
Order Decision

Site visit held on 3 May 2017

by Martin Elliott BSc FIPROW

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

Decision date: 23 May 2017

Order Ref: FPS/D3450/7/33

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Staffordshire County Council (Public Footpath from A518 Weston Parish to A518 Amerton, Stowe-By-Chartley Parish) Modification Order 2016.
- The Order is dated 30 June 2016 and proposes to modify the Definitive Map and Statement for the area by adding a public footpath as shown in the Order plan and described in the Order Schedule.
- There was one objection when Staffordshire County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is not confirmed.

Procedural Matters

1. I carried out a site visit on 3 May 2017 when I was accompanied by the landowner, who is also the statutory objector. It was necessary to be accompanied in order to gain access to the land crossed by the Order route. I did not discuss the merits of the case with the landowner.
2. The Order arises from an application under Section 53(5) and Schedule 14 of the 1981 Act. The Council refused the application but were subsequently directed to make the Order following an appeal to the Secretary of State. The Council have adopted a neutral stance to the Order and the case in support of the Order is made by the original applicant. The applicant has made a number of submissions and asks that I also consider the report of the Director of Democracy, Law and Transformation to the Council's Countryside and Rights of Way Panel on 13 February 2015.
3. In the submissions from the objector it is suggested that a small part of the Order route just south of point G¹ on the Order map does not belong to them. In correspondence on file from the Council confirms that the objector owns the land crossed by the Order route by reference to the Title Register plan. There is no evidence before me to indicate that the objector does not own the land.

The Main Issue

4. 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 Act.

¹ Letters A to G identified in this decision relate to points identified on the Order map

5. The main issue is whether the discovery by the authority of evidence, when considered with all other relevant evidence, is sufficient to show that a right of way which is not shown in the map and statement subsists over the land in the area to which the map relates. The test to be applied to the evidence is on the balance of probabilities.
6. It is noted that at the Schedule 14 appeal stage the Inspector concluded that the Council should be directed to make an Order on the basis that a right of way is reasonably alleged to subsist. However, in confirming the Order it is necessary for the evidence to show, on the balance of probabilities, that a right of way subsists, this is a higher test.

Reasons

Documentary evidence

Tithe maps and awards

7. The 1844 Weston upon Trent tithe award map shows a dashed line annotated 'footway'. Where the route passes over the boundary of the land subject to the award the route is annotated 'to Amerton'. The 1850 Stowe tithe map shows a footway leading to a track which leads to Amerton. Neither of the tithe awards make reference to the 'footway' in the apportionment.
8. Tithe documents were compiled to identify titheable land not to establish or record public rights of way. It is likely that the footway was not mentioned in the apportionments because a footway would not have any significant effect on productivity. The tithe maps provide evidence of a footway over the land concerned but do not provide evidence as to whether the route was public or private. The evidence needs to be considered with all other available evidence.
9. The objector makes the point that the route shown on the award maps does not correspond with the route indicated on the Order plan. Having looked closely at the award map and Order plan I take the view that the route shown on the award does not correspond with the Order route in the vicinity of point B on the Order map. The route shown on the award plan is to the east of Order route, nevertheless the map shows a footway. I will consider the alignment further, if necessary, below.

Ordnance Survey mapping

10. The 1836 map shows the start of a track leading from Amerton which corresponds with the start of the Order route but the remainder of the Order route is not shown. Whilst the remainder of the route is not shown this does not necessarily mean that there was no route. Given the scale of the map the absence of any route is not unexpected. The 1883 map shows a route following the alignment of the route shown on the tithe maps; a footbridge is marked on the route. The 1890 map depicts the route in the same way. The 1901 shows the route in a similar way to the earlier maps although the footbridge is not marked. A footbridge is marked further to the east and the route is annotated 'f.p.'
11. The 1924 map does not show the Order route with the exception of the Amerton end where the route is shown as a track. The 1971 map is similar to the 1924 map. The current Ordnance Survey maps do not show any part of

the Order route with the exception of the short section of track leading southwards from point G.

12. Ordnance Survey maps were produced to record topographical features and were not intended to record public rights of way. The maps from 1883 to 1901 show that a route was discernible on the ground and the annotation 'f.p.' indicates the existence of a route not to be mistaken for a route for horses or vehicles. This is consistent with the marking of footbridges on the route. However, the maps do not provide evidence as to whether the route was public or private.

1910 Finance Act

13. The Order route passes through part of the hereditament numbered 201. The field book records a deduction for 'footpaths' of £15 and for a 'right of way' of £5. Whilst the field book indicates the existence of footpaths and a right of way there is no information that any deductions relate to the Order route, the field book extracts provide no further information as to location. It does not necessarily follow that the deductions were made in respect of routes annotated 'f.p.' on the Ordnance Survey mapping.
14. The Committee report makes the point that there is no indication as to whether the term 'right of way' refers to a public or private way. It is suggested that because the 'right of way' is listed separately that it was a higher right. Whilst I note this contention there is no supportive evidence from the field book that this was the case or that the reference is to the Order route or any other public route.
15. The Order route also passes through part of hereditament 38. The field book records a deduction for 'Public Rights of Way or User' in respect of three footpaths to the value of £20. Whilst the deduction would suggest the existence of three public footpaths the field book provides no evidence as to the location of the footpaths and whether one of the routes is the Order route. I note that there are three routes annotated 'F.P.' on the Ordnance Survey mapping and that two of those are now recorded on the definitive map, the third being the Order route. However, in the absence of further information it cannot be concluded that the deduction relates, in part, to the Order route and I refer to my comments at paragraph 13 above which are equally applicable. The evidence needs to be considered with all other available evidence.
16. I note that the track at the Amerton end of the Order route is recorded in the field book for hereditament number 38 as a 'road'. I do not consider that this means that this section is of a higher status than public footpath. Further, I do not accept that this section of road has been 'coloured out' such as to show a public highway. The road is within a schedule of the property describing the various land parcels. There is no indication that the term road is a public road and it should be noted that the field book makes no deductions for public roads.
17. The field book extract for hereditament 43 records a deduction of £5 in respect of a footpath. The Ordnance Survey mapping shows that the only route annotated 'f.p.' passing through the hereditament is the Order route. It is therefore more likely than not that the deduction was made in respect of the Order route.

18. The objector makes the point that the route shown on the 1910 Finance Act plan in the vicinity of point B passes through land not within their ownership. I agree that the route marked on the Ordnance Survey map used for the purposes of the 1910 Finance Act shows a route passing over land which is not within the ownership of the objector. The route shown is consistent with the route shown on the 1844 tithe map and the other Ordnance Survey maps. As noted above I will consider the alignment of the route below if necessary. I have not been provided with information as to the hereditament number or been provided with any field book extracts in respect of the land crossed by the route shown.
19. The applicant contends that in dismissing the evidence of the 1910 Finance Act an objector would need to show that the owner made a false claim. Whilst penalties for making false claims under the 1910 Finance Act were significant it should be noted that the main purpose of the process was not to record public rights of way. Furthermore, although the applicant asserts that the 1910 Finance Act records provide clear evidence that the landowner acknowledged and accepted a public right of way there is nothing from the evidence before me that this was the case. Evidence from field books and plans may provide good evidence as to the reputation of a public footpath but care should be exercised when drawing conclusions not known to be provided directly by the landowner. The 1910 Finance Act evidence therefore needs to be considered with all other evidence.
20. I note the point of the applicant that the objector has not provided evidence as to an alternative route for which a deduction was claimed. However, it is for the supporter of the Order to make a case for confirmation of the Order route by showing that public rights subsist on the Order route.

Chartley Castle sale catalogue 1904

21. The catalogue shows a double pecked line which corresponds with the Order route. This is with the exception of the route in the vicinity of point B where the map shows the route in a similar position to the route shown on the tithe and Ordnance Survey maps. However, the catalogue provides no evidence as to the status of the route shown and therefore does not assist in determining the Order.

Landowner evidence

22. Evidence submitted by the objector suggests knowledge of the land for over 80 years and that no one has been seen walking any route. Whilst the landowner has not seen any use of a route this does not preclude the existence of a public right of way.
23. I note that the objector argues that it is evidential that there appears to be no physical evidence to support the existence of the route. It is also suggested that there are a number of physical natural obstacles to the use of the way. However, whilst there may be no physical evidence of a way, and the route may not be currently passable, this does not mean that public rights cannot subsist. It is apparent from the Ordnance Survey mapping that a through route existed up to 1901 although after this date the maps do not record the physical existence of such a route. This might suggest that the route fell into

disuse after this time but this would not result in the loss of any existing public rights.

24. The evidence also refers to the flooding of the area, issues of safety, the cost of reinstating any route and the suitability of the grass verge on the A518 for use as a footpath. The objector also contends that there would be no purpose in creating a public right of way. Whilst I note this evidence issues of suitability, desirability and the existence of an alternative route are not matters which have any bearing on the existence or otherwise of public rights. They are also not matters which can be taken into account under section 53 of the 1981 Act.

Report to Countryside and Rights of Way Panel

25. The applicant refers to the report of the Council which recommended that the definitive map should be modified by adding the route to the definitive map. Whilst the initial recommendation was to make an Order this was on the basis of a conclusion that a right of way was reasonably alleged to subsist. As noted above, in confirming the Order it is necessary for the evidence to show that a footpath subsists.

Overall conclusions

26. The evidence shows the existence of a route from 1844 which corresponds, with the exception of a short section in the vicinity of point B, to the Order route. The Ordnance Survey maps provide evidence as to the physical existence of a route up to 1901. Whilst later maps do not show a through route this does not necessarily mean that the route ceased to exist. It may have been the case that there was no discernible route on the ground or no route which the Ordnance Survey required mapping. Nevertheless there is nothing to support the physical existence of a through route after 1901. The maps do not provide evidence of a public route.
27. The 1910 Finance Act records evidence deductions being made in respect of public footpaths. However, in respect of hereditaments 210 and 38 no further information has been provided as to the location of the routes for which a deduction has been claimed. The deduction in respect of hereditament 43 is more supportive of the existence of a public footpath and, given the size of the hereditament, more likely than not relate to the Order route. I also note that hereditaments 43 and 38 were in the same ownership and this lends some support to the route through hereditament 38 being the Order route. Further, it would not appear logical for a route to be claimed which was a cul-de-sac. However, the weight to this evidence is lessened by the absence of information as to the location of the routes for which deductions were made. There is also nothing from the 1910 Finance Act records to indicate that the information in respect of public footpaths was provided directly by the landowner.
28. Other than the 1910 Finance Act evidence there is nothing to support the existence of a public footpath along the Order route, or a route to the east of the Order route in the vicinity of point B. However, the 1910 Finance Act evidence is not sufficient on its own to support the existence of a public footpath. I conclude, on the balance of probabilities, that whilst there is sufficient evidence to raise a reasonable allegation as to a public footpath it is not sufficient to conclude that a public footpath subsists. Consequently the

Order should not be confirmed. In view of my conclusions it is not necessary to consider further the alignment of the Order route in the vicinity of point B.

Other Matters

29. The applicant makes reference to decision making process of the Council. This is not a matter relevant to the determination of the Order.

Conclusion

30. Having regard to these and all other matters raised in the written representations I conclude that the Order should not be confirmed.

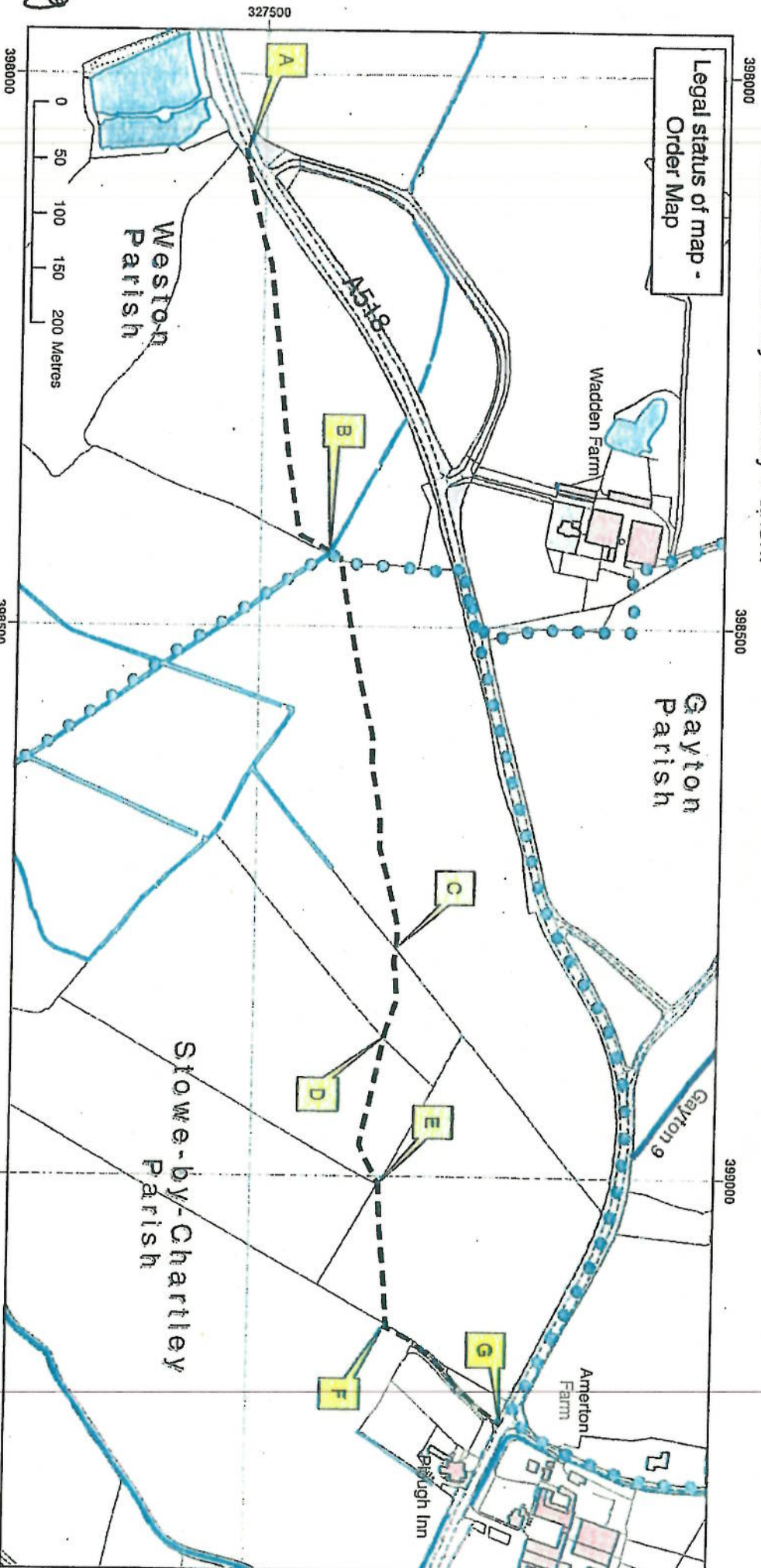
Formal Decision

31. I do not confirm the Order.

Martin Elliott

Inspector

Wildlife and Countryside Act 1981,
Section 53.
Public Footpath between A518, Weston Parish
and A518 Stowe-by-Charley Parish.



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Produced by Staffordshire County Council, 20/05/2016.

Map created at the scale of 1:5,000
(facsimiles may vary)

- Path to be added (A - B - C - D - E - F - G)
- Rights of Way Unaffected
- Footpath
- Parish Boundary