

---

## Order Decision

On papers on file.

**by Barney Grimshaw BA DPA MRTPI(Rtd)**

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

**Decision date: 04 November 2020**

---

### **Order Ref: ROW/3252487**

- This Order is made under Section 53(2)(a) of the Wildlife and Countryside Act 1981 and is known as The Warwickshire County Council Definitive Map Modification Order, Parishes of Ashow and Kenilworth, Sheet SP37SW, Order No. 1 2020, Sections of Path Nos. W212 and W219.
- The Order is dated 11 March 2020 and proposes to modify the Definitive Map and Statement for the area by deleting one section of footpath and upgrading another to bridleway status as shown on the Order Maps and described in the Order Schedule.
- There were no objections outstanding when Warwickshire County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

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

---

### **Procedural Matters**

1. I have not visited the site, but I am satisfied I can make my decision without the need to do so.
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)(ii) 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 a highway that is shown in the definitive map and statement as a highway of a particular description ought to be there shown as a highway of a different description.
4. The requirement of Section 53(3)(c)(iii) of the 1981 Act is that the evidence should show that there is no public right of way over land shown in the map and statement as a highway of any description.
5. As this Order is concerned with possible unrecorded vehicular routes, it is also necessary to have regard to the provisions of Section 67 of the Natural Environment and Rural Communities Act 2006 (the NERC Act) which extinguished rights of way for mechanically propelled vehicles (MPVs) subject to certain exceptions.

## Reasons

6. The purpose of this Order is to correct errors in the definitive map and statement. On the definitive map the route W212 (Points A-B) is shown as public footpath but it is described in the statement as bridleway. Route W219 between Points B and D is shown on the map as a footpath and between Points D and E as bridleway but, in the statement the whole route is described as bridleway.
7. Warwickshire County Council, the Order Making Authority (OMA), states that the whole of the Order route is known as Rocky Lane and was a public vehicular highway linking Glasshouse Lane and Ashow Road. This conclusion is supported by documentary evidence considered. It is also recorded in the authority's list of highways maintainable at public expense although this list does not specify the status of the route.
8. The Kenilworth Bypass (A46) was built with Rocky Lane passing over it on a bridge. In order for this to take place the existing route was stopped up in part, by a Side Roads Order made in 1970, and a new route provided on a slightly different alignment (Points B-C) with the status of a bridleway. This left two sections of vehicular route (Points A-B and C-E) linked by a bridleway.
9. A stopping up order was then made in 1972 for the route from the A46 to Ashow Road (Points C-E) which took away public rights with vehicles but retained bridleway rights. The remaining section of the Order route (Points A-B) continued to be classified as a vehicular highway. Then, in 1977, a Permanent Traffic Regulation Order (PTRO) was placed on this section prohibiting the use of motor vehicles. However, this order did not change the status of the route which continued to be that of a vehicular highway.
10. In a review of the definitive map in 1991 the whole route was recorded as a bridleway. It is not known why the section A-B was added to the map as there had been no legal order to change its status.
11. In 1998 a new definitive map was produced which appears to have introduced further errors. The section A-D was shown as a footpath and that from D-E shown correctly as a bridleway although the whole route was described as a bridleway in the statement.
12. The current Order, as made, proposes to correct these errors by deleting section A-B from the definitive map as it is still a vehicular road, albeit subject to the PTRO, and to upgrade section B-D from footpath to bridleway.
13. However, in 2006 the NERC Act came into force and at that time section A-B was recorded in the definitive map as a bridleway. Even though this was recorded incorrectly, under the provisions of that Act any existing public right to use such a route with mechanically propelled vehicles (MPVs) was then extinguished. This means that it would now be appropriate for the route to be recorded in the definitive map as a Restricted Byway, a route open to all traffic other than MPVs, and the OMA has requested that the current Order be modified to reflect this.
14. A number of objections were made to the Order when it was published but these were made on the grounds that it was thought that it would take away all public rights to use section A-B of the Order route. All these objections have

now been withdrawn as a result of clarification by the OMA and the proposed modification to record the route as a Restricted Byway.

15. It is my view, on the balance of probability, that there are clear errors in the definitive map which will be corrected by this Order, subject to its modification as referred to above.

### **Conclusions**

16. Having regard to these and all other matters raised, I conclude that the Order should be confirmed subject to the modification referred to above.

### **Formal Decision**

17. I propose to confirm the Order subject to the following modifications:

- In the Order, delete the reference to section 53(3)(c)(iii) of the Wildlife and Countryside Act 1981;
  
- In the Schedule to the Order, Part I, delete the first two paragraphs and the sub-heading **"Description of path or way to be amended"** and add:

#### ***"Description of paths or ways to be amended"***

*The section of the route shown on the Warwickshire Definitive Map as Public Footpath W212 and as a dashed black line between points A and B on the W212-W219/MEB/Order Plan 1 is to be shown as Restricted Byway W212*

*The section to be amended starts from a point on the D7079 Glasshouse Lane labelled Point A (Grid reference SP 3033 7134). It runs generally south east for approximately 230 metres to Point B (Grid Reference SP 3048 7117).*

*The width of the route is 15 metres."*

- In the Schedule to the Order, Part II, delete the reference to the entry for W212 and add:

#### **"W212**

##### **Restricted Byway**

**Length:** 232 metres

##### **Description**

Surface type unspecified. Width 15 metres

##### **From:**

SP3033 7134

D7069 Glasshouse Lane

##### **To:**

SP3048 7117

W219

##### **Map Sheet:**

SP37SW

##### **Connects with:**

D7069 W219

##### **Limitations/Conditions:"**

- Amend Order Plan 1 accordingly

18. The proposed modification would have the effect of showing as a highway of one description a way which is shown in the Order as a highway of another description. It is therefore required by virtue of Paragraph 8(2) of Schedule 15 to the 1981 Act that notice of the proposal to modify the Order be given and an opportunity for objections and representations to be made regarding the proposed modification.

*Barney Grimshaw*

Inspector



