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| **Order Decision** |
| Site visit made on 31 March 2021 |
| **by Alan Beckett BA MSc MIPROW** |
| **Am Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 28 April 2021** |

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| **Order Ref: ROW/3250997** |
| * This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (‘the 1981 Act’) and is known as the Borough of Telford & Wrekin Restricted Byway (Bridge Road to Frame Lane) Parish of Dawley Hamlets Definitive Map and Statement Modification Order 2018. |
| * The Order is dated 9 February 2018 and proposes to modify the Definitive Map and Statement for the area by adding a Restricted Byway as shown in the Order plan and described in the Order Schedule. |
| * There was 1 objection outstanding when Telford & Wrekin Borough Council (‘the Council’) submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation. |
| **Summary of Decision: The Order is confirmed.** |
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Procedural Matters

1. None of the parties requested an inquiry or hearing into the Order. I have therefore considered this case on the basis of the written representations forwarded to me. I made an unaccompanied inspection of the path at issue from public vantage points on Wednesday 31 March 2021.

The Main Issues

1. The Order has been made under Section 53(2)(b) of the 1981 Act in consequence of the occurrence of an event specified in Section 53(3)(c)(i).
2. Therefore, the main issue is whether the Council has discovered evidence which, when considered with all other relevant evidence available, is sufficient to show that a right of way which is not shown in the definitive map and statement subsists over land in the area to which the map relates such that the definitive map and statement require modification.

**Legal Framework**

1. Whilst it suffices under section 53(3)(c)(i) for a public right of way to be *reasonably alleged* to subsist for an Order to be made, the standard of proof is higher for the Order to be confirmed. At this stage, evidence is required which demonstrates, on a balance of probabilities, that a right of way subsists.
2. Dedication of a public right of way through a long period of use can be deemed to have occurred under Section 31 of the Highways Act 1980 (‘the 1980 Act’). Section 31 provides that where a way has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, that way is deemed to have been dedicated as a highway unless there is sufficient evidence that during that period the landowner had no intention to dedicate it. Use ‘as of right’ is use which has been without force, secrecy, or permission.
3. The period of 20 years is to be calculated retrospectively from the date when the right of the public to use the way was brought into question, either by a notice or otherwise.
4. Should the tests for deemed dedication under section 31 not be met, then it may be appropriate to consider the dedication of the way at common law. There is no fixed period of use at common law and depending on the facts of the case it may range from a few months to several decades. There is no particular date from which use must be calculated.

Reasons

***Documentary evidence***

1. I have had the opportunity to study the copies of maps and plans which the Council have considered as part of its investigation of the application. The earliest of these documents is a copy of the plan attached to the 1844 tithe apportionment for the township of Dawley Magna; the remaining documents comprise extracts from Ordnance Survey (‘OS’) maps at 6 inches to 1 mile which were published between 1855 and 1901, an extract from a 1910 sale catalogue of the property of the Coalbrookdale Company and an undated aerial photograph of the site.
2. All of these documents show the Order route as being separate from adjacent land and running between physical boundaries. The eastern boundary of the Order route is marked by the buildings and premises of the former bridge and crane works which occupied the site until the 1980s; these buildings are in the process of being re-developed for housing. Although the western boundary is shown on the documents are having a physical boundary in the form of a hedge or fence, the undated aerial photograph shows that at the time the photograph was taken, the western boundary was, in part, open to a parcel of undeveloped land on the western side of the Order route.
3. The partially open nature of the western boundary is reflected in the 1844 tithe map which shows the Order route and a parcel of ‘waste land’ as comprising apportionment plot 149. It is not known how the Order route was described in the tithe apportionment as no extract from that document has been provided. The tithe map shows the Order route as unobstructed and provided a link between Bridge Road and Frame Lane and is shown in the same manner as other roads in the area.
4. The OS maps published in 1885 and 1901 show the Order route as being separated from adjacent plots by physical boundaries and as an unobstructed through route which connected Bridge Road to Frame Lane. On the 1901 map the Order route is identified as land parcel 620; the book of reference which would have accompanied this map is unavailable, so it is not known how the OS surveyor described this land parcel.
5. The extract from the catalogue of the sale of the Coalbrookdale Company’s property in 1910 shows the Order route to have been offered for sale as part of Lot 158 which comprised “*Three cottages and Gardens, Shop, and Stabling; also the Pool, Roadway, and Pit Mount*”. The ‘*roadway*’ referred to in the sale is the Order route with the pit mount and pool being to the west of it; it is these parcels of land which were shown in the earlier tithe map as ‘waste land’.
6. My attention has been drawn to images of the Order route which were captured by a Google Street View camera in 2011 and which remain available for viewing on line. These images demonstrate the condition of the Order route at that date and show an unobstructed through route over which the Street View camera car was able to pass and re-pass. Although these images are not indicative of the status of the Order route, they demonstrate that up to the date at which the images were captured, the Order route remained open at both ends and was in a physical condition to support vehicular and other traffic.
7. In the absence of the tithe apportionment and the book of reference to the 1901 OS map no conclusions can be drawn with regard to the status (public or otherwise) of the Order route or what status the surveyors considered it to have at the date those surveys were undertaken.
8. What can be drawn from the documentary evidence is that since at least 1844 (and in all probability for much longer) there has been a substantial track which has provided a means of communication between Bridge Road and Frame Lane. Whilst none of the documentary sources provide conclusive evidence as to the status of the Order route, they demonstrate the existence for at least 170 years of a route which would have been capable of supporting public vehicular and other forms of traffic.

***User evidence – section 31 of the 1980 Act***

***The date on which the right of the public to use the restricted byway was brought into question***

1. An application to add the Order route to the definitive map and statement was submitted to the Council in March 2013 but was not progressed at that stage as the Council considered that the evidence which had been submitted in support was insufficient to demonstrate that a public right of way had been established over the Order route. The application appears to have been prompted by local concerns about the continued availability of the Order route following the submission of a planning application to convert some of the existing buildings at the former Horsehay bridge and crane works to residential purposes.
2. Planning permission for the redevelopment of the Horsehay site was granted by the Council in March 2014. As part of the redevelopment of the site, in or around June 2016 a gate and fence was erected across the Order route which prevented access between Bridge Road and Frame Lane and which led to objections to the closure of the path being raised with the Dawley Hamlets Parish Council (‘the Parish Council’) by local residents. In total, 37 user evidence forms were submitted in support of the application to add the Order route to the definitive map and statement.
3. The application made in 2013 could be considered an event which brought into question the public’s right to use the Order route under the provisions of subsections (7A) and (7B) of section 31 to the 1980 Act. However, I have not been provided with a copy of that application and I am unable to determine whether it was in the form prescribed by Regulation 8 (1) and Schedule 7 of the 1993 Regulations, or whether the application was accompanied by a map at the prescribed scale and by copies of the evidence on which the applicant relied. Furthermore, the Council considered the evidence submitted to be insufficient to investigate the application at that time. In such circumstances, it is not possible to determine that the 2013 application brought use of the Order route into question.
4. The physical obstruction of the Order route in 2016 by the erection of a gate and fence which prevented public use as a through route would serve as an event which brough use into question. This event appears to have led to complaints being made to the Parish Council which, in turn, sought to further progress the application which had been made some three years earlier. If 2016 is the date at which public use of the Order route was brought into question, then the relevant 20-year period for the purposes of section 32 (2) of the 1980 Act would be 1996 to 2016.
5. The objector submits that signs prohibiting trespass have been displayed along the Order route for approximately 28 years (that is from around 1996) without provoking any adverse comment. The Council disputes the date at which these notices were said to have been erected noting that none of the users of the route mention the existence of signs prior to 2005. Whilst the objector does not specifically draw attention to these signs as having brought use into question, they may be material in relation to this aspect of the statutory tests.
6. The signs at issue are located on the walls of the former crane works site and are positioned around 2.5 – 3 metres above ground and face towards the Order route. The signs are of a substantial size with black lettering on a white background and contain wording which is easily legible when seen from the Order route. One sign remains present towards the southern end of the route near to the Travellers Joy public house; the Google Street View images show that a second sign was present on the former office buildings which have now been redeveloped for housing.
7. The signs at issue read: “*The Horsehay Estate (of which this lane and the adjacent land form part) is private property. Persons entering any part of the estate without lawful business within the estate do so at their own risk. Horsehay Limited do not accept responsibility or liability in respect of personal injury or damage howsoever caused. Any person or persons found to be trespassing on the estate may become liable for summons or prosecution and will be liable for damage caused by them or their presence on the land or any buildings thereon*”.
8. Whilst the signs indicate that the Order route forms part of the Horsehay Estate, that the estate is private property, that liability for personal injury is not accepted and that anyone entering the lane (or other parts of the Estate) does so at their own risk, the notices do not prohibit public use of the lane nor do they state that the route is not a public right of way.
9. It is well established that the meaning being conveyed by such signs has to considered in the light of what the relevant audience would reasonably have understood the landowner’s intention to be. The earliest evidence of use of the Order route dates from 1935 with other witnesses claiming use from various points in time with that use continuing until 2016. I consider that it is highly unlikely that those users who had been in the habit of walking between Bridge Road and Frame Lane via the Order route prior to the erection of the signs around 1996 would have regarded themselves as ‘trespassers’ and would not have considered the notices to be a challenge to their use of the Order route.
10. It is unsurprising therefore that the erection of the notices in or around 1996 and their continued presence on site did not provoke any adverse reaction. Consequently, I do not consider that the notices erected on site had the effect of bringing use of the Order route into question. In the absence of any other event, I conclude that it was the erection of a gate and fences in June 2016 which brought public use of the Order route into question. Accordingly, the relevant 20-year period of qualifying use would be 1996 to 2016.

###### *Whether the claimed restricted byway was used by the public for a period of not less than 20 years ending on the date the public’s right to do so was brought into question*

1. The Council submits that it had received 37 user evidence forms (‘UEF’s) in support of the application. The bundles which have been forwarded to me however only contain 30 of those forms. The absence of some user evidence has been noted by the Parish Council in its submission; the Parish Council also provided a copy of a written statement made by a local resident who had been employed as a highways engineer by Dawley Urban District Council and by Wrekin Council (the forerunners to the current Council).
2. The UEFs that I have had access to were completed at various dates during 2016, 2017 and 2018. All the UEFs contained a map or plan to indicate which route the evidence of use related to and for the avoidance of doubt, the UEFs contained a written description of the route at issue. The route was described as running from the Travellers Joy on Woodhouse Lane to Bridge Road or between Bridge Road and Frame Lane, and the descriptions of the physical characteristics of the route leave no doubt as to which route the user evidence relates to.
3. Those respondents who completed a UEF state that they had used the Order route on foot, with a pedal cycle and with a motor vehicle; one respondent sated that the route had also been used on horseback. As noted above, the earliest recorded use was from 1935 with other respondents stating that their use had commenced in subsequent decades. Of the UEFs I have seen, two respondents ceased use of the route before 1996, and although their evidence must be discounted as they provide no evidence of use during the relevant 20-year period, that evidence is nonetheless part of the overall picture of use which is of regular and unhindered use over a considerable period of time.
4. Of the 30 forms I have seen, 18 respondents demonstrate use throughout the relevant 20-year period, with others providing evidence of use which ranges between 4 and 17 years of use during that period. None of the respondents reported having been challenged verbally or physically in their use of the route prior to the erection of the gate and fences in 2016, nor is there any evidence of the route having been obstructed prior to 2016.
5. The use described in the UEFs was for both utilitarian and recreational purposes. The Order route served as a means by which residents living around Frame Lane could access the fish and chip shop on Bridge Lane and those living around Bridge Lane could access the Travellers Joy public house. The route was also used by many as part of their route to and from school or to and from work. The Order route was also used as part of a recreational walk (with or without a dog) within the local area.
6. In his statement, the former Dawley UDC and Wrekin Council engineer states that part of his duties was the maintenance of unsealed highways within the district. In addition to the maintenance of roads around Spring Village and Farm Lane, one of those unsealed routes which Dawley UDC and Wrekin Council had maintained had been the Order route where potholes and depressions had been filled with crushed stone. Whilst it may be probable that some maintenance had been done on this route at unspecified points in the past, this evidence is in direct conflict as to the recorded status of the Order route. It is not disputed that the Order route forms part of the Horsehay Estate, nor that the Order route is not recorded on the Definitive Map or the Council’s List of Streets maintainable at public expense.
7. The engineer’s evidence of personal use of the Order route for 60 years both on foot and with a motor vehicle is however consistent with the other user evidence submitted in support of the application. The picture painted by the evidence of use is one of frequent and consistent use of the Order route over a prolonged period of time on foot, by pedal cycle and by motor vehicle. Until the erection of the gate and fences as part of the redevelopment of the former crane works, none of those using the Order route had been challenged in their use.
8. The objector points to the previous history of the site and use of the Order route as part of the industrial activity conducted at the former crane works to challenge the claimed use. It is submitted that heavy vehicles belonging to the crane works would use the track for the internal distribution of materials around the site and that in recent years the southern end of the route has been used for deliveries to the various commercial units located within the Horsehay Estate; pedestrian access would not have been permitted in such circumstances.
9. Whilst it is entirely possible that the Order route had been used as an internal estate road by the operators of the crane works and that deliveries to the site may have been undertaken from Frame Lane, no evidence has been provided as to the frequency or duration of such activities. There is no reference within the available user evidence to such activities taking place or that use of the route was interrupted or prevented by such activities. It seems probable that such activity would have been of limited duration and any obstruction of the route which resulted would have been of a temporary and transitory nature.
10. Objections were also made on the grounds that trespass along the way has always been a problem with the clearing of dog excrement falling to the owners of the site; that the creation of a bus stop on Bridge Road near the northern end of the Order route had encouraged further trespass, as had a recent housing development at Farm Lane. The nature and grounds of these objections however reflects the frequent and extensive use of the Order route contained within the UEFs submitted in support of the application.
11. The documentary and user evidence points to the Order route being unobstructed throughout its length prior to 2016 and that no force was required by anyone to travel along it. There is no evidence of permission to use the Order route having been sought or granted at any time nor is there any evidence that use was other than open and in full view of anyone who cared to look.

***Conclusions regarding the evidence of use***

1. There is a substantial body of evidence which demonstrates uninterrupted public use of the Order route as of right throughout the 20-year period under consideration. I conclude that the evidence adduced is sufficient to raise a presumption that the Order route has been dedicated as a restricted byway.

###### *Whether there is sufficient evidence that there was during the 20-year period under consideration no intention to dedicate the claimed right of way*

1. For a lack of intention to dedicate to be demonstrated a landowner is required to have taken action to make the public aware that he, she, or they had no intention of dedicating a public right of way.
2. The most common way in which the landowner’s intentions could have been brought to public attention would have been by the erection on the path of a notice or notices denying the existence of a right of way, or to place a suitably worded notice in the local newspaper.
3. As noted above, there are and have been notices erected on buildings which face the Order route carrying the wording described in paragraph 22. In the case of *Godmanchester Town Council v Secretary of State for Environment, Food and Rural Affairs* [2007] UKHL 28, Hoffman LJ held that in relation to matters considered under section 31 (1) of the 1980 Act, “*intention* *means what the relevant audience, namely the users of the way, would reasonably have understood the landowner's intention to be. The test is, as Hobhouse LJ said, objective: not what the owner subjectively intended nor what particular users of the way subjectively assumed, but whether a reasonable user would have understood that the owner was intending, as Lord Blackburn put it in Mann v Brodie (1885) 10 App Cas 378, 386, to "disabuse [him]" of the notion that the way was a public highway”.*
4. The notices found on site deny any liability for accident or injury whilst within the Estate and that persons entering the Estate did so at their own risk. Although reference is made to those ‘*found to be trespassing*’ possibly being summonsed, those using the Order route to pass and re-pass between Bridge Road and Frame Lane are unlikely to have considered themselves to be trespassers whilst exercising what was considered by many to be a public right of way over the land. Those users who read the sign are therefore unlikely to have understood that the landowner was attempting to ‘disabuse’ them of the notion that the Order route was a public highway.
5. The text of the notices is not therefore presented to those who would read it as a denial of the existence of a right of way any more than the wording was a challenge to those using the way. Rather than stating ‘no public right of way’ or preventing users from accessing the way, the inference that those reading the notices would draw is that access was not denied but that access was to be taken at the users own risk. There is also ambiguity in the notice regarding any potential penalty (‘*may become liable for summons’*) which users may have faced. In my view the wording on the notices is insufficient to convey to a user reading it that there was no intention on the part of the landowner to dedicate a public right of way.
6. The objectors refer to anti-social activity taking place on various parts of the Order route and that they had no knowledge of the route as a public right of way. A number of statements were submitted from parties who had knowledge of the management and operation of the site for a number of years; none of these respondents regarded the Order route as being a public right of way. The evidence submitted by the objectors all post-dates 2016 and the erection of the gate and fences; no evidence has been submitted which is contemporaneous with the 20-year period under consideration and which shows that overt attempts were made to prevent public use of the Order route or to inform users during that period that the way was not public.

**Other matters**

1. The objectors also submit that the recording of the Order route as a restricted byway would be incompatible with the redevelopment of the former offices of the crane works in to residential units. The restricted byway would cross what is now private amenity space and would interrupt access to the communal garden area which is to be developed to the west of the Order route.
2. Whilst acknowledging that there may be an incompatibility between a restricted byway and the current use of the land, the issue before me is to determine whether a public right of way came into existence through long usage which pre-dates the redevelopment of the site. The current or potential use of the land crossed by the claimed right of way is not a matter which I can take into account in reaching my decision.

**Conclusions on statutory dedication**

1. I conclude that the evidence of use of the Order route on foot, with bicycles and motor vehicles by the public as of right and without interruption throughout the period between 1996 and 2016 is sufficient to raise a presumption of dedication of the route as a restricted byway.
2. There is no evidence of challenges having been made to those using the route and the wording of the notices present on site was insufficiently clear to convey to those using the route that the landowners had no intention to dedicate a public right of way.
3. For these reasons I consider that as the landowner did not demonstrate a lack of intention to dedicate a right of way, the presumption raised by the user evidence has not been rebutted.
4. It follows that I am satisfied that the evidence before me is sufficient to show, on a balance of probabilities, that a restricted byway subsists over the Order route.
5. Given my finding that dedication can be deemed to have taken place under section 31 of the 1980 Act, it is unnecessary for me to consider whether dedication at common law could be inferred.

**Overall Conclusion**

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

**Formal Decision**

1. I confirm the Order.

Alan Beckett

Inspector

