



Order Decision

Hearing held on 15 August 2017

by Mark Yates BA(Hons) MIPROW

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

Decision date: 04 December 2018

Order Ref: FPS/J1155/7/115M

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the 1981 Act") and was known as the Devon County Council (Footpath Nos. 16, 17, 18, 19 and 20, Combe Raleigh and No.5, Awliscombe) Definitive Map Modification Order 2016.
- The Order was made by Devon County Council ("the Council") on 10 June 2016 and proposed to modify the definitive map and statement by the addition of six footpaths in the parishes of Combe Raleigh and Awliscombe, as detailed in the Order Map and Schedule.
- The Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.
- In accordance with Paragraph 8(2) of Schedule 15 to the 1981 Act I have given notice of my proposal to confirm the Order with modifications.

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

Procedural Matters

1. This decision should be read in conjunction with my interim decision ("ID"), dated 26 October 2017, with the numbers in square brackets representing particular paragraphs in the ID. I proposed to confirm the Order in respect of one of the claimed routes (CR5¹), which I considered should be recorded as a restricted byway rather than a footpath.
2. An objection was submitted by Mr Carr² to the designation of CR5 as a restricted byway. Two additional people (Mr and Mrs Kimbell³) have made submissions in support of the confirmation of this part of the Order. I have considered the objection following an exchange of written representations between the parties.

Main Issues

3. I outlined the relevant matters in relation to the Order, as made, in the ID [8-10]. The issue now is whether there is any new evidence or argument which has a bearing on the status of CR5. In considering this matter it will be necessary to revisit particular pieces of evidence I took into account in the ID.

¹ Shown between points K and L on the Order Map

² On behalf of Mr Furnival

³ Mrs Kimbell is the representative of the Ramblers' and the applicant for the Order

Reasons

Consideration of the evidence and submissions

4. I addressed the issue of settled land in the ID [27-31]. The evidence points to CR5 crossing land that was settled between 1824 and 1956. Although there was a five year period when this was not the case⁴. During the time the land was settled there would have been no landowner with the capacity to dedicate a highway. The issue arising from the submissions is whether the dedication of a highway occurred prior to 1824.
5. It is not disputed that CR5 is shown on the early Ordnance Survey ("OS") maps [71]. Whilst I note with interest the detailed submissions made by Mr Kimbell on OS mapping and the responses of Mr Carr, they do not lead me to reach a different view on the issue of OS mapping generally [15]. Physical features such as roads were clearly depicted on the early OS maps and were given prominence. However, these maps are silent on the issue of whether CR5 was a public or private road. This is distinct from the point made by Mr Kimbell on turnpike roads.
6. Clearly CR5 existed prior to the land being settled and the way it is represented indicates that the route was either a public or private road. I noted in the ID [71] that CR5 was a direct continuation of the public road to the south, which is now a cul de sac highway. In this respect, there is nothing to separate them. It is also shown linking with a public road at the other end. The depiction of CR5 as a through route within the highway network could lead to an inference that it was a public road. However, the weight to be attached to the OS mapping by itself will be limited.
7. Two commercial maps show CR5 in the same manner as the earlier OS maps [72]. In the case of the Greenwood map [12-13], this was compiled shortly after the land was settled. The Cary map was produced in 1832. It is apparent that some private roads as well as public roads were shown on the commercial maps. This means that they cannot be relied upon in isolation to determine the status of any route shown on them. However, again they could provide support for CR5 being part of the highway network at the time.
8. The tithe map [73] only indicates that a section of CR5 was unproductive land. It does not reveal whether this section of road had public or private status. Mr Carr accepts that the points he makes in terms of where the route is not shown across the common are speculation.
9. In respect of the highways document [74-75], Mr Carr draws attention to Section 32 of the Highways Act 1980 [10]. He says there is no evidence of when it was compiled, who compiled it or why it was compiled. However, the submissions of the parties indicate that the document was likely to have been produced during the latter part of the nineteenth century. It appears that the purpose of the list was to record the ways believed to be highways. The fact that it was located within the records held in connection with the former Honiton District Highways Board suggests that the list was drawn up in connection with this body. Further, I note that Mrs Kimbell states that the other highways listed in this document are acknowledged public roads today.
10. I have reservations about placing too much weight on this document. Nonetheless, I consider that it should carry a fair amount of weight. It

⁴ Between 1920 and 1925

provides a written record that a view was taken that CR5 was a highway during the latter part of the nineteenth century and is distinct from the records produced at a parish level. I take the document to be a list of highways believed to already exist at the time it was produced.

11. The absence of particular annotation on the second edition OS map [76] could indicate that CR5 was used by wheeled vehicles but it is not necessarily supportive of public status. However, I do not accept that the presence of gates would be indicative of private status. I note that there is no indication of any barrier across the route at point L on the Order Map on the mapping produced during the early part of the nineteenth century. CR5 is depicted to varying degrees on particular twentieth century maps [79].
12. A section of CR5 is shown outside of the numbered hereditaments on the map compiled in accordance with the 1910 Finance Act and this would generally be supportive of public status [77]. In contrast, the existing public road leading to point L and the remainder of CR5 are shown within the hereditament numbered 8. Whilst I do not rule out that the section was excluded for another reason, it cannot be determined that there is any substance in the potential alternative explanations put forward by Mr Carr. Nor is it evident whether any gate in connection with the route was locked.
13. A field book entry for hereditament 8 makes reference to a "*parish road to St Cyres Hill*" [78] and a "*Honiton water supply pipe line*" under the heading "*Fixed Charges, Easements, Common Rights and Restrictions*" [78]. I take these references to indicate that the hereditament was crossed by both a parish road and a water supply pipe line. The reference to a parish road is suggestive of it having public status. Whilst this document does not indicate where the parish road terminated on St Cyres Hill, the earlier highways list recorded a highway which continued over CR5.
14. A deduction of £75 is recorded within hereditament 8 for "*Public Rights of Way or User*" [77] and there is a separate deduction of £50 for easements. Elsewhere three deductions of £25 are recorded for rights of way, including one through field 225. This is distinct from the water pipe line. However, I accept that no firm conclusion can be reached regarding the position of any right of way for which a deduction was claimed.
15. Mr Carr draws attention to a 1920 estate sale plan showing accepted public roads outside of the sale, including a section of road to the south of point L. A section of CR5 is shown outside of the landholding but the remainder went through land owned by the estate. However, it must be remembered that the purpose of the plan was to show the extent of the estate rather than the representation of highways.

Conclusions

16. The highways list is indicative of CR5 being viewed as a highway by the end of the nineteenth century. Although I accept that there is some uncertainty regarding its provenance, it was located within the records held for the local highways board. There are clearly issues with interpreting the Finance Act records. Nonetheless, they could potentially be supportive of CR5 being a highway. I do not find that much weight can be placed on the depiction of a proportion of the route within the landholding on the estate map. The same would apply to the twentieth century OS maps.

17. The early map evidence clearly shows CR5 as a road in conjunction with the public road to the south of point L. The way CR5 is shown in connection with the road network points more to it being a public road. In contrast, there is little evidence to suggest that the route was historically viewed as a private road. Whilst the weight to be attached to the map evidence will be limited to some extent, it needs to be considered in conjunction with the highways list. The early OS maps could therefore be supportive of CR5 having already been dedicated as a highway prior to the land being settled.
18. I acknowledge that the evidence in this case is not substantial. However, I find the evidence to be more in favour of CR5 being a public road that later fell into disuse rather than a historical private road. Therefore, I conclude on the balance of probabilities that a public vehicular highway subsists that should be added to the definitive map and statement as a restricted byway.

Overall Conclusion

19. Having regard to these and all other matters raised at the hearing and in the written representations I conclude that the Order should be confirmed with the modifications proposed in the ID.

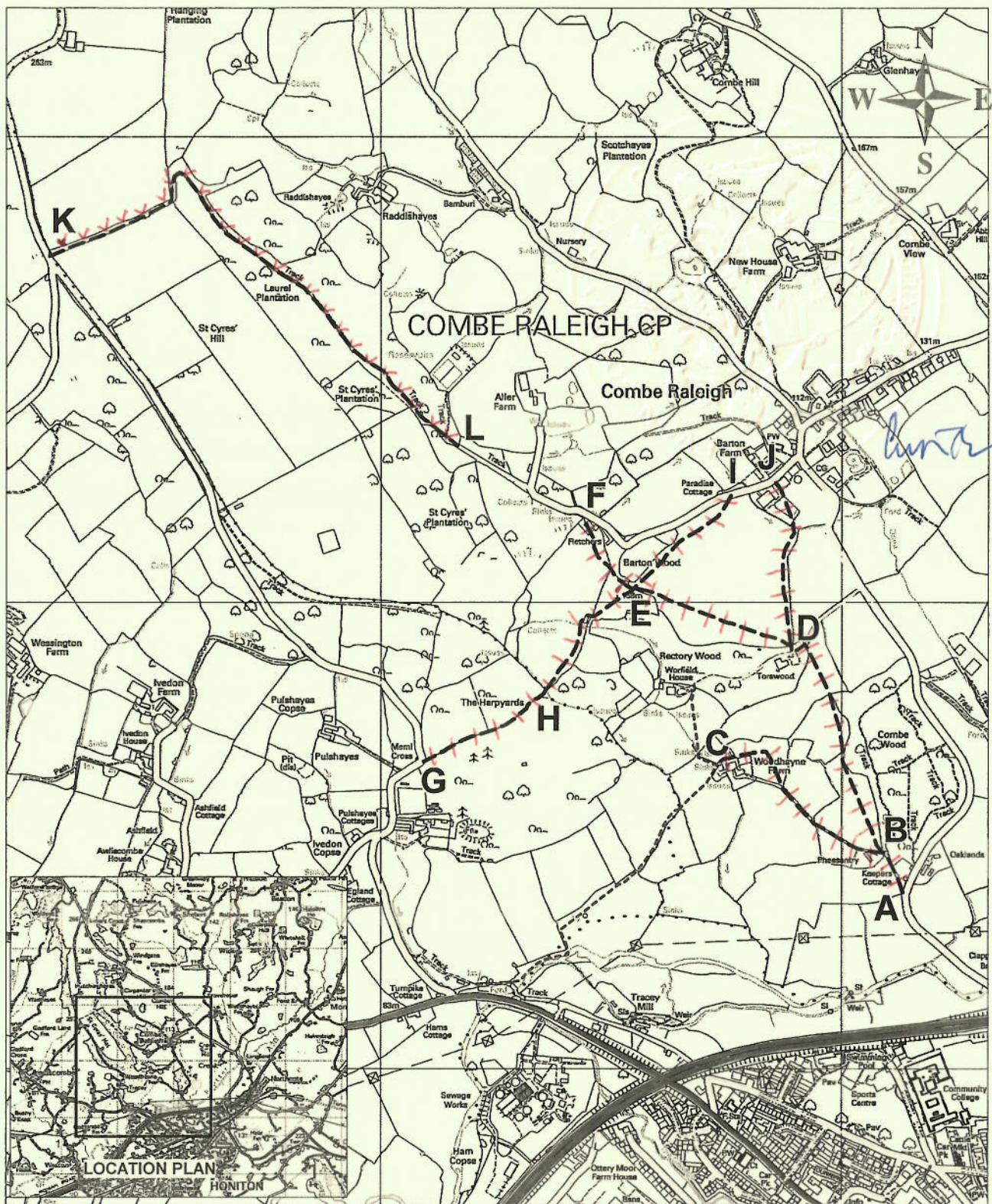
Formal Decision

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

- Delete all references to the title of the Order and insert "*Devon County Council (Restricted Byway No. 20, Combe Raleigh) Definitive Map Modification Order 2016*".
- Delete the first, second, third, fourth and sixth descriptions in Parts I and II of the Order Schedule.
- Delete all references to "*footpath*" in relation to CR5 and insert "*restricted byway*".
- Delete the final line in the fifth description in Part I of the Order Schedule and insert "*The path is shown on the plan as a broken line with small arrowheads*".
- Remove CRs 1-4 from the Order Map.
- Show CR5 on the Order Map by way of the notation for a restricted byway and amend the map key accordingly.

Mark Yates

Inspector



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DEVON COUNTY COUNCIL
 (Footpath Nos. ~~16, 17, 18, 19 and 20,~~
 Combe Raleigh and No. ~~5, Awliscombe~~)
 Definitive Map Modification Order 2016

drawing number **HCW/PROW/16/19**
 date **Apr 2016**
 scale **1:12,500**
 drawn by **NSC**

Notation *Restricted Byway*
 Footpaths to be added **V V V V**
 (Combe Raleigh: No. ~~16 A-B-C; No. 17 B-D-E-F;~~
 No. ~~18 H-E-I; No. 19 D-J; No. 20 K-L~~
 Awliscombe: No. ~~5 G-H~~)
 Existing footpaths **-----**

David Whitton
 HEAD OF HIGHWAYS, CAPITAL DEVELOPMENT & WASTE

Devon
 County Council