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| **Appeal Decision** |
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| **by A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practicing)** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 1 February 2022** |

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| **Appeal Ref: FPS/D3450/14A/8** |
| * This Appeal is made under Section 53(5) and Paragraph 4(1) of the Wildlife and Countryside Act 1981 (the 1981 Act) against the decision of Staffordshire County Council not to make an Order under Section 53(2) of that Act.
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| * The Application dated 15 February 2000 was refused by Staffordshire County Council (the Council) on 22 March 2021.
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| * The Appellant claims that the appeal route should be upgraded to a bridleway.
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| **Summary of Decision: The Appeal is allowed in part.** |
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Preliminary Matters

1. I have been directed by the Secretary of State for Environment, Food and Rural Affairs to determine an appeal under Section 53(5) and Paragraph 4(1) of Schedule 14 of the 1981 Act.
2. I have not visited the site. However, I am satisfied I can make my decision without the need to visit the site. This appeal has been determined on the basis of the papers submitted.
3. The appeal concerns an application made by Mr M Reay (the Appellant) to upgrade to bridleways the footpaths 67 Madeley, 68 Madeley and Road Used as a Public Path Keele 15, from Three Mile Lane to Netherset Hey Lane (the Appeal Route). The submissions in this appeal refer to a highway at the western end of the Appeal Route as Netherset Hay Lane or Netherset Hey Lane. For the purposes of this appeal, I shall refer to that highway as Netherset Hey Lane. Furthermore, the submissions in this appeal indicate that the Road Used as a Public Path Keele 15 has been reclassified by the Council as PF24 Whitmore and, for the purposes of this appeal, I shall refer to this part of the Appeal Route as PF24 Whitmore. I attach a copy of a map submitted with the application showing the Appeal Route for reference purposes.

The Main Issue

1. The application was made under Section 53(2) of the 1981 Act which requires the surveying authority to keep their Definitive Map and Statement under continuous review, and to modify them upon the occurrence of specific events cited in Section 53(3) of the 1981 Act.
2. Section 53(3)(c)(ii) of the 1981 Act specifies that an order should be made on the discovery of evidence which, when considered with all other relevant evidence available, shows that a highway shown in the map and statement as a highway of a particular description ought to be shown as a highway of a different description.
3. The appeal relies on documentary evidence. Section 32 of the Highways
Act 1980 requires a court or tribunal to take into consideration any map, plan or history of the locality, or other relevant document, which is tendered in evidence, giving it such weight as is appropriate, before determining whether or not a way has been dedicated as a highway.
4. The claimed bridleways follow the routes of the footpaths that are already recorded on the definitive map. Therefore, if the evidence supports the existence of higher rights, when considered on the balance of probability, a definitive map modification order should be made to upgrade these footpaths to bridleways.

Reasons

1. The three public footpaths recorded on the definitive map are joined end to end and which are aligned in a roughly east-west direction between the roads at Three Mile Lane and Netherset Hey Lane. Footpath 67 Madeley (Points A-B) forms the greater proportion of the Appeal Route and is located west of a disused railway line. Footpath 68 Madeley (Points B-D) and PF24 Whitmore (Points D-F) form a continuous route east of Footpath 67 Madeley.
2. The evidence in this appeal consists of historic documents and a photograph. I shall consider the main elements of each type of evidence separately below.

*Survey Cards*

1. The submissions in this appeal indicate that the Parish Survey Cards recorded the status of each of the sections of the Appeal Route in 1951. Footpath 67 Madeley is identified as a footpath which starts at a county road located about 250 yards southeast of Madeley Vicarage to the Roadpath 68 Stony Low. The survey card for 68 Madeley identifies 67 Madeley as being a footpath and describes the route as being a Road Used as a Public Path (RUPP) from
67 Madeley to the parish boundary located about 675 yards east of Stony Low. The survey card for PF24 Whitmore identifies this route as being a RUPP running from the Gables, Keele, to the parish boundary located about
700 yards west of the Gables.
2. The evidence before me indicates that 68 Madeley and PF24 Whitmore were reclassified to footpath status as part of a First (General) and Special Review
in 1969. After these ways had been reclassified to footpath status, the Court of Appeal decided in R v Secretary of State for the Environment ex parte
Hood [1975] that, in the absence of new evidence to the contrary, designation of a way as a RUPP conferred a presumption of the existence of bridleway rights.
3. There does not appear to be any evidence that objections were raised when the First Revised definitive map was completed or when the Second Revised definitive map showed no change in the footpath status of these ways. However, the Appellant has put it to me that these ways were reclassified to footpath status without any evidence that bridleway rights did not exist over them.
4. The survey cards indicate that 67 Madeley was recorded as footpath, and are supportive of the contention that 68 Madeley and PF24 Whitmore are of a higher status than a footpath. Consequently, there is only supporting evidence that bridleway rights exist between Points B-F of the Appeal Route. The survey cards equally support that only footpath rights exist between Points A-B of the Appeal Route.

*Railway Related Records*

1. The Appellant has provided a copy of a railway plan which the main parties agree is dated 1858. On the plan, there is a route which the notes identify as being an “Occupation road and Public Bridle road”. The Appellant contends that this description includes parts of the Appeal Route on both the eastern and western side of the railway line and over a bridge which was constructed over that railway line. The Appellant maintains that these records demonstrate that the Appeal Route is shown as a Public Bridle Road.
2. Whilst it is acknowledged that it is not the primary purpose of railway plans to record rights of way, the inclusion of the term ‘Occupation road and Public Bridle road’, and the presence of the bridge constructed over the railway line, of which the Appellant has provided a recent photograph, are indicative of the route having a higher status than a footpath. The plan does include a very small section of the way located west of the railway line within this description. However, the solid line showing the route gives way to a dashed line outside of the ‘limit of deviation’ shown on the plan west of the railway line.

*Finance Act 1910 Plans*

1. The 1910 Act required that all land be valued. Where a route is shown uncoloured and unnumbered so that it is outside of hereditaments, it is indicative of a public highway.
2. The submitted Finance Act plans include a section of the Appeal Route between Stony Low and Three Mile Lane as being outside of hereditaments 204 and 926. Furthermore, additional plans have been provided which show part of the Appeal Route between Stony Low and Netherset Hey Lane and which appear to cross hereditaments 203 and 142. I have not been provided with all the field book entries for these hereditaments. However, I have been provided with the field book entry for hereditament 203 which, whilst not describing the status of such rights, does indicate that a deduction for Public Rights of Way or User was made.
3. Finance Act records are not definitive. However, the submitted Finance Act plans do provide some supporting evidence that the part of the Appeal Route between Stony Low and Three Mile Lane (Points B-F) may have a higher status than a footpath. However, in my view, they are not supportive of such higher rights being in existence for the section of the Appeal Route between Stony Low and Netherset Hey Lane (Points A-B).

*Highway Orders*

1. Copies of an 1834 Highway Bridleway Diversion Order (the Diversion Order) and an 1834 Highway Stopping Up Order has been provided by the Appellant.
2. The Diversion Order plan appears to include a very small section of the Appeal Route from Three Mile Lane and in the direction of Stony Low and which indicates that this very small section at the eastern end of Points E-F to have bridleway status. However, whilst noting that the main parties agree that a notation on the Diversion Order describes this small section of the Appeal Route as leading to Madeley, the Diversion Order appears to predominately apply to Rams Lane, a bridleway which is located on the opposite side of Three Mile Lane. In my view, the submitted copies of Highway Orders confirm the status of Rams Lane as a bridleway, and provides some support for Points B-F having the same status as a bridleway. However, the Orders offer only very limited support that Points A-B of the Appeal Route would have the same status.

*Early Maps*

1. I have been provided with an extract from 1901 OS map which shows the position of a railway station adjacent to the abovementioned bridge which crosses over the railway line. I have also been provided with OS maps
from 1833 and 1876 which appear to include a route between Three Mile Lane and Netherset Hey Lane. A 1924 Bartholomew Road map which has been provided by the Appellant, appears to show the same route between Three Mile Lane and Netherset Hey Lane on a similar alignment to the Appeal Route.
2. Whilst it is accepted that OS maps provide good evidence of the features that were present on the ground at that time, they do not, as is the case here, indicate or confirm the status of the routes shown thereon. Furthermore, while I note the Appellant’s contention that the routes shown on these maps are depicted in a manner that indicates that they have a higher status than a footpath, the plans produced do differ in how specific sections of the routes appear, being represented by solid lines, dashed lines or dotted lines in the various documents provided.

*Conclusions on the documentary evidence – Points A-B*

1. There is only very limited evidence that supports the contention that bridleway rights exist between Points A-B of the Appeal Route. The Parish records for both 67 and 68 Madeley confirm the status as being a footpath. Whilst the deduction for public rights of way are noted, there is no indication that this section of the Appeal Route had a higher status than a footpath.
2. Whilst it is acknowledged that the railway plan shows a very small section of the Appeal Route on the western side of the railway bridge to be an occupation road and public bridle road, this does not confirm the status of the way between Points A-B. I note the Appellant’s contention that the location of the former railway station with platforms on either side of the railway line would have been used on foot and on horse in order to reach race meetings at Keele Racecourse.
3. However, whilst this evidence is supportive of Points B-F, discussed below, having higher rights than a footpath, the railway plan shows the solid lines depicting the occupation road and public bridle road giving way to a dashed line at or near Point B west of the railway line. Other highways shown on that plan are depicted in solid lines which are shown up to the edges of the plan and, consequently the railway plan offers little support for Points A-B having a higher status than a public footpath.

*Conclusions on the documentary evidence – Points B-F*

1. Much of the evidence before me is consistent with Points B-F of the Appeal Route being a bridleway. Since 1969 the definitive map and statement has recorded these sections of the Appeal Route as footpaths, although before then these sections were recorded as RUPPs, suggesting a higher status than footpaths. Further evidence of the status of these sections is provided by the Finance Act 1910 plans, the Highway Orders, and the railway plan which specifically describes this part of the Appeal Route to be an occupation road and public bridle road.
2. There is no one individual piece of evidence that makes a definitive case for a bridleway to exist between Points B-F. Nonetheless, when the evidence is considered together, there is a credible case that part of the Appeal Route between Points B-F would have been used on horseback as well as on foot. I am therefore satisfied, on the balance of probability, that the case has been made that a bridleway subsists between Points B-F of the Appeal Route.

**Other Matters**

1. A number of matters have been raised in support of and in opposition to the application by interested parties. These matters include the desirability of the route being open to horse riders so as to avoid having to cross a motorway on a bridleway bridge when travelling between Keele and Madeley, damage from bridleway use, disturbance and escapes of livestock, health and safety of nearby residents and safety concerns regarding possible conflict with traffic. I have carefully read and considered all of these submissions. However, these matters fall outside the criteria set out in the relevant legislation. Accordingly, whilst I acknowledge the concerns and support provided by interested parties, these matters cannot be taken into account in the determination of this appeal.

Overall Conclusion

1. Having regard to the submissions in this appeal and for the above reasons, I conclude that the evidence before me does show that, on the balance of probabilities, a bridleway exists between Points B-F. However, I am not satisfied that bridleway rights exist between Points A-B of the Appeal Route.

**Formal Decision**

1. In accordance with paragraph 4(2) of Schedule 14 to the 1981 Act, Staffordshire County Council is directed to make an order under
section 53(2) and Schedule 15 of the 1981 Act within three months of the date of this decision to modify the definitive map and statement for the area to record Public Footpaths 68 Madeley and PF24 Whitmore as Public Bridleways.
2. This decision is made without prejudice to any decision that may be issued by the Secretary of State in accordance with powers under Schedule 15 of
the 1981 Act.

Mr A Spencer-Peet

INSPECTOR

