
Order Decision

Inquiry held on 19 July 2016

Site visit made on 19 July 2016

by Martin Elliott BSc FIPROW

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

Decision date: 22 August 2016

Order Ref: FPS/W1850/7/14

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Herefordshire Council (Addition of Footpaths BW24 and BW25 Bridstow) Modification Order 2013.
- The Order is dated 20 December 2013 and proposes to modify the Definitive Map and Statement for the area by adding two public footpaths as shown in the Order plan and described in the Order Schedule.
- There was one objection outstanding at the commencement of the inquiry.

Summary of Decision: The Order is proposed for confirmation subject to modifications set out below in the Formal Decision.

Procedural Matters

1. I held a public local inquiry on 19 July 2016 at The Gardner Hall, Venns Lane, Hereford. I carried out an unaccompanied site inspection of the Order routes and surrounding area on the afternoon of 18 July. I carried out an accompanied inspection of the section of the Order route C to D¹ following the close of the inquiry. This was limited to measuring the width of this section. There were no additional issues arising from the inquiry which required me to revisit the remainder of the Order routes and none of the parties required me to do so.
2. At the commencement of the inquiry the Council sought to introduce additional evidence, although some of the evidence had been previously submitted and the Council were providing better copies. These documents were relevant to my considerations and the objector did not resist their submission. The objector was given an opportunity to consider the additional evidence and there is no evidence of prejudice.
3. The case in opposition to the Order was made by Mr K Garvey of counsel on behalf of the objector. Mr Garvey did not call any witnesses but cross examined witnesses who gave evidence in support of confirmation of the Order.
4. The Council asked that I modified Part 1 of the Schedule to the Order so as to identify the footpath 'B-D' as 'B-E'. This is a typographical error and there is no evidence that anyone will have been misled. The Order if confirmed will be modified accordingly.

¹ Letters A to E identified in this decision refer to points on the Order plan

The Main Issues

5. The Order has been made under section 53(2)(b) of the Wildlife and Countryside Act 1981 in consequence of an event specified in section 53(3)(c)(i) of the 1981 Act. The main issue is whether the discovery by the authority of evidence, when considered with all other relevant evidence, is sufficient to show, on the balance of probabilities that a right of way which is not shown in the map and statement subsists over land in the area to which the map relates.
6. Section 31 of the Highways Act 1980 provides that where a way, other than a way of such a character that use of it could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public, as of right and without interruption, for a period of twenty years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that the landowner demonstrated a lack of any intention during this period to dedicate the route. The 20 year period applies retrospectively from the date on which the right of the public to use the way was brought into question.
7. Should the test for statutory dedication fail under section 31 of the 1980 Act then it may be appropriate to consider the dedication of the way at common law in consequence of use by the public. Dedication at common law requires consideration of three issues: whether any current or previous owners of the land in question had the capacity to dedicate a highway, whether there was express or implied dedication by the landowners and whether there is acceptance of the highway by the public. There is no evidence of any express dedication. Evidence of the use of a path by the public as of right may support an inference of dedication and may also show acceptance by the public. For a dedication at common law the burden of proof rests on those claiming the public right of way.
8. Section 32 of the Highways Act 1980 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 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.
9. The Council relies on the documentary evidence and evidence of user in respect of the section A to D and in respect of B to E on documentary evidence. The Council also considered that there had been a statutory dedication under section 31 of the Highways Act 1980 in respect of the Order route C to D.

Reasons

Documentary Evidence

County maps of Herefordshire

10. The Council has found no evidence from the county maps of Cary (1805) Henry Price (1817) or Bryant (1835) which supports the existence of public rights on the Order route. Although the maps do not provide evidence of public rights

they do not preclude the existence of such rights. As pointed out by Mr Walker Bryant was a producer of road atlases and therefore it would be unlikely to see footpaths marked on the map.

Horse Towing Path map 1808 and plan of quay 1817

11. The 1808 plan shows the proposed horse towing path from Welsh Bicknor to Ross part of which passes along the section of the river bank crossed by the Order route A to D. A document submitted by the Council (MFW/3 inquiry document 1) indicates that the towpath was first used on 15 January 1811. The 1817 plan shows the existence of a wharf on part of the land crossed by the Order route A to D and shows the route of the towing path.
12. The 1808 map shows a route of a proposed towing path following the river Wye. However, there is nothing from the plan to suggest that any such route carried public rights or that the route corresponds with the Order route. Similarly the 1817 plan of the wharf provides no evidence of public rights. The plans do not assist in determining the existence of the Order route A to D as a public footpath. It may be the case that the route shown on the 1808 plan was potentially available to the public but that does not mean that the public used the route at that time or that the route is a public footpath.
13. Mr Walker outlined that the remainder of the towpath is now recorded as a public footpath. However, it does not necessarily follow that the Order route A to D should be recorded as a public right of way. Its status must be considered on the basis of the evidence.

Notice of meeting

14. The notice of an adjourned General Meeting² of the company of proprietors of the rivers Wye and Lugg navigation and horse towing path refers to a communication from the commissioners of the Ross District Turnpike Roads. The communication refers to the means of obviating the passing of towing ropes across the road at Wilton Bridge. Whilst the notice gives an indication that the towing path was in use and that the towing path crossed the road at Wilton Bridge the notice provides no evidence as to the existence of public rights.

Bridstow Tithe Map 1839

15. The Council contends that the map shows a network of tracks of which the Order routes form part. It is also stated that the routes are shown in the same way as other highways in the area. It is asserted that the depiction on the map indicates that the routes may have been considered to be public highways.
16. Whilst the land crossed by the Order routes is coloured in the same way as other routes which are public highways this does not mean that the Order routes are public footpaths. The Council stated that the apportionment makes no reference to support a contention that the routes were public. The absence of any apportionment number or the identification of the routes as public might indicate that the land was not subject to tithes. As pointed out by the objector, the fact that the land was not subject to tithes is consistent with the land being

² to be held on 1 March 1832

waste land of the manor. Evidence relating to the registration of the land as a village green identify that the land subsequently recorded as a town and village green was manorial waste. The depiction of the land on the tithe map needs to be considered with all other relevant evidence but it should be noted that the purpose of tithe maps was to identify titheable land. The maps were not produced to record public highways including public rights of way.

Sundry Lands in the Parishes of Bridstow and Ross 1841

17. The plan shows the Order routes being open to the highway network and excluded from the adjacent properties. The accompanying schedule indicates that the plan shows land owned by Guy's Hospital. Although the Order routes link with the highway network, the plan is to identify the property owned by Guy's Hospital. There is no indication that the survey was to identify and ascertain the status of highways. As such the map does not assist.

Guy's Hospital Estate map 1852

18. It is suggested by the Council that this estate map mirrors the tithe map by showing the Order routes as being open between boundaries in a way that it depicts other recognisable public highways. Whilst the map does show the Order routes to be open, the purpose of the map is to identify the Guy's Hospital estate. There is nothing to indicate that the depiction on the map provides evidence that the Order routes were public highways.

Copy of tithe map and plan of altered apportionment of 4 August 1870

19. Given that the map is a copy of the tithe map with altered apportionments I do not consider that the map assists further in determining the status of the Order routes. There is no indication that the map was prepared to show the existence of highways and the map provides no such information.

Ordnance Survey mapping

20. The 1831 Ordnance Survey map shows the land crossed by the Order routes as being open with the mapping consistent with the tithe map. The 1886-1888 1st edition map shows the land crossed by the Order routes with the adjacent properties separated from the Order routes by boundaries. A tracing from an Ordnance Survey map dated 1887/8/9 depicts the land in a similar fashion to the 1886-1888 map. The 1903 - 1904 2nd edition map shows a pecked line between A and B; a footbridge is also identified approximately at point B. From point B to D the Order route is shown mainly as an enclosed track. The 1916 - 1928 2nd revision and 1937 3rd revision maps show the land crossed by the Order routes in a similar fashion to the 1903-1904 map. However, the section A to B is annotated 'F.P.' and B to D is shown as a track bounded only on the north western side.
21. Ordnance Survey maps were not produced to identify public rights of way but were produced to record topographical features. The maps show the physical characteristics of the land but provide no evidence as to public rights. Although the route A to D is annotated 'F.P.' and shows the existence of a footbridge, this does not evidence the existence of a public right of way.

1910 Finance Act records

22. The section of Order route A-B-E is not included in any hereditament. As pointed out by the Council, the exclusion of the land would suggest that the land did not have a value which was directly attributable to any landowner. Whilst the exclusion might indicate that the route was considered a highway of some description it is quite possible that the exclusion was for some reason other than being a highway. As noted above the land crossed by the Order route A to D is manorial waste and this could provide a reason as to why the land was excluded. As noted in *Fortune v Wiltshire Council [2012] EWCA Civ 334* 1910 Finance Act records are not definitive. The depiction of the land crossed by the Order routes needs to be considered with all other available evidence.
23. The section of Order route B to D passes through the hereditaments numbered 19 and 24. No deduction is made for a public right of way or user. The records provide no information as to the existence of a public right of way although do not preclude the existence of such rights. Whilst I note the point of the objector, that the landowner would wish to claim tax relief for a public right of way, the fact that there was no claim for such a right does not indicate that no such right existed. There was no obligation to make a claim for a public right of way.

Definitive Map

24. The Order routes were not claimed as public rights of way under the survey carried out in accordance with the National Parks and Access to the Countryside Act 1949. The definitive map is conclusive as to the particulars contained therein but does not preclude the existence of rights being shown to exist at a later date. Whilst the routes were not originally claimed this does not mean that the routes cannot be public.
25. At the first review of the definitive map the Parish Council submitted an application to add the route A to D to the definitive map. The decision to make the application was taken on 28 September 1964. The schedule identifies three individuals who could state that the route had been used by the public, as of right and without interruption or obstruction. The claim was not accepted on the grounds that the route duplicated the county road and that the route was an accommodation path to the public house.
26. I note the assertion of the Council that the application was not accepted on very spurious grounds, providing correspondence as to the actions of the Council relating to the original survey. However, there is no information before me as to how the conclusion of the County Council had been reached and whether or not any investigations were carried out by the Council. In the absence of evidence to the contrary it must be presumed that the correct approach had been followed in reaching the conclusion that the route was not public. Nevertheless some weight should be given to the assertions of the Parish Council that the way was regarded as public.

Registration of village green (VG8)

27. Land over which the Order route A to C and a small section of the route E to B at its south easterly end was registered as a village green on 3 July 1967. This

registration does not assist in establishing the Order routes as being public. However, it is of note, as referred to above, that in a decision of the Commons Commissioner it was not disputed that the land now registered as a village green was manorial waste.

Parish Council records

28. Minutes of the meeting dated 11 August 1942 identify that a communication had been received from Ross Rural District Council regarding the dangerous state of the footbridge on the river bank at Wilton. The correspondence is minuted as expressing the opinion that the Parish Council should undertake the necessary repairs. Whilst the Rural District Council considered that the bridge was the responsibility of the Parish Council, and the Parish Council authorised expenditure on the bridge, there is no indication that the bridge carried a footpath along the Order route A to D.
29. The minutes of the meeting held on 18 January 1980 identify an agenda item relating to the 'Footpath behind White Lion'. The minute refers to correspondence from the County Council requesting that the Parish Council 'enquire from the tenants or owner about mounds of soil being placed on the river bank which is also a public footpath'. The minutes identify that this had been done and that the tenant had inspected the definitive map and noted that there was no footpath marked thereon from the road at the Kings Head to Wilton Court. Councillor Brown and the Clerk were to look into this.
30. Although the objector made the point that the minutes made it clear that the route was not on the definitive map, the definitive map is conclusive as to the particulars contained therein but does not preclude the existence of the other rights. The minutes might suggest that the County Council considered that the route was a public footpath although this view appears inconsistent with the fact that the route was not shown on the definitive map. Further, the minutes do not indicate that the Parish Council regarded the route to be a public footpath. The Parish Council were to investigate the status of the route but there is no evidence before me as to the outcome of any investigations.

Other documentary evidence

31. A planning application plan dated 1987 shows the floor plan for the development of what is now Riverside Lodge. The plan identifies a 'Right of Way to White Lion'. Although reference is made to a right of way there is no indication as to whether this was regarded as public or private. The objector states that when the land crossed by the section of route C to D was sold by the owners of the White Lion that a private right of way was granted for the benefit of the White Lion. The reference on the plan to a right of way could refer to this right.
32. The applicant submitted a number of other documents which provide an interesting insight in to the history of the wharf at Wilton and the surrounding area. However, the documents do not evidence the existence of a public footpath. Although the land in the vicinity of point C was a wharf and the land was crossed by a towing path it does not follow that the land is crossed by a public footpath.

33. A photograph of Wilton Quay taken in the 1920s shows the use of the land crossed by the route A to C by the local otter hounds and hunt. Although the photograph shows the use of the land, the use by the hunt does not provide evidence that way is a public footpath.

Conclusions on documentary evidence

34. Before reaching my conclusions on the documentary evidence it is appropriate to consider the case of *Divine & Anr v Welsh Ministers [2011] EWCA Civ 1328*. I was pointed towards paragraph 34 of that judgement from which it was argued by the objector that limited weight should be given to the mapping evidence. In paragraph 34 of the judgment it is suggested that no weight should be given to 'the map'. Having read the judgement in full, the document to which 'no weight' should be given was a map of local walks produced by the community council. In my view the correct approach in considering the map evidence, and indeed all documentary evidence, is in accordance with section 32 of the 1980 Act (paragraph 8).
35. Having regard to the documentary evidence, whilst the tithe, Ordnance Survey and estate maps record the physical existence of the Order routes they do not provide evidence as to the existence of a public footpath. It may be the case that the routes have been open to the public for a considerable length of time and the 1808 plan of the towing path does show a route passing along the alignment of the route A to D. However, the maps provide no indication as to the basis of any public access, if any was exercised, and no indication as to the existence of public footpaths.
36. As regards the 1910 Finance Act records when taken into consideration with all other evidence the exclusion of the sections A to B or B to E from the adjacent hereditaments does not support a conclusion that this exclusion is in consequence of the route being a public highway. It is also noted that in respect of the section B to D no deduction was made for a public right of way. Whilst this does not preclude the existence of a public footpath it does not support the existence of the same.
37. The claim made by the Parish Council under the review of the definitive map supports an inference that the Parish Council regarded the route A to D was a public footpath. However, whilst I note the assertions of the Council (paragraph 26) the route was not accepted as a public footpath. Parish Council minutes from 1942 do not evidence the existence of a public footpath along the Order route, only that in the District Council's view the maintenance of the bridge rested with the Parish Council. Nevertheless the minutes do not preclude the existence of a public right of way. The minutes from 1980 suggest some doubt as to the status of the route and the Parish Council was to investigate the matter further. No evidence has been provided as to the outcome of any investigations and it is therefore difficult to give these minutes any weight.
38. Looking at the documentary evidence as a whole I do not consider that it is sufficient, on the balance of probabilities, to show that a right of way subsists on the Order routes.
39. The Council indicated that the evidence of use supported the existence of public rights along the route A to D but conceded that use of the route where it

crossed the village green, from 1967 when registered as such, was by right and not as of right. I have examined the evidence of use for the section A to D and in my view the use of this section in its entirety is limited to a few individuals. I do not consider that this use is sufficient to tip the balance to show that a public footpath subsists over the route A to D. As regards the section B to E the Council have provided no evidence of user although in support of the Order Mrs Preece said that she used this section. Given the limited evidence of use I reach the same conclusion.

40. In view of my findings I consider below whether there has been a statutory dedication of the section of the Order route C to D. The relevant criteria are set out above at paragraph 6.

Statutory dedication C to D – section 31 of the Highways Act 1980

When the right to use the way was brought into question

41. If the right of the public to use a particular route is to be effectively brought into question there must be some act that is sufficient to bring to the attention of at least some of those people using the way that the right to do so is being challenged so that they may be apprised of the challenge and have a reasonable opportunity of meeting it.
42. The Council initially considered that the right to use the way was brought into question in 1990 when users of the Order route between points C and D were challenged by the new owner of Riverside Lodge. On reflection the Council considered that the right to use the way was brought into question in 1987.
43. The objector contended that it was entirely unfair to put forward a different case in respect of the date when the right to use the way was brought into question. Further, section 31 of the 1980 Act required consideration of a fixed period and to change the relevant period would be unlawful. In my view whilst there is a requirement to consider use within a twenty year period, should evidence come to light as to a different date when the right to use the way was brought into question then a different twenty year period can be considered. There is no requirement that the twenty year period is fixed although for a statutory dedication to occur it is still necessary for the requirements of section 31 to be met throughout the relevant period.
44. As regards unfairness, I accept that the Councils case was initially based on the date when the right to use the way was brought into question as 1990. However, as noted above should evidence suggest otherwise it is appropriate to consider another date. In this case the Council has reviewed that date and now considers that the relevant date is 1987. Following the closing submissions of the Council I gave the objector a further opportunity to make submissions in respect of an earlier twenty year period. It was the objectors contention that even if the date when the right to use the way was brought into question was 1987 there was still insufficient evidence to support a statutory dedication. Bearing in mind the above I do not consider that the consideration of an earlier date has prejudiced the objector.
45. In respect of the bringing into question the right to use the way it does not appear to be disputed that this occurred when a chain was placed across the route and a notice stating 'private' was positioned on the route. The chain and

notice is referred to in a number of the evidence of use forms. Miss Ward states on her form that the private notice would put most people off. In my view the notice and chain would have brought the right to use the way into question. The issue to be considered is when this took place.

46. The Council did not take any additional statements from those completing evidence of use forms and did not call any witnesses who might have been able to assist in determining the date of challenge. A number of supporters gave evidence in support of the Order but, given the passage of time, their recollections as to any date was unclear.
47. I have examined the evidence of use forms which give dates as to the chain and notice variously from the late 1980s to 1992. Those giving evidence to the inquiry suggested dates between 1987 and 1990 although some fairly acknowledged that they could not recall the exact dates. Looking at the evidence as a whole it appears to me that it was more likely than not that the chain and notices were placed on the route in 1990. This sets a relevant twenty year period of 1970 to 1990.

Evidence of use 1970 to 1990

48. From my examination of the evidence of use forms there are eight individuals who have used the way for the full twenty year period with a further three using the way for part of the period. I have only counted the evidence of use form of Mr and Mrs Brown as relating to one individual as it is only signed by Mr Brown. Nevertheless it is likely that Mrs Brown also used the route. Use was on a daily, weekly or monthly basis although two individuals who used the way for less than the twenty year period did so on a less than monthly basis. Mr Hurley only used the Order route 3 to 4 times a year. Some forms refer to use by others. Mrs Davies, in response to the question if she knew anyone else using the path replies 'Too numerous to mention'. Mrs Preece refers to use by her late husband and his family since approximately 1935 and use by her family and friends. There is nothing to indicate that use was interrupted, use was continuous throughout the relevant period.
49. A number of supporters of the Order gave evidence to the inquiry in respect of their use of the way which was consistent with the evidence given in the evidence of use forms. However, Mrs Preece indicated that she had prescriptive rights to the former quay along the section D to E. As such her use would be by right. Mr Robbins, who did not complete an evidence of use form, said that he used the route in the 1970s 1980s and 1990s. He recalled that in the past people would use the route any day of the week.
50. As regards use as of right, noting Mrs Preece's prescriptive right, there is no evidence that use was with force or in secrecy. The objector points to three individuals who use the way for the purpose of accessing the White Lion Inn and that use was likely to be as invitees of the proprietors using the private right of way.
51. Mr Hurley indicates use of the route to the White Lion Inn and refers to other locations and it is not clear if all his use was in connection with access to the White Lion Inn. Use to the White Lion Inn along the Order route would however be as an invitee and such use would not be as of right. Mr Hurley did not use the route for the full twenty year period and only used the way 3 to 4

times a year as such his use, bearing in mind some, or possibly all, of that use would be by right is extremely limited.

52. Mr and Mrs Watts used the route to the White Lion Inn but the evidence of use forms completed by them suggests that the route was used as part of longer walks. Again, whilst use to access the White Lion Inn would have been as an invitee, use of the way for longer walks would be as of right. It is noted that their use was on a monthly basis and given that some of their use was to the White Lion Inn this diminishes the weight which can be given to their use.
53. Although some use of the way would have been with implied permission in consequence of visiting the White Lion Inn this would not prevent other use from being as being as of right.
54. Mrs Hurley provided details of a number of guided walks from 1992 onwards. As these fall outside the relevant period this evidence does not assist in determining the Order. Mrs Hurley also referred to other guided walks in the 1970s and 1980s but in the absence of any details I can give this evidence no weight.
55. Having regard to all of the evidence of use it is in my view just sufficient to bring home to a landowner that a right was being asserted against him. Although more finely balanced, if the date when the right to use the way was brought into question is taken to be 1987 I would reach the same conclusion. Use of the way, other than those identified above, was as of right and without interruption. In view of this I conclude that the evidence of use is sufficient to raise a presumption that the way has been dedicated as a public footpath.
56. In reaching my conclusion it is noted that the route forms a cul-de-sac with the village green (VG8). There is no rule of law which precludes a cul-de-sac route from being a public right of way. In this case the route provides access to the village green which is an area of popular resort.

Evidence of a lack of intention to dedicate

57. In view of my findings at paragraph 56 it is necessary to consider whether any landowner demonstrated a lack of intention to dedicate the Order route C to D as a public footpath. For there to be sufficient evidence that there was no intention to dedicate the way there must be evidence of some overt acts on the part of the landowner, during the relevant period, such as to show the public at large, the public who used the path, that they had no intention to dedicate the route as a public footpath. The test is whether a reasonable user would have understood that the landowner, that is the owner of the land over which the route passes, was intending to disabuse the user of the notion that the way was a public footpath.
58. The land over which the Order route passes formed part of the former King's Head Hotel and was owned by West Country Breweries Limited who also owned the White Lion Inn within the same title. In 1987 part of the property was sold to a Henry Weaver and now forms the Riverside Lodge.
59. The objector outlines that when the land was sold by the owners of the White Lion Inn a private right of way was granted for the benefit of the White Lion Inn and for the benefit of that part of the village green in their ownership. The

objector contends that this is good evidence that the owners of the land had no intention to dedicate a public right of way.

60. Whilst a private right of way was reserved, this would be for the benefit of the White Lion. The reservation of a private right has no bearing on the existence or otherwise of public rights, such rights can coexist. Further, if this was intended to demonstrate a lack of intention to dedicate there is no evidence that this was brought to the attention of the public who used the way. The reservation of a right was a matter between the relevant parties.
61. The evidence of use form of Mr C Watkins indicates that he was told by the owner of King's Head that the ground was private and that there was no public path across it. The evidence of use form is lacking in detail and in the absence of any further information it is difficult to establish the circumstances surrounding the challenge. Nevertheless any challenge is likely to have been during the relevant twenty year period. Although Mr Watkins was seemingly challenged in his use of the way there is no evidence of any other challenges during the relevant twenty year period. Use continued throughout the period and it wasn't until a 'private' notice and chain were placed on the route that users understood that their right was being challenged. Mr Watkins states in his evidence of use form that he considered the route to be public and has taken that view for 38 years prior to completing his form in 1997. In the circumstances I do not consider that the challenge to Mr Watkins was sufficient to disabuse the public using the way of the notion that the way was a public footpath.
62. I note the point made by the objector that the absence of a significant amount of evidence of a lack of intention to dedicate needs to be weighed against the level of user. However, whilst the level of use is not substantial it is sufficient to raise a presumption of dedication. If the landowner had sought to demonstrate a lack of intention to dedicate the way it would be expected that further challenges would have been made. I have not been provided with any evidence as to additional challenges.
63. Bearing in mind the above I do not find that any landowner took sufficient steps to demonstrate a lack of intention to dedicate a public footpath and the statutory dedication is made out.

Width

64. The Council sought amendment and clarity to the widths specified in the Order. The width of any route should be based on the evidence of public rights or, in the absence of such evidence, what may be considered reasonable; it is the Councils approach that a reasonable width should be 2 metres. In view of my findings at paragraphs 38 and 39 I have not considered further the width of the Order route A to C or B to E.
65. The Council argued that in respect of the section C to D the width should be based on the boundary to boundary presumption. The widths between the boundaries as measured on the site visit following the close of the inquiry varied between 3.4 and 4.4 metres.
66. As regards the application of the boundary to boundary presumption, before such a presumption arises it is necessary to establish whether the boundaries

were established by reference to the highway. I have no evidence before me to indicate that the boundaries were set out by reference to a highway. In the absence of any evidence that the boundaries were set out by reference to the highway no rebuttable presumption arises.

67. I have not been provided with any other evidence as to the width of the way and therefore the width should be based on what is considered reasonable in the circumstances. In my view a width of 2 metres is reasonable and I propose to modify the Order accordingly.

Other matters

68. The original objection raised concerns in relation to the actions of the Council and issues relating to safety and the loss of value of the property. Whilst I note these concerns the 1981 Act does not provide for such matters to be taken into account when determining a definitive map modification order.
69. The Council made the point that the objection to the Order had been altered in its entirety from the objection made in response to the notice of the order; this was a statement of fact and not intended to be any criticism of the objector. It is clear that the grounds of objection have changed significantly. However, this is not a relevant consideration. It will often be the case that grounds for objection are developed during the process of determination.
70. The objector made reference to a planning application made by the objector for a parking space on his property. As accepted by the objector this is not material to my decision.

Conclusion

71. Having regard to these and all other matters raised at the inquiry and in the written representations I conclude that the Order should be confirmed subject to modifications.

Formal Decision

72. The Order is proposed for confirmation subject to the following modifications:

- From the title of the Order delete the 's' from 'footpaths' and delete 'and BW25 Bridstow'.
- From Part 1 of the Schedule to the Order delete the descriptions of the 'path or way to be added' and insert 'Footpath C - D Commences at its junction with the village green (VG8) at OS Grid Reference SO 5893 2421 (point C on the order plan) proceeding generally north eastwards for approximately 28 metres where it joins the County Road B4260 at OS Grid Reference SO 5895 2423 (point D on the order plan). The route has a width of 2 metres. (To be known as Footpath Bridstow BW24.)'.
- From Part II of the Schedule to the Order delete the particulars relating to Footpath Bridstow BW24 and insert 'Commences at its junction with the village green (VG8) at OS Grid Reference SO 5893 2421 proceeding generally north eastwards for approximately 28 metres where it joins the County Road B4260 at OS Grid Reference SO 5895 2423. The route has a width of 2 metres.' Delete the particulars relating to Footpath Bridstow BW25.

- From the Order plan delete the sections to be added A to C and B to E and associated references in the key and delete the points A, B and E and the 's' from 'additions' and 'footpaths'.

73. Since the confirmed Order would not show a way in the Order as submitted I am required by virtue of Paragraph 8(2) of Schedule 15 to the Wildlife and Countryside Act 1981 to give notice of the proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modifications. A letter will be sent to interested persons about the advertisement procedure.

Martin Elliott

Inspector

APPEARANCES

Herefordshire Council:

Mr M Walker

Public Rights of Way Team Leader

Also in support of the Order:

Mrs H Hurley

The applicant, Ross on Wye & District Civic Society

Mr E Robbins

Mrs J Collin

Chair of Bridstow Parish Council

Mrs S Preece

Miss L Ward

Mr J Ripley

In opposition to the Order:

Mr K Garvey

Of Counsel on behalf of the objector

DOCUMENTS

- 1 Appendices to Proof of Evidence of M Walker (MFW/1 to MFW/14)
- 2 Conveyance 21 October 1987 former King's Head Inn

