
Order Decision

Inquiry held on 29 November 2017

by Barney Grimshaw BA DPA MRTPI(Rtd)

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

Decision date: 19 December 2017

Order Ref: ROW/3172071

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as The Shropshire Council (Bridleway Additions, Parish of Richard's Castle) Modification Order 2015.
- The Order is dated 19 November 2015 and proposes to modify the Definitive Map and Statement for the area by adding 2 Bridleways linking two sections of Mitnell Lane, Richard's Castle as shown on the Order Maps and described in the Order Schedule.
- There was 1 objection outstanding at the commencement of the inquiry.

Summary of Decision: I propose to confirm the Order subject to modifications that require advertising.

Procedural Matters

1. I held a public inquiry into this Order on Wednesday 29 November 2017 at Richard's Castle Village Hall. I made an unaccompanied site inspection on Tuesday 28 November when I was able to walk the whole of the Order routes. It was agreed by all parties at the inquiry that a further accompanied visit was not necessary although I did myself re-visit both ends of the Order routes after the inquiry.
2. In writing this decision I have found it convenient to refer to points marked on the Order Maps. I therefore attach copies of these maps.

The Main Issues

3. The requirement of Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 (the 1981 Act) is that the evidence discovered by the surveying authority, when considered with all other relevant evidence available, should show that rights of way that are not shown on the definitive map and statement subsist along the Order routes.
4. Some of the evidence in this case relates to usage of the routes. In respect of this, the requirements of Section 31 of the Highways Act 1980 (the 1980 Act) are relevant. This states that where it can be shown that a way over land has been enjoyed by the public as of right and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The period of 20 years is to be calculated retrospectively from the date when the right of the public to use the way was brought into question.

Reasons

5. This Order proposes the addition of 2 parallel bridleways running close together. Order Map 1 shows the western route which I will refer to as Bridleway 1 and Order Map 2 shows the eastern route which I will refer to as Bridleway 2.

Bridleway 1

6. The case in support of the addition of this bridleway relies primarily on documentary evidence.

Early maps and records

7. An early commercial map (Greenwood, 1827) shows a route running between Park lane and Wheatcommon Lane including the Order route and Ordnance Survey (OS) maps from 1833 onwards also show a similar route. The OS 1:2500 scale map of 1970 appears to show two parallel routes one coinciding with Bridleway 1, named as 'Mitnell Lane' and the other on the Bridleway 2 route.
8. A similar route is shown on the Tithe Map of 1841. The route is not numbered or coloured and was presumably regarded as part of the field it crossed for tithe purposes. I have not seen any tithe records other than an extract from the map.
9. The map prepared as part of the valuation survey in connection with the Finance Act 1910 shows a route on the line of Bridleway 1 included within the adjoining hereditament, No. 267, and Shropshire Council, the Order Making Authority, (OMA) states that this property received a deduction from value in respect of unspecified public rights of way. However, this may not have related to the Order route as there are other rights of way within the same property.
10. These records appear to show that a route similar to the Order route has existed as part of a through route between Park Lane and Wheatcommon Lane since the first half of the 19th century. They do not however indicate the status of the route or whether the public had any rights over it.

Highway records

11. A map prepared in 1929, when responsibility for certain highways was handed over to the county council, shows the whole of Mitnell Lane, including the Order route coloured yellow as a council maintained road.
12. However, a highways map dated 1959 shows the currently adopted sections of Mitnell Lane as County Roads but not the Order route. No explanation has been discovered for this alteration in the records. The Highway Authority confirmed in 2014 that there is a gap in Mitnell Lane that is not recorded as part of the public highway but there are no records of why this is the case.

The Definitive Map

13. In the survey undertaken in 1950 before the preparation of the first definitive map, Richard's Castle Parish Council claimed the Order route as a Cart Road used as a Bridleway (CRB). The reason given for the claim was that it had been used throughout living memory. However, the base map provided to the parish for the survey already showed the route coloured red to indicate that it was a

County Road. The parish map was subsequently annotated 'SCC ROAD' and the accompanying schedule annotated 'OMIT SCC ROAD'. The route was then not included in the Draft, Provisional or first Definitive Map.

14. The most likely interpretation of these events is that both the parish council and the county council then believed the route to be a public highway of more than bridleway status and that it was accordingly appropriate to omit it from the definitive map in the same way as other County Roads. Subsequently the highway authority seems to have decided that the route was not more than a bridleway and it was omitted from the highway records but not added to the definitive map as would have been appropriate.
15. In 1972, the clerk to Richard's Castle Parish Council wrote to the county council stating that the bridle path along this Order route had apparently been omitted from the definitive map. In response he was informed that the matter would be considered at the next review of the definitive map.
16. In a footpath survey undertaken in 1987, apparently on behalf of the parish council, the Order route was noted as a footpath that had been checked whereas Bridleway 16 was noted as a footpath no longer in being as it was not used.
17. In 1988, a parish review was initiated by the county council which included investigation of the Order route. The landowner, Mr T Froggatt, was consulted and stated that he had not seen anyone using the way and that he did not wish any more people or horses to use it than was absolutely necessary. The Byways and Bridleways Trust commented that as it appeared that the route had not been included in the definitive map because it was believed to be a County Road it should now be recorded as a County Road or a bridleway.
18. Subsequently, the route was not added to the definitive map. The OMA could not explain why but speculated that it may have been felt that it would be more properly recorded as a County Road.
19. In a letter to the parish council, said to have been sent around January 2012, Mr Herbert Froggatt, a former owner of the land crossed by the Order route, stated that the route was a gated road across the field. His family bought the land in 1952 and later built a more permanent road "*...for the benefit of locals & trade people...*" He also stated that prior to around 2002/3 the road had been maintained by the county council although correspondence with the highway authority would suggest that this was not the case.
20. Mr Hall in his evidence stated that the new road had been constructed in around 1962/63 and nearly all users did not recall any other route.
21. As the field through which the route passes was sometimes used for grazing livestock it is likely that gates were installed across the new route when it was constructed and the gates across the existing route replaced by fencing as is still the situation.

Conclusions

22. The evidence that is available indicates that this Order route probably existed from the first half of the 19th century until the 1960s and formed part of a through route between Park Lane and Wheatcommon Lane. Early maps and documents do not indicate whether there were public rights of any sort over

the route. However, by the 1920s it appears that it was regarded as a public road of some sort and by the 1950s, both the parish and county councils also seemed to accept this. Nevertheless, probably as a result of confusion as to whether it was a County Road or a public right of way of another type, it was not recorded on the definitive map and was omitted from the highway records. Subsequent attempts to correct what was seen as an error of omission have not been pursued without any stated explanation but possibly as a result of continuing confusion regarding the correct status of the route.

23. Overall, it is my view that on the balance of probability, the route had become established as a public right of way of at least bridleway status by the 1920s, as is indicated by the highway handover records, the 1950s parish survey and subsequent comments and correspondence. The evidence that the public continued to use it as such, albeit on a slightly different alignment (see evidence in connection with Bridleway 2), reinforces this view.
24. Although at some time after 1952, possibly in 1962/63 a new route was constructed and public use transferred to this, the existing route was not formally extinguished or diverted. Accordingly, any public rights that had been established still subsist and should be recorded.

Bridleway 2

25. The case in support of the addition of this bridleway relies on evidence of public use.

Statutory Dedication

26. It would appear from the evidence of users and the landowner that public use of the route was brought into question in 2012 when challenges were made to users which triggered the application for the route to be added to the definitive map being made. However, Mrs Hall (formerly Froggatt) stated that she had locked the gate at Point D from time to time since 2001. There was also correspondence with the OMA in 2003 regarding the locked gate which led to a second gate being installed to permit access to Bridleway 16 but not to the Order route. Mrs Hall also stated that a notice was erected in 2003.
27. It is my view that the evidence that a locked gate was encountered in 2003 is sufficient to indicate that public use of the route was brought into question at that time and therefore the relevant period of 20 years public use which would raise a presumption that the route has been dedicated as a public right of way in accordance with the provisions of the 1980 Act runs from 1983 to 2003 in this case.
28. Twenty-four people completed User Evidence Forms (UEFs) describing their use of the claimed route between 1958 and 2016. Fourteen people who had completed UEFs also gave evidence at the inquiry along with three others who had used the route but not submitted forms. Eight people claim to have used the route throughout the 20 year period from 1983 to 2003 and twelve people for some of that period. Seven people had only used it before or after that period. A minimum of eleven people claim to have used the route in any single year of the relevant period.
29. All those who claimed to have used the route in the relevant period said they had used it on foot but eight had also used it on bicycles, five on horseback and nine with vehicles. The frequency of use claimed varied from daily to only

once or twice per year. In general, the evidence indicates that use of the route on foot was far more frequent than other modes and that use in vehicles was very occasional and then sometimes with the permission of the landowner.

30. In the earliest years of the 20 year period (1983-84) only two people claimed to have used the route on bicycles and none on horseback. Most users said they had seen others using the route, mainly on foot but also on bicycles and horseback although they did not specify in which years.
31. Although several users referred to their having been a gate or gates across the route they stated that they were never locked until recent years (after 2001).
32. If 2001 were to be taken as the date when public use was brought into question as this is when Mrs Hall stated that she began locking the gate, this would make very little difference. The amount of user evidence relating to 1981 and 1982 is similar to that for the subsequent year.
33. I have seen no substantive evidence of actions taken by landowners before 2001 which would have brought public use into question or indicated their lack of intention to dedicate a public right of way.

Conclusions

34. Overall, it is my view that on the balance of probability, the available evidence is sufficient to raise a presumption that the Order route has been dedicated as a public footpath but not as a route of higher status. However, well before the beginning of the relevant period it seems likely that the route of Bridleway 1 had been obstructed at both ends as it would appear that when the new route was built new gates were provided and the old gates replaced by fencing. Thereafter people wishing to use that right of way deviated on to the new route to avoid the obstructions, as they were entitled to do. However, such deviation does not lead to the establishment of an additional right of way over the alternative route.
35. Accordingly, it would not be appropriate to record Bridleway 2 as a public right of way although, as mentioned previously, the continuing use of this route reinforces the view that Bridleway 1 should be recorded as a public bridleway.

Other Matters

36. Mr and Mrs Hall argued that the Order was flawed as the northern termination points of both routes are not on an appropriate public highway. They maintain that the adopted northern part of Mitnell Lane ends further north than Points A and C and that, although these points are on Footpath 24, the Order routes would be cul de sacs as far as bridleway use is concerned. These points are not at any feature of public interest or resort and accordingly it is not appropriate to record cul de sac public bridleways terminating at these points. When the Moor Park Estate was sold at auction in 1951 private rights of access were reserved for purchasers of various lots including a right of way "*...along the metalled road which connects the Burnt House Farm with Wheat Common Lane via O.S.No. 403...*". Mr and Mrs Hall also state that the title for their land registered with the Land Registry includes part of Mitnell Lane which the highway authority says is a public road but which they claim has never in fact been maintained by the authority. I also noted that the remains of a gate post can still be seen alongside Mitnell Lane north of Points A and C.

37. On behalf of the OMA this argument was disputed. Information provided on behalf of the council as highway authority indicates that the public highway, Mitnell Lane (north section) extends as far as Points A and C.
38. I am not in a position to be able to resolve any potential dispute regarding the extent of the currently adopted highway but, if in the future it is found that there is a gap between Point A and the adopted section of Mitnell Lane to the north, this may have to be addressed by the OMA, possibly by the making of a further modification order.

Conclusions

39. Having regard to these and all other matters raised, I conclude that the Order should be confirmed with regard to Bridleway 1 but not Bridleway 2.

Formal Decision

40. I confirm the Order subject to the following modifications:

Delete all references to Bridleway Addition – Order Map 2 from Parts I and II of the Schedule to the Order;

Delete Order Map 2.

41. The proposed modifications would have the effect of not showing a way shown in the Order. This means that I am required by virtue of Paragraph 8(2) of Schedule 15 to the 1981 Act to give notice of the proposal to modify the Order and to give an opportunity for objections and representations to be made regarding the proposed modifications. A letter will be sent in connection with the advertisement of the notice and the deposit of the associated documents to all persons to whom this Order Decision has been sent.

Barney Grimshaw

Inspector

APPEARANCES

For the OMA

| | |
|----------------|---|
| Constanze Bell | Counsel, representing Shropshire Council (SC) |
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Who called:

| | |
|-----------------|---------------------------|
| Lucy McFarlane | Rights of Way Officer, SC |
| Ian Smith | Path user |
| Steven Broom | Path user |
| Ian Broom | Path user |
| Julia Weaver | Path user |
| Judy Whitmarsh | Path user |
| Gill Smith | Path user |
| Bruce Allwright | Path user |
| Patricia Sibcy | Path user |
| Anthony Sibcy | Path user |
| Paul Sallis | Path user |
| Dawn Moore | Path user |
| Carole Goosey | Path user |
| Graham Lambourn | Path user |
| WJ Cadwallader | Path user |

Supporters

| | |
|---------------|-----------|
| Jane Farr | Path user |
| David Milner | Path user |
| Ros Allwright | Path user |

Objectors

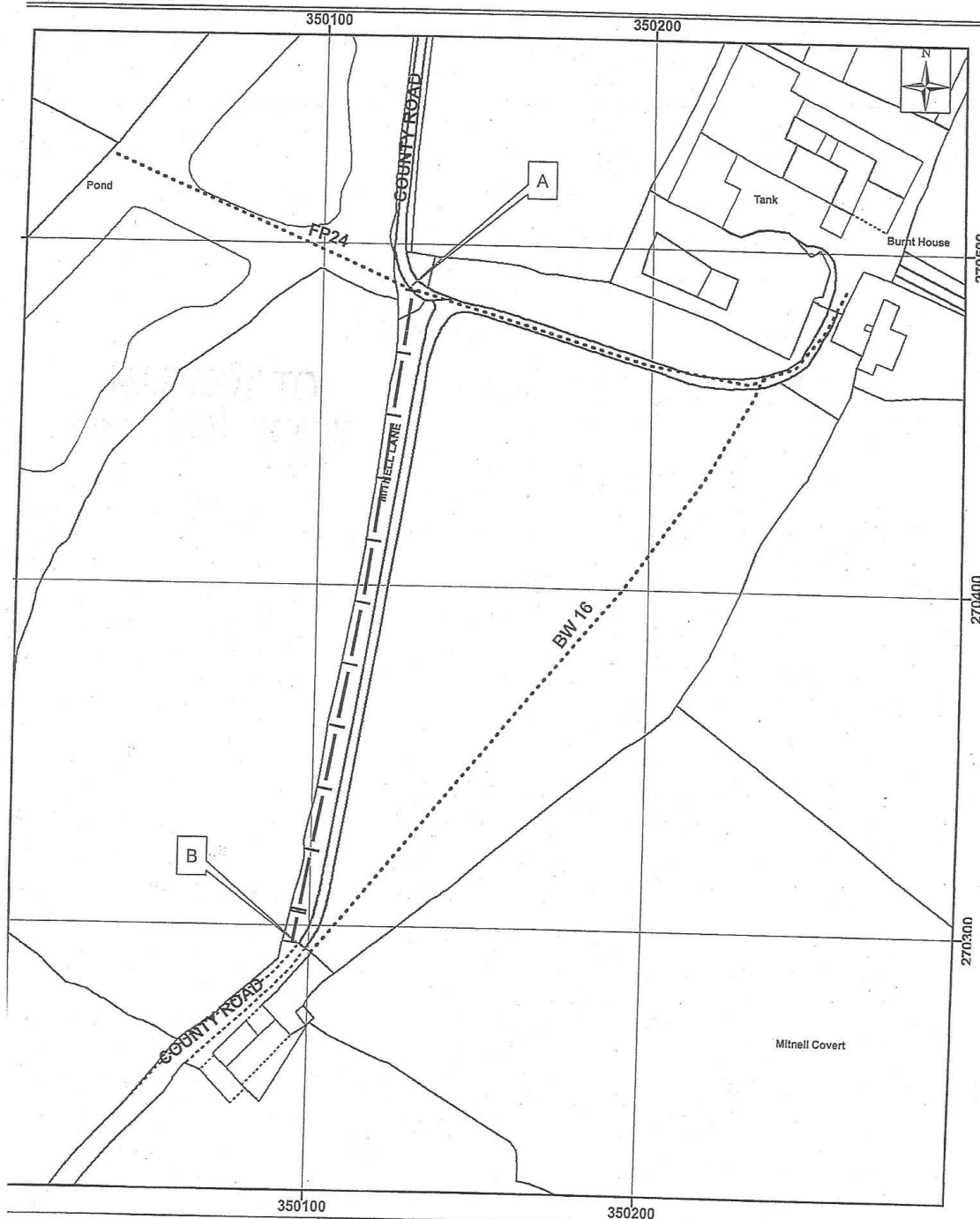
| | |
|-------------|-----------|
| Adrian Hall | Landowner |
| Susan Hall | Landowner |

DOCUMENTS

1. Proofs of Evidence (2) of Lucy McFarlane, SC.
2. 17 additional Proofs of Evidence (Bruce Allwright, Calvin Allwright, Ian Broom, Lynette Broom, Steven Broom, Louise Choblet, Glyn Goodwin, Carole Goosey, Christopher Hill, Rosemary Hill, Graham Lambourn, Dawn Moore, Paul Sallis, Gill Smith, Ian Smith, Julia Weaver, Judy Whitmarsh).
3. Highways Statement by Richard Bennett, SC. [not seen]
4. Statement of Case on behalf of Mr and Mrs Hall.
5. Further letter from Mr and Mrs Hall dated 30/10/17.
6. Statement of Mrs Hall.
7. Statement of Mr Hall.
8. Closing Submissions on behalf of the OMA>

SHROPSHIRE COUNCIL
WILDLIFE AND COUNTRYSIDE ACT 1981
Definitive Map Modification Order 2015
Order Map 1

Parish of Richard's Castle
Bridleway Addition
OS Sheet No: SO 60 70



Key

Scale: 1:1,500

Route to be added
Existing to remain

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