



Order Decision

Inquiry opened on 19 December 2018

by Sue Arnott FIPROW

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

Decision date: 01 November 2019

Order Ref: ROW/3198009

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981. It is known as the Rutland County Council District Council (Clipsham) Definitive Map and Statement Modification Order No 1 of 2017.
- The Order is dated 16 November 2017. It proposes to modify the definitive map and statement for the area by adding a footpath from Bradley Lane, Clipsham, to Clipsham Park Wood, as shown on the Order map and described in the Order schedule.
- There was one objection¹ outstanding when Rutland County Council submitted the Order for confirmation to the Secretary of State for Environment, Food & Rural Affairs.

Summary of Decision: The Order is not confirmed.

Preliminary matters

1. On 19 December 2018 I opened a public inquiry in the Council Chamber of Rutland County Council at Catmose in Oakham, having visited the site of the claimed public footpath, unaccompanied, during the previous afternoon. When matters had not been completed by the end of the following day, I adjourned until the earliest convenient date: Tuesday 24 September 2019.
2. Prior to resuming the event I made a further visit to the site on 23 September, again unaccompanied. During a break in the proceedings in the afternoon of 25 September, I carried out a full inspection of the Order route and its surroundings accompanied by supporters of the Order (Mr Crook of Rutland County Council, the applicant Mr Bacon, Mr Leach and Ms Williamson) together with the objector Professor Tregay.
3. At the close of the proceedings on Friday 27 September 2019, an application for an award of costs against the order-making authority, Rutland County Council (RCC) was made by Ms Meager on behalf of the objector. This is now the subject of a separate decision.

Service of notice

4. In his initial submission, the objector challenged the procedures followed by the RCC in respect of the service of notice on landowners of the making of the Order. Whilst notice had been served on Professor Tregay as owner of the field known as 'Bradley' through which the majority of the Order route passes, he drew attention to the fact that notice had not been served on Anglian Water,

¹ Whilst the statutory objection was lodged by Professor R J Tregay and Ms K H Ertzgaard, for brevity in this Order Decision I refer to 'the objector' in the singular (intending no disrespect to Ms Ertzgaard) since it was Professor Tregay who attended throughout the inquiry.

owners of a small plot of land located approximately mid-way along the claimed footpath.

5. At the inquiry both RCC and one of the two applicants (Mr Bacon) made clear that the claimed route does not pass through this plot; it passes to the west of it and not to the immediate east of the small pump house which stands on the land. Consequently there was no necessity to notify Anglian Water as an owner of land directly affected by the Order. Even so, RCC had consulted the water company but no relevant evidence had been forthcoming.
6. I am satisfied that the approach taken in this matter by RCC was correct. However, this raised a further issue in relation to the sufficiency of the Order map to depict the claimed footpath (which I address further below).
7. Towards the end of the inquiry it became apparent that the section of the Order route between its southern terminus (Point A) and a gate a short distance to the north (listed in the Order Schedule as a limitation) lay on land that is not in the ownership of the objector. Indeed it is said to be unregistered land and the landowner has not been identified.
8. Although RCC provided photographic evidence to show that notices advertising the making of the Order (as required by Schedule 15(3) of the 1981 Act) were placed on site in this location, the further procedure set out in sub-paragraph (3)(4) (which provides for notices on site to be addressed to "The owners and occupiers" of the land where ownership is unknown) was not pursued. In the circumstances and given my conclusions on the evidence, I have not considered it necessary to require RCC to take these steps retrospectively.

Accuracy and adequacy of the Order map & schedule

9. The Order map is drawn to a scale of 1:10 000. As a consequence, the line of dashes drawn to represent the claimed footpath would proportionally represent a path some 10m wide although the Order route is clearly stated in the Schedule to extend to a width of 3m.
10. At the inquiry the objector criticised both the line of the claimed path as shown on the application plan and its depiction on the Order map. The former was marked with a broad coloured line such that it was not possible to be sure whether the claimed path ran through the Bradley field or the field to the east. Mr Bacon accepted that, when he drew this line, he had not appreciated the need for greater accuracy although he felt there was no confusion amongst the claimants as to where the walked path lay on the ground.
11. Neither, it seems, was RCC in any doubt about the claimed route, although it chose to draw the Order map at 1:10 000 because that is the scale of the definitive map on which, if confirmed, the path would ultimately be recorded.
12. I agree with the objector that it is unhelpful to be presented with this map when the use of a larger scale would have clarified the route for the benefit of all parties in this case as well as the public in general, even if when transferred to the definitive map it would be scaled down. However, the Order map is not misleading and, with respect to scale, it complies with statutory advice².

² In Defra Circular 1/09 version 2 October 2009 at paragraph 4.17: "The scale of the map referred to in the order is prescribed in the 1993 Regulations and must not be less than 1:25 000 although larger scale maps should be used wherever practicable."

13. The purpose of the Order Schedule is to provide further clarification over the way at issue. In this case the Order route is described as extending "*From the northern terminus of Bradley Lane to the south west corner of Clipsham Park Wood*".
14. The objector questioned the reference to the end of Bradley Lane and the grid reference given for point A (SK 9691 1659). However, a closer examination of the issue on a larger scale map leads me to conclude that this grid reference does in fact encompass the point at which the claimed footpath leaves the definitive Bridleway E133 although the exact termination of Bradley Lane was a matter left unanswered. Again, I find the description is not actually misleading although it could have been a little more specific.
15. RCC accepted that the grid reference given in the Schedule for the location of the gate just north of point A (SK 9616 1658) was incorrect and requested that, if minded to confirm the Order, I modify this accordingly.

The Main Issues

16. The main issue here is whether the evidence before me is sufficient to show that, in the past, the Order route has been used in such a way and to such an extent that a public footpath can be presumed to have been established.
17. RCC made the Order under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) on the basis of events specified in sub-section 53(3)(c)(i). If I am to confirm it I must be satisfied that, on a balance of probability, the evidence shows a public right of way subsists along the claimed route, described in the Order between the points labelled A and B.

Reasons

18. Firstly, I have examined the several old maps and other historical documents discovered by RCC which relate to the Clipsham area. The authority concluded, as do I, that these contribute nothing more than to confirm that there is no substantive evidence to support a way (public or private) of any antiquity along the Order route. That finding is not disputed. A track is shown at various times in the distant past, but not consistently over time and not necessarily depicting a public right of way. I can attribute little weight (if any) to these maps other than to confirm there has been a track in this position in the recent past but they provide no evidence that it was used by public.
19. The case in support of the Order is based on the presumed dedication of a public right of way under statute, the requirements for which are set out in Section 31 of the Highways Act 1980. For this to have occurred, there must have been use of the claimed route by the public on foot, as of right and without interruption, over the period of 20 years immediately prior to its status being brought into question so as to raise a presumption that the route had been dedicated as a public footpath. This may be rebutted if there is sufficient evidence to show there was no intention on the part of the relevant landowner(s) during this period to dedicate the way for use by the public; if not, a public footpath will be deemed to subsist.
20. The standard of proof required to justify confirmation of an Order is higher than that initially required to make it, being judged on a balance of probability. At the inquiry RCC submitted that the evidence is sufficient to meet that test.

Background

21. In September 2013 Professor Tregay and Ms Ertzgaard purchased land at Clipsham including the Bradley field. Through their agents, the new owners deposited documents with RCC on 21 February 2014 under the provisions of Section 31(6) of the Highways Act 1980 (the 1980 Act). In effect this identified the land in their ownership, the public rights of way they admitted and, by implication, any others they did not.
22. The procedure then implemented by RCC³ entailed posting notices on the land advising the public of the deposition. This drew to the attention of several local residents that their right to use the Order route was being challenged. A period of negotiation followed but, when no agreement was reached, an application was made to RCC by Mr Bacon and Mr Ashpole seeking to record the Order route on the definitive map as a public footpath. This application was supported by evidence of use from 13 Clipsham residents and it was countered by an objection from the landowners. Having investigated and considered the evidence available at that time, RCC concluded there was insufficient evidence to show that the way had been used by the public. In response, on 22 May 2017 Messrs Bacon and Ashpole made a second application supported by a further 7 user evidence forms from Clipsham residents. This was again opposed by the landowners who provided information to substantiate their case.
23. On considering the additional evidence, on 18 August 2017 RCC concluded that a public right of way had been reasonably alleged to subsist and that an Order should be made.

When was the status of the way brought into question?

24. When considering the evidence in relation to Section 31 of the 1980 Act, the first matter to be established is when the public's rights were brought into question.
25. The residents of Clipsham who claim to have used the Order route initially felt this had occurred with the more recent deposit of documents by the present landowners (in 2014) since it was this which prompted the application to record the way. Local people became aware of the challenge to their use when the statutory notices were put up by RCC, broadly coinciding with notices erected by the landowners warning would-be trespassers that the land was private.
26. However, during its investigations, RCC discovered in its records an earlier statutory declaration made by previous landowners in 2008. Consequently RCC concluded that this was effective in calling into question the right of the public to walk between points A and B and therefore calculated the statutory 20 year period accordingly (1998-2008).
27. This conclusion has not been challenged. Although I have some reservations over the ability of a declaration such as this to bring the status of the way into question when local people were not made aware that this had occurred, I accept RCC's reasoning that the statutory declaration made in 2008 was then included in a public record that was freely open to inspection.

³ In accordance with the Commons (Registration of Town and Village Greens) and Dedicated Highways (Landowner Statements and Declarations) (England) Regulations 2013 as described in "Guidance to Commons Registration Authorities in England on Sections 15A to 15C of the Commons Act 2006" (February 2014)

28. It follows from this that I need to examine the claimed use by the public during the preceding twenty years, April 1988 - April 2008.
29. One other possible challenge needs to be addressed: that is a sign said to have been first erected by a previous landowner (Mr Allen) but more recently replaced with similar wording by Professor Tregay. This reads "PLEASE KEEP TO THE FOOTPATH" and is positioned on Bridleway E133 to the north west of Point A and south west of the grain store. The reason for a sign in this location is somewhat confusing and none of the claimants recalled seeing it when originally erected. It may possibly have been intended to apply to anyone walking from this point across to the grain store to join the claimed route but in my view it would be somewhat tenuous to deduce that this brought into question the public's right to walk directly between points A and B.

Evidence of use by the public (April 1988 – April 2008)

30. If a presumption of dedication is to be raised, qualifying use by the public during the relevant period must be shown to have been enjoyed 'as of right', without interruption, and to have continued throughout the full twenty years. Use 'as of right' is interpreted as being use by the public that does not take place in secret, is not by force and is not on the basis of permission.
31. In support of the claimed route is the written evidence of use from 20 local people who completed standard forms. One of these claims use after the relevant period and therefore must be discounted. Nine of the claimants prepared additional proofs of evidence, 10 gave evidence in person at the inquiry⁴ and all submitted to cross-examination.
32. In support of the Order, Ms Williamson submitted it was possible to extrapolate the total number of regular users from comments made by individual claimants. In her estimation this amounted to 54 people, including 5 claiming a full 20 years' use (increasing to 10 when adding in family and friends). My own examination of the evidence forms suggests there may have been some double-counting here but nevertheless I accept the general point that the number of individuals making statements may not be the sum total of those walking the path.
33. My initial assessment of the evidence shows all 19 people were using the route regularly in 2008 (with family and friends) but only 5 individuals (from 3 separate households) were doing so at the start of the relevant period in 1988. Of these, Mr White⁵ stated he used the route on average 2 times per month from 1986 onwards. Mrs Wheatley had grown up in Clipsham but moved away, returning to the village in 1980; thereafter she used the path 3 or 4 times a week as part of a circular walk for dog walking. Her daughter used the path monthly on visits to Clipsham as did her son, Mr V Wheatley, but he lived abroad until 1989. Mr and Mrs Bacon began using the claimed route in 1979 and 1983 respectively.
34. I found all the claimants who spoke at the inquiry to be credible witnesses, although it is true that the details of their claimed use conflict in some respects with other evidence submitted by or on behalf of the objector.

⁴ As highlighted by the objector, these 10 people were from 7 separate households in the village, reducing the weight I place on this evidence to a degree.

⁵ Three other family members are named on his evidence form but this is signed only by Mr White himself. I am therefore reluctant to place weight on this as the direct evidence of all four individuals.

Was the claimed use 'with permission' or secretive?

35. Before addressing those conflicts, I note that none of the claimants were ever challenged whilst walking the claimed footpath. None of their claimed usage took place in secret; it was open and readily observable. None of these people reported ever seeing notices that prohibited their use prior to 2014, or notices that granted them permission to walk there. One family (Mr and Mrs Beanland) had approached Mr Allen in 2007/8 to check their use of the track beyond point B; when clarifying this evidence, Mr Beanland wrote "*as far as I was concerned 'permission' was being sought solely for use of the headlands*". Similarly, Mr Cubley initially noted on his form that he had been given permission to use the way by a previous owner, but at the inquiry he described speaking to a man (who was most probably Mr Allen) around 2006 who gave his 'tacit approval' to use of the path rather than 'express permission'. In both cases Mr Allen was not the owner of the land at the time; I have no evidence before me to indicate whether, as a tenant of the land, he was in a position to grant permission for use by members of the public on behalf of the then landowner.
36. Some other claimants refer to their use being acknowledged by Sir David Davenport-Handley, the former owner of the Clipsham Park Estate. He sold the Bradley field and other neighbouring land in 1962/3 and therefore it was not in his gift to grant access to others although he retained a private right of access for himself. Whilst some people may have believed Sir David retained ownership of the land and therefore that he endorsed their use, the subjective belief of the claimants is not at issue⁶ here.
37. In short, I find that the claimed use was not 'with permission' or in any way secretive.

Was the claimed use 'by force'?

38. Although not the main thrust of the objector's argument, the question arises as to whether the claimed use was 'by force' and therefore not 'as of right'. This stems from the submission made by the objector that the evidence points to the presence of a fence at point B to contain the sheep which, until the sale of land in 1987, were kept in the Bradley field. It is also contended that at certain times in the past the gate just north of point A was locked.
39. In both instances the issue is whether the claimants 'forced' their way over or around these barriers in order to use the claimed footpath, and whether one or both barriers caused an interruption to the otherwise continuous use that was taking place.
40. On the matter of the fence, I have before me the evidence of Mr J Bodily, son of Mr I Bodily who owned and farmed the land from the early 1960s until its sale in September 1987. He confirmed that, during his father's time, the field was laid to grass for grazing sheep in the summer months (sometimes with pigs and horses). This was supported by an aerial photograph taken in 1984 on which sheep can clearly be seen in the field.
41. It was not disputed that Messrs Bodily maintained a stock-proof fence along the eastern boundary that was topped with a single strand of barbed wire.

⁶ *R v Oxfordshire County Council and others ex parte Sunningwell Parish Council (HL)*[1999] UKHL 28, [2000] 1 AC 335,[1999] 3 WLR 160, [1999] 3 All ER 385

However, at the inquiry, Mr J Bodily admitted that, in order to feed pheasants for a rough shoot run by his father, they themselves would regularly step over the fence into Clipsham Park Wood at point B.

42. Of course, that does not signify a crossing for the public, but it would be quite understandable if local people interpreted an informal stepover as a convenient access point and made use of it themselves. Whilst I was able to see remnants of the barbed wire trampled into the ground at this point alongside the dilapidated fence, there is no evidence from which to ascertain exactly when it ceased to be an effective barrier. However, after the sale in 1987 the land was no longer grazed, the necessity for a stock-proof fence ceased and there would have been no agricultural imperative to repair any breaches thereafter.
43. Without further information to indicate otherwise, at best this evidence supports the evidence of a fence pre-1987. This may or may not have continued to function as a barrier at point B after the sale to Mr Clark but none of the claimants recall other than a gap at this point. Given the use previously made of it by Messrs Bodily, I deduce that, even if still in place, it could easily be stepped over and would therefore be unlikely to prevent access by the public from 1988 onwards or to render their use 'by force'.
44. Turning to the gate just north of point A, Mr Featherstone recalled that this was installed around the time the grain store was constructed by Mr Bodily (c1984)⁷. Mapping evidence shows there had previously been a gate across Bradley Lane immediately south of point A⁸ which presumably had contained the sheep in Bradley field previously. Since this earlier gate also provided access from Bradley Lane to the definitive bridleway, it would be surprising to find this had been locked at any time.
45. I therefore have no difficulty accepting Mr Bacon's statement that when he first started to use the claimed footpath in the late 1970s he was able to do so without climbing any gates. The earlier gate appears to have been moved to its present position in the 1980s but before the period that is relevant here; Mr J Bodily was certain that this gate was normally locked with a padlock and chain. His statement is difficult to reconcile with Mr (and Mrs) Bacon's recollection that from 1983/4 they were both able to walk the route with no difficulty, including with their dog from 1986 onwards.
46. However, the land was sold to Mr Clark some 6-7 months before the start of the relevant period. I heard from witnesses Mrs Clark and Mr Elson that Mr Clark insisted the gate be kept locked though in practice it would often be open whilst contractors were working in the fields. From their evidence it seems that neither witness was on site regularly throughout the year, Mrs Clark usually finding the gate open because farming activities were taking place there, whilst Mr Elson recalled needing to get a key when he worked for Mr Clark.
47. Mr Featherstone explained that he had erected notices on the fence adjacent to this gate (although not until after the relevant period) but in his evidence stated this was "*to deter ... people climbing over the gate and also the section of fence immediately between the gate and my own property*". However at the inquiry he was unable to say that the gate was always locked.

⁷ According to Mr Featherstone, this was also the time that Mr Bodily moved to live in the house in which he (Mr Featherstone) is now resident.

⁸ Noted on the Ordnance Survey base map used by HM Land Registry for title number LT372691

48. In fact claimants who gave evidence to the inquiry spoke of sometimes opening the gate, occasionally climbing over it (even if not locked) and some said they would bypass the gate by walking through a gap at the side where the metal fence had fallen down. There were also many times when the gate was left open and they simply walked through. In fact photographs show that this gate had a chain and padlock around the post at the hinged end while the gate was actually unlocked which may have misled some people.
49. My conclusion is that once Mr Clark took ownership, the gate locking regime was somewhat intermittent despite his clear instruction to keep it fastened. With no livestock on the land, there was no need for a totally secure boundary and therefore the gap at the side of the gate seems to have been allowed to continue for many years. When Mr Clark sold to Mr Allen in 1995 it appears that security became even more lax; even when, after a theft from the farm buildings in late 1990s, the gate was locked, it is not clear for how long this continued and there is no evidence to show the gap at the side was addressed until Mr Featherstone's signs were installed in 2009.
50. There is a further gate that stands across the claimed route a short distance to the north of the grain store that still remains something of a mystery. All the claimants who gave evidence at the inquiry recalled this always being fixed open so they were able to walk through, but this was regarded as something of a joke by many because there was no fencing attached at either side. It clearly had a purpose during Mr Bodily's tenure, most probably to further contain sheep once the grain store was built but there is no evidence that the gate was ever locked or indeed ever closed during the relevant period.
51. Although the matter is not completely without doubt, on balance I am satisfied that throughout the relevant period, the use that took place was 'as of right' being without force, without permission and without secrecy.

Was the claimed use continuous and without interruption?

52. In order to raise a presumption of dedication the claimed use must have continued throughout the whole of the twenty-year period without interruption.
53. There were two features that may possibly have interrupted use of the claimed footpath, both of which I have already addressed in the preceding paragraphs, namely the gate north of point A and the fence at point B.
54. I have concluded that on those occasions when this gate was actually locked, the claimants were able to continue on their way by stepping to one side and walking through a gap where the adjacent fence had fallen down. As a result I find there to have been no interruption to use caused by this gate.
55. In respect of the fence, none of the claimants recall ever having difficulty walking through what they describe as a gap between the Bradley Field and the woodland. Since the necessity to keep in sheep had ceased before the start of the relevant period, there can be no presumption that this fence retained its integrity at this point for this reason, especially since this had previously been used as a step-over by Messrs Bodily.
56. On balance, I reject the submission that this would have prevented passage by the public from September 1988 onwards and therefore conclude that it did not interrupt the claimed use at any material time.

Was the claimed use sufficient to raise a presumption of dedication?

57. Whilst in total the number of claimants (19) and the frequency of their use is low, RCC submitted that this level of use is in line with that of other local public rights of way, including Bridleway E133 which runs across the same land holding and connects with the Order route. This was supported by the personal evidence of RCC's Rights of Way Officer, Mr Crook, who has been a regular user of the bridleways around Clipsham in the summer months.
58. Whilst the objector submitted that the claimants' evidence shows usage by fewer people than would have been expected, Ms Williamson responded by pointing out that in the context of the population of Clipsham (reported to total 91 in 1991, 120 in 2001, rising to 166 in 2011) the number of claimants represents a reasonable proportion of those resident in the village.
59. For the objector, Ms Meager submitted that in the case of *Mann v Brodie [1885]* it was held that "*the number of users must be such as might reasonably have been expected if the way had been unquestionably a public highway*". With that in mind she drew attention to the early years of the relevant period, arguing that the numbers of people at that time were simply not enough to represent the public.
60. Of the 10 people who gave evidence in person at the inquiry, only Mr and Mrs Bacon had been using the route regularly at the start in 1988. Mr Wheatley had resumed his use (monthly) on his return from America in 1989. There is also the written evidence from Mr White whose use (twice monthly) with other family members from 1986 onwards I noted at paragraph 33 above, together with Mrs C Wheatley (3-4 times weekly) and Ms A Wheatley (monthly). The Spiers family began their use in 1989/90 (twice monthly), but it is not until 1993-5 when the Wicikowski and Cubley families combine to raise the level of use to something approaching a sufficient level and frequency of user.
61. Whilst I accord greater weight to the evidence of those people who gave evidence in person and submitted to questioning, the written statements from the remaining claimants are broadly consistent with the oral evidence yet do not clarify the precise line they took at the gate or the gap in the fence.
62. Ms Meager suggested that the level of use may have been exaggerated but, having listened to the witnesses at the inquiry, I am quite satisfied they did use the route as they described. Yet, even extending the utmost latitude to the evidence of use, both written and verbal, and the weight I place on it, I cannot accept that so few path users (effectively from 4 families) can be sufficient to represent public use in the first five years of the 20 year period, even in a rural context such as this.
63. Consequently, the case for dedication under Section 31 of the 1980 Act must fail since no presumption is raised by the evidence submitted. I therefore conclude that the evidence before me is not sufficient to demonstrate continuous use by the public throughout the relevant 20 years such as to raise a presumption of dedication in relation to the claimed public right of way.

The intentions of the relevant landowners

64. Having reach this conclusion, there is no need for me to further examine the somewhat scant evidence of steps taken by previous owners to make path users aware that there was no intention to dedicate the route as a public path.

Cul de sac issue

65. Similarly, since I have concluded that the Order should not be confirmed for other reasons, the potential difficulty posed by the nature of the claimed footpath as a cul-de-sac does not arise. However, since this is an issue on which the objector's claim for costs rests, I will briefly state my conclusions.
66. Firstly, the evidence does not show that in practice the Order route was actually used as a cul-de-sac; all the claimants in this case continued beyond point B to follow various routes within Clipsham Park Wood before, throughout and since the relevant twenty-year period.
67. At the inquiry I made clear that it is not my role to determine whether any rights of way may have been established within the woodland. Even so, I am mindful of the principle established in the case of *Trevelyan v Secretary of State for the Environment, Transport & the Regions* [2001] EWCA Civ 266 (*Trevelyan*) where⁹ Lord Phillips made clear "*the scheme of the procedure under Schedule 15 (to the 1981 Act) is that if, in the course of the inquiry, facts come to light which persuade the inspector that the definitive map should depart from the proposed order, he should modify it accordingly, subject to any consequent representations and objections leading to a further inquiry.*"
68. It therefore follows that I am not prevented from considering evidence relating to the route beyond point B but, in this scenario, I decline to do so for two main reasons. Firstly, because of the tenure of Clipsham Park Wood, any claim that a public right of way has been established would need to be considered under the common law approach since the statutory scheme provided by Section 31 of the 1980 Act does not apply to Forestry Commission land¹⁰. The case for the Order route has not been argued at common law.
69. The second reason is that whilst all the claimants describe walking to the iconic 'Yew Tree Avenue' within the woods, the evidence before me does not point to one single route. Given that this would need further investigation, I consider it inappropriate for me to pursue this as part of my determination of this Order.
70. Suffice it to say that, insofar as it affects my decision on the ability of A-B to be recorded as an apparent cul-de-sac, I find no incontrovertible evidence *before me* that might preclude the possibility that a public right of way *might* have been established beyond point B. However, I am mindful of the fact that the Forestry Commission was not a party at the inquiry.
71. Public rights of way aside, it was submitted by RCC that Clipsham Park Wood can properly be considered a place of popular resort sufficient to explain the existence of A-B as a cul-de-sac, such places often including a place of natural or scenic beauty. When considered by the Courts, various cases have shown that it is not necessary for a highway to lead to another highway but must lead to a definite destination.
72. As RCC highlighted, the woods have, as a matter of fact, been used by the claimants throughout the relevant period and longer, without force or challenge. The brief responses from the Forestry Commission to questions concerning public access within the wider woodland¹¹ state merely that the

⁹ At paragraph 23

¹⁰ Including land held on a 999 year lease

¹¹ As distinct from visits restricted solely to Yew Tree Avenue

basis on which the wood is held does not allow for public recreation. The terms of the 999-year lease were not revealed so it is not possible to elicit how the obvious and well-promoted access to Yew Tree Avenue is facilitated.

73. There is clearly no official provision for public access but it is apparent from the evidence presented by the claimants that there has been de facto access throughout the woodland for many more years than twenty.
74. In none of the cases referred to by counsel for both parties are the facts directly comparable to the circumstances here but I am satisfied that it would not have been wholly inappropriate to record A-B as a public footpath had the evidence of use been sufficient to warrant confirmation of this Order.

Summary

75. To summarise, I repeat my conclusions in paragraphs 62 and 63 that despite the use claimed by the many people who completed forms and gave evidence at the inquiry to confirm their use of the Order route, taken together with that supplied by and presented to the inquiry by the objectors, the evidence as a whole is not sufficient to show the necessary level of user over the early years of the relevant period such as to raise a presumption of dedication as a public right of way.
76. I therefore conclude that, even though the evidence provided by the applicants and subsequently gathered through investigation, may have been enough to reasonably allege the existence of a public right of way under the statutory scheme, it is not sufficient to show that, on the balance of probability, a public footpath subsists over the Order route.

Conclusion

Having regard to the above and all other matters raised at the inquiry and in the written representations, I conclude that the Order should not be confirmed.

Formal Decision

77. I do not confirm the Order.

Sue Arnott

Inspector

APPEARANCES

In support of the Order

For the Order-Making Authority:

Mr D Stedman-Jones Of Counsel; on behalf of Rutland County Council

Who called:

Mr S M Crook Public Rights of Way Officer; Rutland County Council

Ms A Williamson Representing a group of residents of Clipsham Village

Mrs M Miles

Mr R Miles

Mr V Wheatley

Mr L Wicikowski

Mr Cubley

Mr E L Gardner

Mrs F Leach

Mr S Leach

Mr C Bacon

Mrs B Bacon

Opposing the Order

For the objector

Ms R Meager Of Counsel, instructed by Roystons Ltd; representing the
objector

Mr J Featherstone

Mr J Bodily

Mrs S L Clark

Mr G Elson

Prof R J Tregay Objector

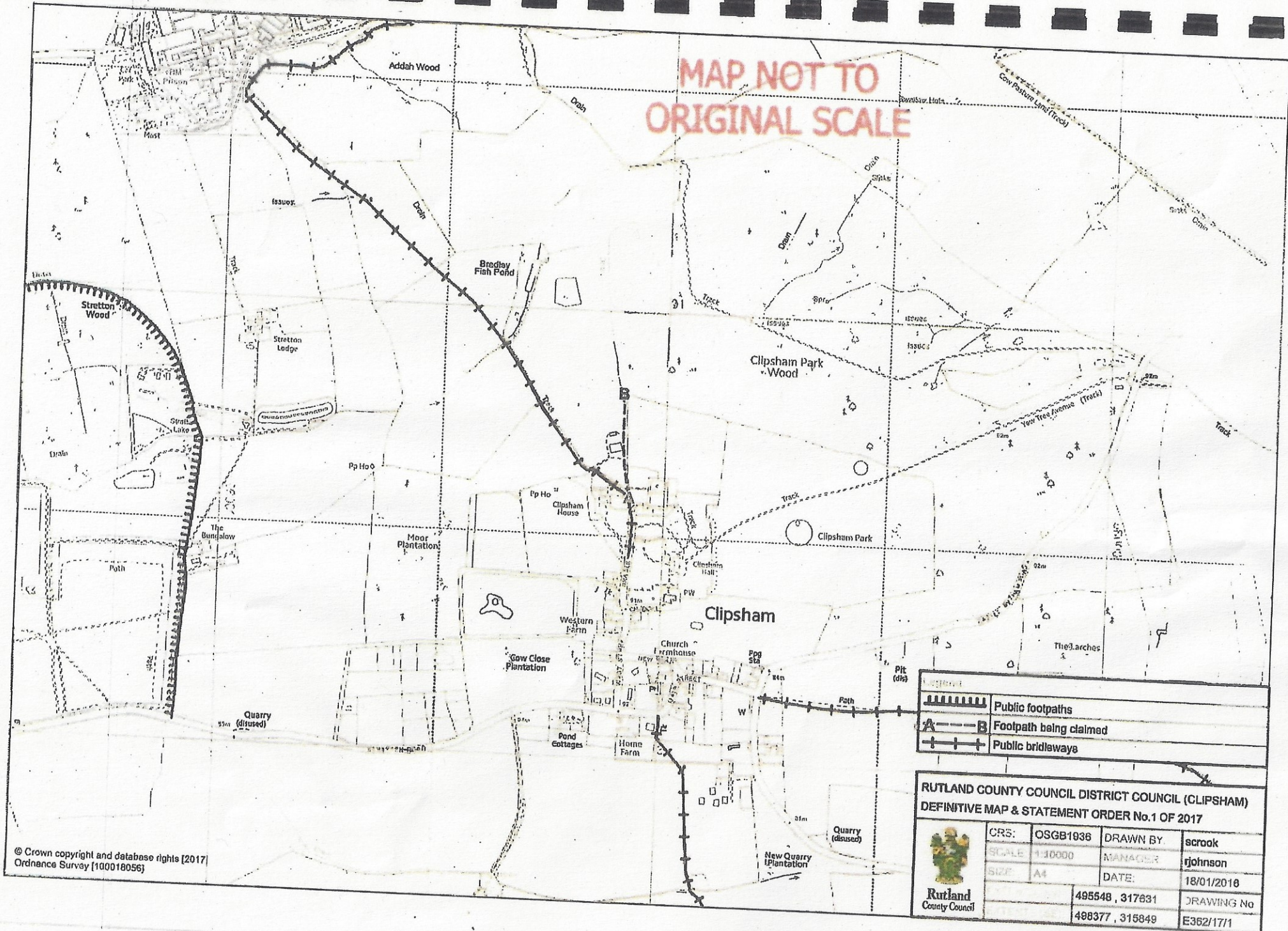
DOCUMENTS




1. Copy of the statutory objection
2. RCC's statement of grounds
3. Statement of case submitted by Ms A Williamson on behalf of a group of residents of Clipsham Village with appendices
4. Statement of case submitted by Roythornes Ltd on behalf of Professor R J Tregay and Ms K H Ertzgaard
5. Proof of evidence of Mr S M Crook of Rutland County Council
6. Proof of evidence of Ms A Williamson
7. Proofs of evidence of Mr E Gardner, Mrs B Bacon, Mr C Bacon, Mr S Beanland, Ms F Leach, Ms M Miles, Mr S Leach, Mr R Miles & Ms CM Wheatley
8. Proof of evidence of Professor R Tregay
9. Statements of Mr J Bodily, Mr G Elson, Mr J Featherstone, Mr R Allen & Mrs S L Clark

Submitted at the inquiry


10. Various photographs submitted by Ms Williamson
11. Letter from Forestry Commission to Professor Tregay dated 22 October 2018
12. Copy of aerial photograph dated 1983 submitted by RCC
13. Supplementary proof of evidence of Professor Tregay dated July 2019
14. Supplemental proof of evidence of Ms Williamson dated 27 August 2019
15. Summary proof of Professor Tregay dated September 2019
16. Email from Forestry Commission to RCC sent 14 October 2014
17. Emails to Professor Tregay from Mrs S Clark (20 September 2019) and Mr R Allen (14 & 15 September 2019)
18. Results of internet search for "tripadvisor clipsham park wood"
19. Photographs of statutory notices displayed on site submitted by RCC
20. Photograph showing position of "Please keep to the footpath" sign submitted by Professor Tregay
21. Plan at scale 1:1500 illustrating grid references of key points
22. Plan showing the extent of adopted highway (Bradley Lane)
23. Photographs showing Bradley Lane taken on 25 September 2019
24. Aerial photograph of part of the Order route taken in 2000
25. Aerial photographs illustrating distance of gate from boundary
26. Extract from the definitive map

MAP NOT TO ORIGINAL SCALE



	Public footpaths
	Footpath being claimed
	Public bridleways

RUTLAND COUNTY COUNCIL DISTRICT COUNCIL (CLIPSHAM)
DEFINITIVE MAP & STATEMENT ORDER No.1 OF 2017

 Rutland County Council	CRS:	OSGB1936	DRAWN BY:	scrook
	SCALE:	1:10000	MANAGER:	rjohnson
	SIZE:	A4	DATE:	18/01/2016
			495548, 317631	DRAWING No
		498377, 315849	E362/171	

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