2500 scale map does not show the claimed route other than the enclosed track which links to the Uttoxeter road.

11. Whilst Ordnance Survey maps do not provide direct evidence of the status of any track shown on them, they do provide evidence of the existence of observable features at the time of the survey. In this case the OS maps demonstrate the existence of a path or way capable of carrying pedestrian traffic and that there were structures on that path which carried it over the ditches between fields. That path was a visible and observable feature in the landscape between 1882 and 1901 but disappeared at some point between 1901 and 1924.

#### *Estate sale catalogue 1904*

12. The plan attached to the Chartley Castle sale catalogue shows the claimed path by means of a double peck line which runs through various individual plots until it reaches the enclosed track at the eastern end. No mention is made of the double peck line feature in the description of individual plots in the sale catalogue although the track at the eastern end was offered for sale as plots 353 and 363 and was described as a 'road'.
13. Although the sale plan shows the existence of the claimed route, the sale documents do not assist with the determination of the status of the path.

#### *Finance Act 1910*

14. The Finance Act plan shows the claimed footpath as crossing hereditaments 201, 43 and 38. The field book entry for hereditament 201 records the existence of both a 'right of way' and 'footpaths' across the land for which reductions in site value of £5 and £15 respectively were allowed. The extracts of the plans submitted show that hereditament 201 was crossed by two routes annotated by OS as 'F.P.' The Appellant submits that one of the routes for which an allowance was made was the footpath being claimed.
15. A reduction in site value of £20 was made for hereditament 38 due to the existence of '3 footpaths' through the fields. The appellant and the Council concur that OS showed 3 routes annotated 'F.P.' running through hereditament 38. It was also common ground that two of these routes were now shown in the definitive map as public footpaths. It is the Appellant's view that the remaining route for which an allowance was made is likely to be the Appeal route.
16. The field book entry for hereditament 43 notes the existence of a 'footpath' which reduced the site value of the property by £5. The only path or track shown by OS within this hereditament is the Appeal route; the Appellant contends that in such circumstances it is likely that the Appeal route gave rise to the reduction in site value.
17. The Finance Act records are the only documents which refer to the existence of public rights of way over the land crossed by the Appeal route. These documents do not provide conclusive evidence that the Appeal route was one

for which a reduction in site value was given. However, in the absence of any evidence as to the reputed existence of other public routes which could have given rise to a reduction in site value, it is not unreasonable for the Appellant to contend that the reduction in site value arose from the existence of the Appeal route.

*Landowner and parish council evidence*

18. The current owner of the land crossed by the Appeal route has not submitted any documentary evidence in relation to this claim. The current owner has been connected to the land for almost 60 years and submits that it has not been used by the public during that period. The landowner submits that there is a verge at the side of the Uttoxeter road which pedestrians could use if they wished travel between A and B. In addition, the landowner submits that significant capital would be required to make the Appeal route available for public use as part of the route is waterlogged for months at a time and there are no bridges in existence to carry the path over the network of ditches found in the area.
19. The Parish Council had no evidence of the use of the Appeal route and submits that it would be difficult to see what purpose the path would serve as the former public house at the eastern end was now a private dwelling and the path did not provide a link to any of the other public rights of way in the parish.
20. Matters such as the suitability of the claimed route for public use, the availability of an alternative route or the connectivity of the claimed route with other public rights of way are not matters which can be taken into account in determining whether or not a public right of way subsists or can be reasonably alleged to subsist. Section 53 of the 1981 Act is concerned with the recording of those public rights which are shown to be in existence; it is not a process whereby only those routes which are preferable or desirable should be recorded.

*Rights of Way Panel*

21. In reaching their decision, the members of the Council's Countryside and Rights of Way Panel were not persuaded that the Finance Act documents demonstrated that the Appeal route had been one for which a reduction in site value had been made. Furthermore, the Panel considered that the absence of the Appeal route from maps published shortly after the Finance Act survey demonstrated that that the claimed route had either ceased to exist or that any use which had been made of it had not been public in nature.

**Conclusions**

22. The documentary evidence adduced in this case shows the existence of a path or way across fields on the alignment of the Appeal route which was capable of carrying pedestrian traffic. This path or way is shown by the tithe documents to have been in existence by 1850 at the latest and that the path or way remained a feature in the landscape until at least 1910. At some point between 1910 and 1924 the path appears to have rapidly fallen into disuse and is not shown as an observable feature by OS for the majority of the twentieth century. However, the absence of the route from post-1924 mapping does not demonstrate that a right of way had not come, or could not have come into existence at an earlier date.

23. The members of the Council's Countryside and Rights of Way Panel reached their decision based on an interpretation of the available documentary evidence. The Appellant draws a different conclusion based on a different interpretation of the same documents. In my view, the Appeal fails Test A set out in paragraph 5 above as there is a conflict in the interpretation that can be placed upon the available evidence. However, I have not read or seen any evidence which would inevitably defeat the Appellant's claim; consequently I conclude that the Appeal succeeds against Test B as the evidence adduced is such that it is reasonable for the Appellant to allege that a public right of way subsists over the Appeal route.
24. Having regard to these and all other matters raised in the written representations I conclude that the Appeal should be allowed.

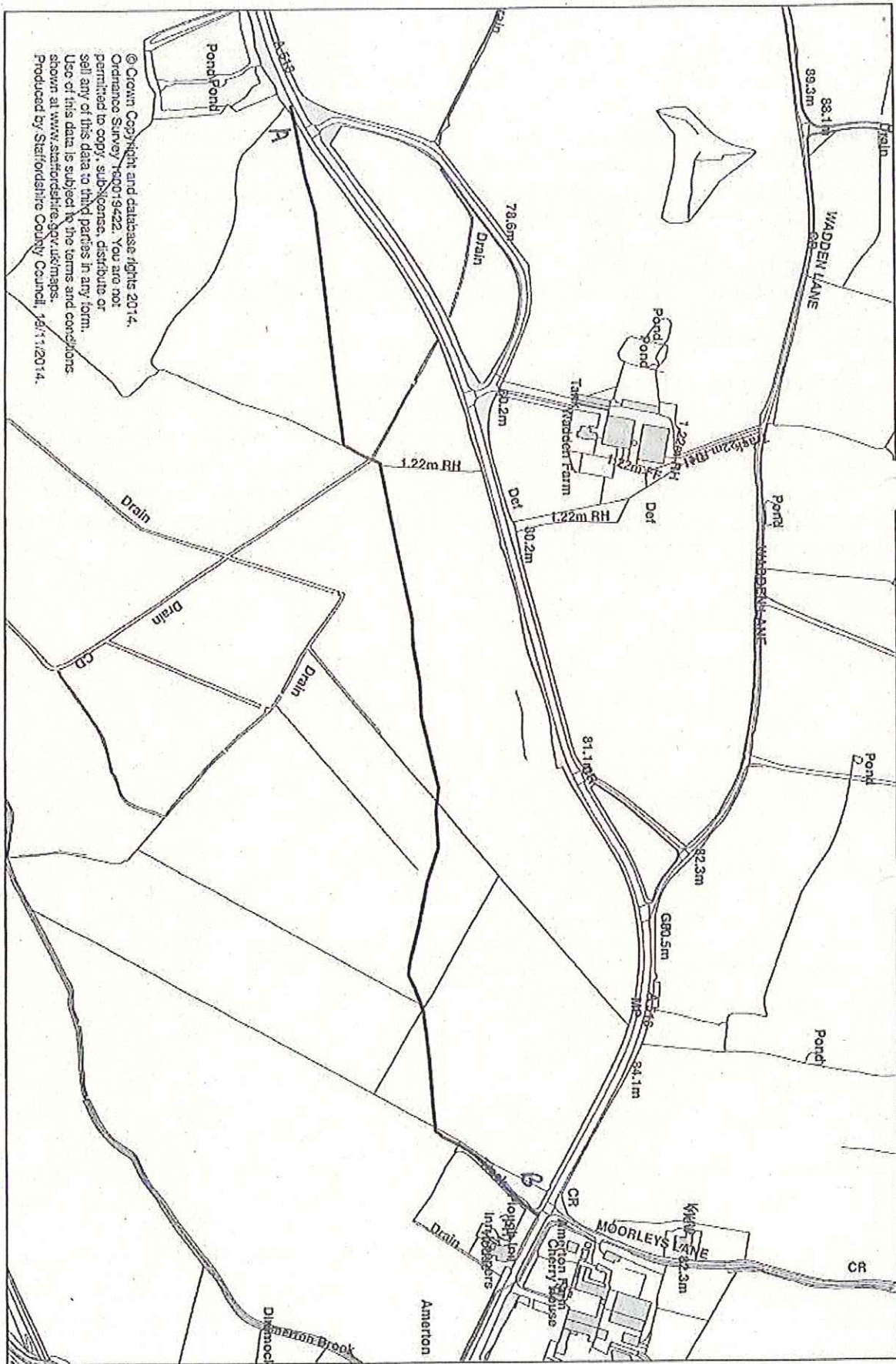
### **Formal Decision**

25. In accordance with paragraph 4 (2) of Schedule 14 to the 1981 Act Staffordshire County Council is directed to make an order under section 53 (2) and Schedule 15 of the 1981 Act to modify the definitive map and statement to add a public footpath as proposed in the application dated 2 May 1997 and shown in the plan appended to this decision. This decision is made without prejudice to any decision that may be given by the Secretary of State in accordance with her powers under Schedule 15 of the 1981 Act.

*Alan Beckett*

Inspector

APPENDIX



MAP NOT TO  
ORIGINAL SCALE