



Order Decision

Site visit made on 31 January 2017

by Susan Doran BA Hons MIPROW

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

Decision date: 24 February 2017

Order Ref: FPS/J1155/7/112

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as the Devon County Council (Bridleway No. 24, Chawleigh) Definitive Map Modification Order 2015.
- The Order is dated 5 March 2015 and proposes to modify the Definitive Map and Statement for the area by adding a length of bridleway as shown in the Order plan and described in the Order Schedule.
- There were 3 objections outstanding when Devon County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed

Procedural Matters

1. I made a site inspection accompanied by Mr and Mrs A Woodman, Messrs G and G Woodman, opposing the Order, and Mrs T Weeks representing Devon County Council (the Council), supporting the Order.
2. The matter is being dealt with by way of written representations, and I have taken into account all of the evidence and submissions before me.
3. The Order seeks to record a bridleway between Southcott Cross (point A on the plan attached to the Order) and Fiddlecote Lane (point B) along a track known as Cloepark Lane¹. The Woodmans do not dispute the status of the Order route, but request that it be gated at either end.

The Main Issues

4. The criteria for confirmation of the Order are contained in Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 ("the 1981 Act"). This requires me to consider whether the evidence discovered shows on a balance of probabilities that a bridleway subsists along the Order route and should be recorded in the Definitive Map and Statement ("DMS").
5. The Council relies on dedication having arisen at common law on the basis of the documentary evidence adduced, and that this is supported by the claimed evidence of use. As regards the documentary evidence, Section 32 of the Highways Act 1980 ("the 1980 Act") requires that I take into consideration any map, plan or history of the locality, or other relevant document provided, giving it such weight as is appropriate, before determining whether or not a way has been dedicated as a highway. So I shall need to consider whether the

¹ Also referred to as 'Bluebell Lane'

documentary evidence available to me, when considered as a whole, shows that bridleway rights have existed historically over the Order route.

6. As regards claimed use by the public, I shall consider whether dedication of the Order route as a public bridleway has occurred through public use. This may be either by presumed dedication as set out in the tests laid down in Section 31 of the 1980 Act, or by implied dedication under common law.

Reasons

Documentary evidence

7. The Order route is shown on the 1809 Ordnance Survey ("OS") 1-inch map, and its depiction as a physical feature remains consistent throughout subsequent OS mapping. From 1899-1900 to 1965 it is defined as an 'unmetalled road'. The 25-inch mapping of 1880-1890 and 1910 names it as Cloepark Lane and it is depicted as open (ungated) to the highway network at either end. It is similarly shown in 1974. OS maps provide good evidence of the physical features in existence at the date of the survey rather than of their status. It is described as an "occupation lane" in the 1904 OS Object Name Book (associated with the 25-inch mapping), but this description was crossed out and signed off by the District Surveyor.
8. The 1839 Chawleigh Tithe Map shows it uncoloured and without a number, and no reference to it appears in the 1849 Apportionment. Its depiction is similar to known public highways, but no conclusions on its status can be drawn from this document.
9. It was excluded from hereditaments on the Finance Act Map of 1910, so was not regarded as forming part of the adjoining landholdings. The exclusion of a route is usually indicative of a public highway, often, though not necessarily, a vehicular one. However, some routes that have no known owner and accessed land owned by several people may also be excluded. Here there are fields accessed from the route.
10. It was also excluded from Lots in Sales documents dated 1908, 1911 and 1913, which suggests that it was considered to be public rather than private, although it was not the purpose of such documents to define public rights.
11. Further to the National Parks and Access to the Countryside Act 1949, the Order route (together with its continuation eastwards) was claimed in the Parish Survey dated September 1950 as a 'wheel path', but this term is not clarified. However, the District Surveyor who walked the route in February 1951 described it as a 'Public Bridleway'. The Parish Survey Map was subsequently annotated by the County Surveyor with several queries including whether it was a 'Public Accommodation Road'. Information subsequently published by the Council as part of its 1977 Review clarified that a 'public accommodation road' was one that gave the public 'complete freedom of access', but which was maintained by the landowner. The Order route was omitted from the Draft Definitive Map, and did not appear on the subsequent Provisional or Definitive Map.
12. Reviews of the Definitive Map were carried out by the Council in 1968, 1977 and 1998 but, for various reasons, none were completed. As part of the 1968 Review, the Chawleigh Parish Clerk drew attention to the omission of the Order

route from the DMS. The Council annotated their letter with the word 'Add', and later agreed with the Parish Council that it should be added as a Bridleway. The route was again to be included as a Bridleway at the 1977 Review, and again in 1998, when the Parish Council forwarded user evidence forms to the Council. Throughout this period the Parish Council maintained its view that the Order route was a public bridleway, and had considered it to be a public right of way since the Parish Survey was undertaken in the 1950s.

13. Other than a reference in 1899 to the repair of the Order route (about which no further mention is made) Parish Council Minutes between 1894 and 2010 concern the Definitive Map Reviews and rectifying the route's omission from the record of public rights of way. In 1975 adjoining landowners agreed to clean up the route, indicating that, like the Parish Council, they considered it to enjoy public rights, although in 1977 one did not agree to it being signed as a Bridleway.
14. Aerial photographs dated 1946, 1999-2000, 2006-2007 and 2011 show a defined and apparently unobstructed lane, consistent with the OS mapping.

The User evidence

15. In all, eight user evidence forms have been submitted. Two describe driving stock from the 1950s. Users considered it to be public, some using it for pleasure, as well as for work on foot, horse and tractor. One user indicated either he or someone he knew had been stopped or turned back in their use of the way, but gave no further clarification. He also referred to use on a bicycle. Another, who had used it since the 1970s, believed it to be in constant use as a bridleway. One person used it on foot as part of a circular walk, but also indicated he had a private right, but had not been given permission to use it. Two people had used it on horseback, one from 1987, the other from 1988 to 2005 for pleasure. Some encountered temporary obstructions in 2003/2004 when hedge laying work was undertaken.
16. The user evidence adduced is not significant in volume, and much refers to private use, which I disregard. Nevertheless, it seems that the users regarded the route as public, and either used it themselves mainly on foot, or horseback, or saw or were aware of others doing the same. Use with vehicles appears to have been for agricultural use connected with the land.

Landowner evidence

17. The Woodmans' who own and/or rented most of the land either side of the Order route, some since 1928, consider it to be an access lane for landowners. They have seen occasional walkers and horse riders, and in the 1970s and 1980s have stopped horse riders and told people it was not a right of way. This is consistent with the reference to a challenge described above.
18. Mr A Woodman has maintained the way since 1970 when he cleared it. No signs contrary to the existence of a public right of way have been installed.

Conclusions

19. The 19th and early 20th Century mapping is inconclusive as regards status, although some of the evidence considered above suggests a vehicular way. In the mid-20th Century the Order route was regarded as a bridleway, but was

omitted from the DMS apparently as it was considered to be used by the public and not maintained at public expense, but rather by the landowner. Subsequently, its omission from the DMS as a bridleway was considered by the Parish Council and the Council as an error.

20. Overall I am satisfied that the Order route is a public right of way. It is arguable that, having regard to the documentary evidence, it may enjoy higher rights. However, the user evidence is consistent with private use by agricultural vehicles and public use on foot and on horseback. I concur with the Council in that dedication of the route took place in the past and such dedication is supported by the evidence of use adduced, and acceptance by the public of that dedication. Thus the limited actions taken by the landowners to deter some users in the recent past do not overturn existing public rights.
21. I conclude that the evidence as a whole supports the existence of at least bridleway rights and that, therefore, the Order should be confirmed.

Other matters

22. The Woodmans say they will withdraw their objections if the Council erect and maintain gates (and rails) at either end of the Order route to prevent its use by motorised vehicles for recreational purposes.
23. Having examined the documentary evidence I agree with the Council that there is no historic basis for the existence of gates or barriers anywhere along the Order route. Accordingly, it is not open to me to modify the Order to include such structures as a limitation to use on the grounds that the route has been dedicated subject to their presence.
24. Neither is it open to me to instruct the Council to install them at either end of the route. The Council has advised the Woodmans that should they wish to graze stock along the Order route, then they could apply to the Council for permission to erect gates under Section 147 of the Highways Act 1981.
25. Whilst I understand the Woodmans' concerns, I am not able to resolve their objections to the Order in the terms they seek.

Conclusions

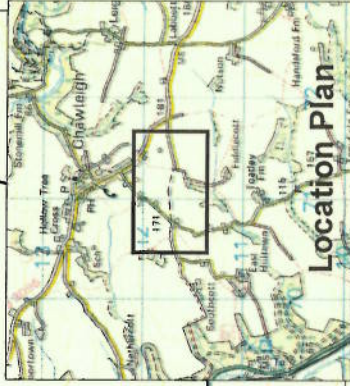
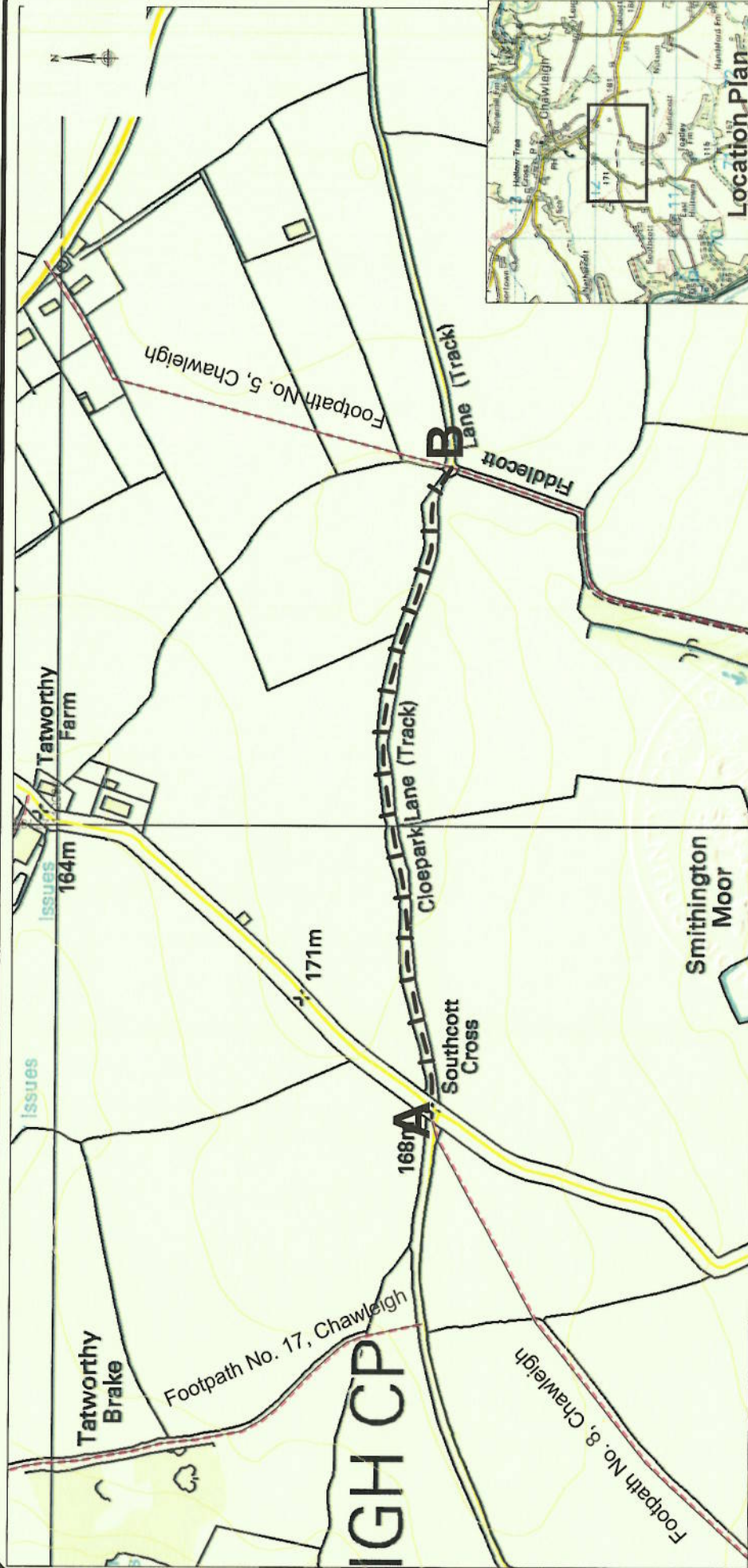
26. Having regard to these and all other matters raised in the written representations, I conclude that the Order should be confirmed.

Formal Decision

27. I confirm the Order.



S Doran

Inspector



Map Ref: SS 7011 7111

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DEVON COUNTY COUNCIL DEFINITIVE MAP MODIFICATION ORDER 2015 BRIDLEWAY NO. 24, CHAWLEIGH		drawing number HCW/PROW/14/146 date Dec 2014 scale 1:5,000 (at A4) drawn by TW
Notation Addition of Bridleway A - B Existing Public Footpaths	(approx 550 metres)  	David Whitton Head of Highways, Capital Development & Waste 