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| **Order Decision** |
| Site visit made on 22 September 2021 |
| **by Barney Grimshaw BA DPA MRTPI(Rtd)** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 22 October 2021** |

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| **Order Ref: ROW/3227602** |
| * This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as The Northumberland County Council Definitive Map Modification Order (No 5) 2018. |
| * The Order is dated 23 April 2018 and proposes to modify the Definitive Map and Statement for the area by adding two Byways Open to All Traffic (BOATs) running between the C169 road and the U1092 road, as shown on the Order Map and described in the Order Schedule. |
| * There were 5 objections outstanding when Northumberland County 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. I made an unaccompanied site inspection on Wednesday 22 September 2021 when I was able to view the whole of the Order route.
2. In writing this decision I have found it convenient to refer to points marked on the Order Map. I therefore attach a copy of this map.

The Main Issues

1. The requirement of Section 53(3)(c)(i) 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 right of way that is not shown on the definitive map and statement subsists along the Order route.
2. Section 53(3)(c)(iii) of the 1981 Act includes a requirement that the evidence should show that other particulars contained in the map and statement require modification.
3. As the Order concerns a possible unrecorded vehicular route, it is also necessary to have regard to the provisions of Section 67 of the Natural Environment and Rural Communities Act 2006 (the 2006 Act) which extinguished rights of way for mechanically propelled vehicles (MPVs) subject to certain exceptions.

Reasons

1. The Order route is recorded in Northumberland County Council’s list of highways maintainable at public expense, which highway authorities must maintain under section 36(6) of the Highways Act 1980 (the List of Streets), as two Unclassified County Roads, U4064 and U1098. Although it is in fact a single continuous route it was formerly within two different Rural District Council (RDC) areas, hence the two road numbers. In the Order, the southern section of the route, the U4064 is proposed to become Whittingham BOAT No.22 (Points G-H) and the northern section, the U1098, is proposed to become Ingram BOAT No. 38 (Points F-G).
2. On my visit, travelling from south to north, I noted that the route follows a clear track for some distance north of Point H but becomes indiscernible on the ground north of Point G. Then, around Plantation House, it follows a tarmac road for a short distance before leaving this and becoming indiscernible again across fields. It was also obstructed by fences at field edges. I observed two motorcyclists using the route from Point H to a point north-east of Plantation House, but they then continued along the tarmac road rather than the Order route. There are a number of gates across the route between Point H and Plantation House which were closed but not locked and there is a gate at Point F which was open.
3. It is stated by one objector that in the mid-1960s the former owners of Branton Middlesteads reached an agreement with Northumberland County Council (or its predecessor) to provide a new track from Plantation House to Middlesteads and in return the track which had existed from north of Plantation House to Point F would be removed. As referred to above the new road is now present and the section of the Order route between it and Point F not discernible. However, there is no record of any formal stopping up or diversion of the route having occurred. Accordingly, any public rights which existed over the Order route before the new road was constructed still subsist.
4. No evidence has been submitted of public use of the Order route; therefore, the determination of the Order depends entirely on the documentary evidence that is available.

***Documentary Evidence***

*Early Commercial Maps*

1. The route is not shown on Armstrong’s Map (1769) but a partially similar although not identical route is shown on maps produced by Fryer (1820) and Cary (1827). In particular, the northern part of the route shown on these maps runs almost due north to south rather than north-easterly. It is argued by objectors that this route is a more logical alternative to the Order route. It is possible that this route may also be a historic public route, depending on what, if any, other evidence relating to it exists, however, I am only concerned with the evidence relating to the Order route at this time.
2. A route more closely resembling the Order route is shown on Greenwood’s Map (1828) as a *‘Cross Road’*. The route shown on the earlier maps is also shown on this map. The description of a route as a *‘Cross Road’* on this map is suggestive of the likelihood that it was thought to be public and available for all traffic, although by no means conclusive evidence of this.

*Ordnance Survey (OS) Maps*

1. The route is shown on OS maps published in 1864-65, 1889 and 1926. On these maps the route is shown as an unfenced track and not annotated in any way. It is joined by another route annotated *“F.P.”* (footpath) towards its northern end. This footpath corresponds to that now recorded as Ingram Footpath No.15.
2. An OS map published in 1957 also shows the route but the section north of Plantation House is annotated as a footpath. A 1979 map shows 3 sections of the route but with no link between them and a 2005 map shows only 2 sections as tracks but the whole route is also depicted by green dots signifying it as an *“Other route with public access”.*
3. OS maps are regarded as providing good evidence of features that existed on the ground at the time they were surveyed. Accordingly, if a route was not visible on the ground it would not be mapped. Nevertheless, if public rights had previously been established over a route, the fact that the route itself had subsequently disappeared would not mean that those rights had also been lost, unless they had been formally extinguished. No evidence has been submitted of any formal extinguishment having taken place.

*Highway Records*

1. Under the Local Government Act 1929, responsibility for highways passed from RDCs to county councils. The Handover Map for Glendale RDC (1932), which covered the northern section of the Order route, did not show the route as a publicly maintainable road. No copy of the map for Rothbury RDC, which included the southern section of the Order route, appears to have survived.
2. In the schedule of roads for Glendale RDC produced under the Restriction of Ribbon Development Act 1935, no entry was made in the Ingram section and other sections do not appear to exist.
3. A Highways Map of 1951 shows the whole Order route as a publicly maintainable road.
4. The County Road Schedule (1958) has entries for the U1098 and U4064 which specify their length and start and finish points. The U1098 is named as *“Branton – Great Ryle”* and described as running *“…via Plantation House…”*. The U4064 is also named as *“Branton – Great Ryle”.* The County Road Schedule (1964) contains similar information and a Highways Map of the same year shows the Order route coloured purple as a publicly maintainable road. The County Road Schedule (1974) contains similar information to previous versions.
5. The List of Streets (2 May 2006) shows the Order route except that a 340m stretch south of Plantation House is shown on an alignment further west than the Order route. Northumberland County Council, the Order Making Authority (OMA) suggests this is an error and no other evidence supports the existence of this alignment.
6. The omission of the Order route from both the 1932 Handover Map and the Restriction of Ribbon Development Act 1935 schedule is puzzling in the light of its subsequent inclusion in various highways schedules and maps. On balance, it is my view that the more recent documents should carry more weight as they contain details of the route and it is unlikely that a highway authority would lightly assume maintenance responsibility for a road without good reason.
7. Although the highway records indicate the existence of public rights over the route, they do not necessarily show that it is a public vehicular route. They indicate maintenance liability but not status and lower categories of highways such as bridleways and footpaths could be included. In practice, although the List of Streets and other highway records could include footpaths and bridleways this was often not the case in many counties, including Northumberland.

*The Definitive Map*

1. In the survey carried out as part of the process of preparing the first definitive map (c.1954) the Order route was not recorded as a public right of way. The route is shown on the relevant map coloured brown in the same way as known public roads and a footpath is shown terminating on it. This would suggest that the route was considered to be a public highway of a sufficiently high status not to be appropriately recorded on the definitive map, namely, a vehicular route.
2. The subsequent Draft Map, Provisional Map and Definitive Map did not include the Order route. However, the Definitive Map did include Ingram Footpath No.15 which terminates on the route and would be a pointless cul de sac route if the Order route was not a public highway of some sort. The Definitive Statement records Footpath No.15 as running *“From the Branton-Glanton Pike road north of Branton Middle Steads in a south-westerly direction to the Branton-Great Ryle Road”.*
3. It is argued on behalf of objectors that Footpath No.15 should correctly be interpreted as following most of the Order route. The statement does not specify the length of the footpath, but this interpretation would depend on the Branton-Great Ryle Road being identified as the C169 road whereas the U1098 and U4064 roads (the Order route) are clearly described in highway records as being the Branton-Great Ryle Road. It would also mean that the Survey, Draft, Provisional and Definitive Maps were all incorrect.

*Other Documents*

1. The map associated with the Branton Tithe Award (1840), which covered the northern section of the Order route, does not include any evidence of proposed BOAT No.38. Proposed BOAT No.22, which is outside the Award area is said by the OMA to be identified with the annotation *“To Ryle”*, But this is not clear on the copy I have seen. In any event, tithe maps were concerned with the identification of productive land and not public rights of way. They can of course be helpful in some cases, especially where the nature of routes was such as to render land unproductive, but the omission of a route from a tithe map does not necessarily mean that it did not exist or was not a public highway of some sort.
2. The Order route is shown on the base map used in connection with the survey carried out under The Finance Act 1910, but I have seen no other related documents. The OMA states that the southern end of proposed BOAT No.38 is annotated as *“Public”,* but this is unclear on the copy I have seen.
3. A map said to date from 1854 and prepared in connection with the sale of Plantation House appears to show sections of both the Order route and the route shown on Fryer and Cary’s maps.

*Conclusions regarding Documentary Evidence*

1. The Order route has existed since before 1828 when it was shown on Greenwood’s map, although OS maps would suggest that it had partially disappeared on the ground by the 1950s.
2. Although the available evidence is not entirely consistent, when it is considered together, it is my view that it indicates that, on the balance of probability, the route is most likely to be public and available for use by all traffic.
3. Even though the route is a public vehicular right of way, it may not meet the test for it to be recorded as a BOAT, most vehicular routes are not so recorded. A BOAT is defined as a route over which the public has a right of way with vehicles but is nevertheless used by the public more on foot, horseback or bicycle. In this case, I have seen no evidence which would enable me to determine the balance of public use that takes place. In such cases, it is appropriate to also consider the nature of the route and it seems to me that the Order route is one which is more suitable for and more likely to be used for the purposes that footpaths and bridleways are used. It would therefore be appropriate for it to be recorded as a BOAT.

***The 2006 Act***

1. As mentioned before, this act extinguished rights of way for MPVs subject to certain exceptions. In this case, an exception applies as, immediately before commencement, the route was not shown on the definitive map but was shown in the List of Streets (Section 67(2)(b)). Accordingly, any rights of way for MPVs that existed before the Act came into operation have not been extinguished.

**Other Matters**

1. A number of other concerns were raised by objectors to the Order, which included:

* The likely detriment to a shooting business, other agricultural activities and biosecurity;
* The possible encroachment of vehicles on to adjoining land and consequent damage;
* The fact that the route was not designed for modern vehicles and is not suitable for them, particularly in winter;
* The route is not needed and has not been used for a long time;
* The possibility that users of the route will leave gates open.

I understand all these concerns, but as they relate to matters outside the criteria set out in the relevant legislation, I have given them no weight in reaching my decision.

1. The Order makes provision for the definitive statement for Ingram Footpath No.15 to be amended so as to make clear that it will terminate on what is to be recorded as BOAT No.38. This would be an appropriate consequential change following the confirmation of the Order.

Conclusions

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

Formal Decision

1. I confirm the Order.

Barney Grimshaw

Inspector

