



Order Decision

Inquiry held on 31 July 2019

Site visit undertaken on 30 July 2019

by Mark Yates BA(Hons) MIPROW

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

Decision date: 14 January 2021

Order Ref: ROW/3213248M

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the 1981 Act") and is known as The Cornwall Council (Upgrade of Footpath to Restricted Byway together with the Addition of Restricted Byways at Zelah in the Parish of St Allen) Modification Order 2017.
- The Order was made by The Cornwall Council ("the Council") on 28 March 2017 and proposed to record the route ("the claimed route") as a restricted byway in the definitive map and statement, 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.

Procedural Matters

1. This decision should be read in conjunction with my interim decision ("ID") of 16 September 2019, with the numbers in square brackets representing particular paragraphs in the ID. All of the points referred to below correspond to those delineated on the Order Map. The claimed route has two distinct sections, namely points A-B-C ("the western section") and points D-E ("the eastern section").
2. My proposed modifications involved amending the status of the route from restricted byway to footpath. Three parties objected to the proposed modifications, namely the Council, Mr Fraser for the Ramblers' Association and Mr Bigg of the British Horse Society. I have considered these objections from the written representations of the parties.

Main Issues

3. I outlined the relevant matters in relation to the Order, as made, in paragraphs 2-6 of the ID. In reaching my conclusion that the claimed route should be recorded as a footpath I had regard to the evidence of recent use by the public. I did not view the documentary evidence to be of sufficient weight to record the route as a restricted byway. The issue now is whether there is any new evidence or argument which has a bearing on the modifications proposed in the ID.

Reasons

Consideration of the evidence and submissions

4. A public footpath presently exists between points A-B. The remainder of the claimed route has no recorded public status. Nonetheless, the map evidence
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- outlined below is supportive of the route being a through route and connecting with recognised highways at points A, C, D and E. Additionally, a former chapel is located on the eastern section and Mr Bigg points out that the claimed route would have historically provided a means of access to the chapel.
5. I have now been provided with copies of commercial maps produced by Martyn (dated 1748) and Greenwood (originating from 1826 or 1827). The Martyn map only possibly shows the eastern section. In contrast, this section is clearly evident on the Greenwood map. Its depiction as a short link between recognised highways provides some support for this section of the claimed route being part of the local highway network. Given the scale of the Greenwood map, it is likely that only significant features in the landscape were shown and this could potentially point to a road used by vehicular traffic.
 6. Given the purpose of the tithe process, I do not find that there is any new information or argument which has a significant bearing on the weight that should be attached to the tithe documents [7]. Nonetheless, the depiction of the claimed route on the tithe maps for Perranzabuloe and St Allen as a through route could provide support for it being a highway and possibly a public road. The reference in the accompanying apportionment for the parish of St Allen to a section of the route falling within the land recorded as "*Waste and Roads*" points to it being a road used by vehicular traffic.
 7. A number of Ordnance Survey ("OS") maps have been provided, which span the latter part of the nineteenth century and a proportion of the twentieth century. The value of the historical OS maps is that they generally provide a reliable indication of the presence of particular physical features when the land was surveyed. They do not purport to identify the status of the tracks or roads shown and their evidential weight will accordingly be limited.
 8. The OS maps generally show the claimed route as an ungated enclosed lane linking with recognised roads at point A, C and D. It is possible that the depiction of the claimed route in this manner could be reflective of it having public status. There is no distinction between the eastern section and the current Bridleway No. 1, which is again suggestive of this section being part of a historical highway and having at least bridleway status. It also appears that parts of the claimed route are shown on a parish boundary records map.
 9. I accepted in the ID that the exclusion of the claimed route from the surrounding hereditaments on the Finance Act map provides a good indication of highway status and is more likely to be representative of a vehicular highway [8]. However, I noted that the Finance Act's primary purpose was not the identification of highways and there may be other reasons for the exclusion of the route. On the latter point, the objectors point out that nothing has been provided to indicate another reason for the exclusion of the route from the surrounding hereditaments and I accept that this matter adds value to the document.
 10. The Bartholomew maps from the early part of the twentieth century show the claimed route as an uncoloured road, which is described in the key as "*inferior and not recommended to cyclists*". Whilst the route is not shown as a footpath or bridleway, there is a disclaimer which states "*The representation of a road or footpath is no evidence of the existence of a right of way*". The claimed route is also shown on the 1930 Geographia 2-inch road map and the eastern section

is represented on the post war Johnson motoring map. Overall, I do not find that these maps provide much greater assistance than the OS mapping.

11. Only the A-B part of the route was originally claimed as a public right of way when the definitive map was compiled. The description of the way by Perranzabuloe Parish Council at the time [10] is indicative of the right of way continuing onwards to point C and there is no apparent reason for it to terminate at point B. However, it remains my view that the initial recording of it as a road used as a public path is not necessarily indicative of the existence of public vehicular rights. The issue of whether vehicular rights existed over such ways would be a matter to be determined from the evidence. Although it is possible that the remainder of the route was not claimed as it was viewed as comprising of sections of public road, there is no evidence to substantiate that this was the case.
12. There is no recorded or known owner of the land crossed by the claimed route. It is a distinct lane separate from the adjoining land parcels and this could potentially be supportive of it being an ancient highway.
13. In terms of the user evidence [13-20], this is supportive of the continued use of the claimed route by pedestrians and horse riders. It is also evident that there has been a bridleway sign around point D and this would have served to encourage such use. This evidence is again supportive of the claimed route being a through route. Whilst it provides no support for vehicular status, it could be reflective of the current use of a historical road that has fell into disuse for the purpose of public vehicular traffic.

Conclusions

14. The map evidence indicates that the eastern section physically existed by the early part of the nineteenth century at the latest and it has consistently been represented as a short link between recognised historical highways. It is also apparent that the remainder of the claimed route is shown from the tithe maps onwards as a through route between two public roads.
15. The Finance Act map is supportive of the claimed route being a vehicular highway, but it cannot be relied upon in isolation to determine the status of the route. However, the tithe documents provide some support for the route being a public road and the additional maps confirm that the route historically linked with the local highway network.
16. I do not accept Mr Fraser's assertion that the evidence in support of restricted byway status is compelling. However, the weight of the evidence in support should also be considered in the context of a lack of any documentary evidence in favour of the route being a private road or footpath. The evidence could possibly be supportive of bridleway status, but the Finance Act and tithe documents point to a greater extent to vehicular status.
17. In light of the submissions of the parties and the additional evidence I am persuaded that the documentary evidence is on balance supportive of the claimed route being an ancient vehicular highway rather than a footpath. By virtue of the Natural Environment and Rural Communities Act 2006, the public rights for mechanically propelled vehicles are extinguished and the appropriate status for the route is a restricted byway [3]. It follows that the Order should now be confirmed without any modifications being made to it.

Overall Conclusion

18. Having regard to these and all other matters raised at the inquiry and in the written representations I conclude that the Order should be confirmed.

Formal Decision

19. I confirm the Order.

Mark Yates

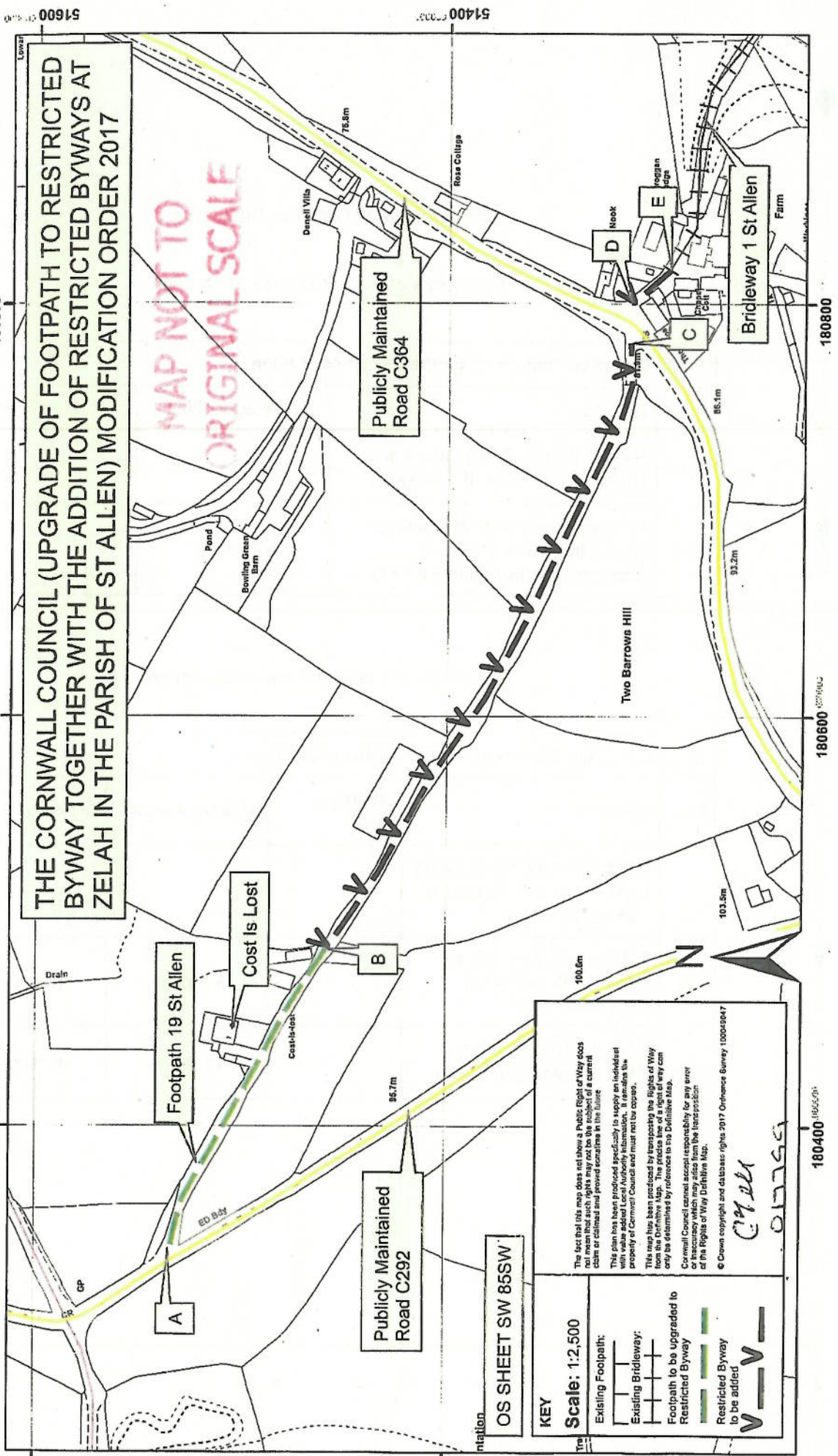
Inspector

Wildlife & Countryside Act 1980 Section 53
 Order Map: WCA 586
 Parish: ST ALLEN CIVIL PARISH
 Produced by Countryside Access Team: 21 March 2017



THE CORNWALL COUNCIL (UPGRADE OF FOOTPATH TO RESTRICTED BYWAY TOGETHER WITH THE ADDITION OF RESTRICTED BYWAYS AT ZELAH IN THE PARISH OF ST ALLEN) MODIFICATION ORDER 2017

MAP NOT TO ORIGINAL SCALE



KEY

Scale: 1:2,500

Existing Footpath:

Existing Bridleway:

Footpath to be upgraded to Restricted Byway:

Restricted Byway to be added:

The fact that this map does not show a Public Right of Way does not mean that such rights may not be the subject of a current claim or claimed and proved sometime in the future.

This plan has been produced specifically to supply the individual with value added Local Authority Information. It remains the property of Cornwall Council and must not be copied.

This map has been produced by transposing the Rights of Way from the Ordnance Map. The precise line of a right of way can only be determined by reference to the Definitive Map.

Cornwall Council cannot accept responsibility for any error or inaccuracy which may arise from the final position of the Rights of Way Definitive Map.

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Zelah

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