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| **Order Decision** |
| On papers on file |
| **by Alan Beckett BA MSc MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 3 February 2023** |

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| **Order Ref: ROW/3274785** |
| * This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (‘the 1981 Act’) and is known as the Devon County Council (Restricted Byways Nos. 26 & 27, Bampton) Definitive Map Modification Order 2020.
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| * The Order is dated 6 March 2020 and proposes to modify the Definitive Map and Statement for the area by adding two Restricted Byways as shown in the Order plan and described in the Order Schedule.
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| * There was 1 objection outstanding when Devon County Council (‘the Council’) submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.
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| **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 was scheduled to undertake an unaccompanied site visit on Tuesday 13 December 2022, however adverse weather conditions over the preceding weekend rendered travel to Devon impractical.
2. The Council’s case is made on the basis of its interpretation of the documentary evidence adduced which the Council considers demonstrates, on a balance of probabilities, that public vehicular rights over the Order routes came into existence at common law many years ago, with recent public user demonstrating the continued acceptance of that earlier dedication.
3. It is the Council’s case that any right the public had to use mechanically propelled vehicles (‘MPVs’) on the Order routes was extinguished on 2 May 2006 by virtue of section 67 (1) of the Natural Environment and Rural Communities Act 2006 (‘the 2006 Act’); consequently, the routes could not be recorded as Byways Open to All Traffic, (‘BOATs’) but could be recorded as Restricted Byways (‘RBs’).
4. The sole objector does not dispute that the order routes are public vehicular ways, and whilst opposing the recording of the routes as RBs, the objector does not provide any evidence from which it could be concluded that any of the exceptions set out in section 67 (2) and (3) of the 2006 Act apply such that MPV rights will have been preserved.
5. In the circumstances of this case as outlined above, I consider that a determination of the Order can be made without needing to undertake a physical site visit.

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) of that Act. Section 53 (3) (c) (i) provides that an order to modify the definitive map & statement (‘DM&S’) should be made following the discovery of evidence which (when considered with all other relevant evidence available) shows that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates.
2. In determining whether a route which is not currently recorded in the DM&S subsists as a public right of way, the provisions of Section 32 of the Highways Act 1980 are relevant. Section 32 provides: “*a court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced*”.
3. The evidence adduced comprises both historic documentary evidence and evidence of recent user by the public.

**Documentary evidence**

1. Extracts from Ordnance Survey (‘OS’) mapping produced between 1809 and 1970 was submitted. These maps all show the Order routes as being observable features in the landscape separated from surrounding fields by either fences, hedges, or walls; on the earliest maps the southern sections of the Order routes are shown unfenced as they crossed Bampton Down. The Order routes are consistently shown on the OS series of maps in the same way as those acknowledged public roads to which they connect.
2. OS maps have, for many years, carried a disclaimer to the effect that the depiction of a route does not indicate the existence of a public right of way. However, these early OS maps indicate that at the time the maps were surveyed and published, the routes at issue were not considered to be different from the remainder of the road network of the area.
3. Collectively, the OS maps demonstrate that the Order routes have been a feature of the local landscape indistinguishable from the surrounding highway network for at least 200 years. This is reflected in the small-scale commercial maps such as that published by Greenwood in 1825 which shows the Order routes as being amongst those roads considered to be ‘cross roads’ as opposed to Turnpike roads.
4. The Bampton tithe map of 1844 only shows that part of RB27 between points Z and G and the unclassified county road south of Dowhills Farm to point Y. To the south of points G and Y, the Order routes are not shown which indicates that the defined boundaries shown on later OS maps had not been established at the time of the tithe survey. Although a defined way for the Order routes is not shown on the tithe map, this does not indicate that a journey from G or Y to Bampton Down Cross at W would not have been possible over the open Down. For those users travelling by the shortest, most direct route between Bampton and Huntsham, the western route at Giffords Farm would have provided the shortest route to Bampton Down Cross. Similarly, the shortest journey from Shillingford to Huntsham would have been over Bampton Down via the route at Dowhills Farm.
5. In 1901 Bampton Urban District Council (‘the UDC’) invited tenders to be submitted for the upkeep and repair of its district roads. Included amongst the list of ‘other roads’ (as opposed to main roads) for which tenders were sought were “*the Sparkhayne Road by Gifford’s Farm to Bampton Down”* and “*the road from Dowell’s Farm to Bampton Down*”.
6. It is not clear whether the terminal point described as “*Bampton Down*” included those sections of the routes Y – X – W and G – X or whether that description related only to a route which led to the boundary of the common at Y and G. Nonetheless, the inclusion of Z – G of RB27 in the tender list for maintenance and upkeep is good evidence that part of RB27 was considered to be a publicly maintainable road in the early 20th century.
7. Neither of the Order routes are named on OS maps. Consequently, there are no directly relevant entries listed in the OS Object Name Book of 1903. However, there is an entry for Bampton Down Cross which was described as “*A crossroads on Bampton Down about 20 chains S.E. of Giffords*” with the District Surveyor having provided authority for the spelling.
8. Bampton Down Road is named on OS maps with the Object Name Book describing the road as running from a junction of roads about ½ mile west of Huntsham Barton to the junction of roads NW of Old Parsonage. I concur with the Council that it would be unlikely that Bampton Down Cross would be described as a crossroads or that Bampton Down Road would be described as commencing at a junction of roads if only Bampton Down Road was considered to be public.
9. Although not determinative, the Object Name Book entries provide some support to the contention that the Order routes were part of the road network at the time those books were compiled.
10. The 1910 Finance Act plan shows the southern end of RB26 (X – W) as being excluded from adjacent hereditaments. The remainder of RB26, the unsurfaced county road (‘UCR’) between Dowhills Farm and point Y, and the road running east-west at the farm are all shown as if they were part of hereditament 343.
11. However, the red line denoting the boundary of hereditament 343 does not cross these routes but is shown to run parallel to the roads for a short distance as if to denote that the roads shown on the base plan were not part of the hereditament. The same approach was taken in relation to RB27, where the section immediately north of X is shown excluded from adjacent hereditaments with the boundary of hereditament 352 either side of RB27 only extending a short way along the side of the road to a point between X and G.
12. The field book notes that an allowance was made for ‘*F.P.& r/o/w over lane £1/1/1 x 24 £24’*. The reduction in site value may have been granted for either or both of the UCR and RB26 or the bridleway running north from the farm buildings. There are no allowances made for public rights of way or user in relation to hereditament 352.
13. It is not evident from the documentation submitted as to what the valuer was intending to convey by breaking the hereditament boundary at known public routes. However, if the sparing use of colour was intended to convey that the Order routes were not part of the lands being assessed as they were public roads, such a depiction would be consistent with the earlier evidence as to the public nature of the Order routes.
14. The minutes of a meeting of the UDC of 13 January 1920 noted that “*Road Giffords to Bampton Down badly washed requires about 40 yards ballast*”, with permission being given to the UDC Surveyor to undertake repairs. In 1924 the UDC gave consideration to a proposal to stop maintaining certain little used roads as a means of saving public money, a proposal which included the roads leading to Bampton Down at Giffords and Dowhills Farms.
15. In 1924 the Surveyor reported that the sums of £1. 11s. 8d and £5 2s. 6d. had been spent on the Dowhills and Giffords roads respectively. A report of a meeting of the UDC of 19 June 1934 noted that the Surveyor had reported on the ‘deplorable’ state of the road at Giffords, and that repair works were required.
16. The minutes of the UDC in relation to RB26 and RB 27 are consistent with the earlier evidence in that they describe the understanding of the highway authority of the day that the road from Giffords and Dowhills Farms over Bampton Down were publicly maintainable roads.
17. Neither RB26 nor RB27 were included in the survey of public rights of way carried out under the provisions of the National Parks and Access to the Countryside Act 1949. I consider it highly likely that those conducting the survey considered that the routes were not of a type which was required to be shown on the maps being prepared as these routes were known public roads at the time of the survey.
18. The Order routes were not included in the list of routes for which maintenance responsibilities were transferred between highway authorities in 1947. That part of the road between Dowhills and point Y was shown on the list as road ‘1990’, but RB26 and RB27 were not included. Whilst this document indicates that the transferring authority did not consider the Order routes to be publicly maintainable, this does not demonstrate that they were not subject to public rights and is at odds with the earlier records of public money having been spent on their maintenance.
19. The Council had also received 12 user evidence forms (UEFs) in relation to RB 26 and 11 UEFs in relation to RB27. Collectively the UEFs provided evidence of use of the Order routes between 1983 and 2019 by the public on foot, on horseback and on a pedal cycle. Frequency of use ranged from ten times per year to once per year. The frequency of use reported is unsurprising for routes in a rural location such as this. None of the respondents had been challenged in their use or had sought or been given permission to use the Order routes.
20. In his letter of objection, the sole objector notes that he had been using the Order routes with a motorcycle since the mid-1990s. Comments made by other motorcyclists made reference to the Order routes as being part of their regular ‘runs’ over a number of years.
21. The Council had also consulted data collected by the Strava app and the ‘heat map’ of use of routes generated by user activity. In July 2019 the ‘heat map’ showed that both routes had been used by Strava users with walkers and runners tending to use RB26 more than RB27, although cyclists had used both routes with the same frequency. Given the nature of the app from which this information has been drawn, it is highly likely that such use was of a recreational than utilitarian nature.
22. The whole of RB 27 and the southern section of RB26 is recorded by Land Registry as being the property of the Huntsham Estate. The remainder of RB26 is recorded as being in the ownership of Huntsham Barton. Neither landowner has provided any evidence or comment regarding the Order routes.

**Conclusions**

1. I am satisfied that the documentary evidence adduced in this case demonstrates, on a balance of probabilities, that the Order routes are public vehicular ways which appear to have been capable of carrying all manner of public traffic since at least 1809. The evidence is sufficient for an inference to be drawn of the dedication of public vehicular rights at some indeterminate point in the past, and that recent evidence of use confirms the continued and continuing acceptance by the public of that dedication.
2. No evidence has been submitted by the objector from which it could be concluded that any of the exceptions set out in sections 67 (2) or 67 (3) of the 2006 Act apply in this case. Accordingly, I conclude that any right the public had to use MPVs over the Order routes was statutorily extinguished on 2 May 2006. It follows that the Order routes cannot be recorded as BOATs but can be recorded as Restricted Byways.

**Formal Decision**

1. I confirm the Order.

Alan Beckett

Inspector

