

|  |
| --- |
| **Order Decision** |
| Inquiry held on 7 March 2023 |
| **by Claire Tregembo BA(Hons) MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 9 June 2023** |

|  |
| --- |
| **Order Ref: ROW/3287679** |
| * This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as the Staffordshire County Council (Regrading of Public Footpath No. 73 in Longdon Parish to a Bridleway) Modification Order 2019. |
| * The Order is dated 26 November 2019 and proposes to modify the Definitive Map and Statement for the area by upgrading part of Footpath No. 73 to bridleway as shown in the Order plan and described in the Order Schedule. |
| * There were three objections outstanding at the commencement of the Inquiry. |
| **Summary of Decision: The Order is confirmed.** |
|  |

Preliminary Matters

1. I made an unaccompanied site visit on 6 March 2023 where I was able to view the existing route and surrounding area. It was agreed by the parties at the Inquiry that a further accompanied visit was not necessary.
2. Staffordshire County Council (the Council) took a neutral stance at the Inquiry. The case in support of confirmation was presented by supporters of the Order.
3. Concerns were raised over the newspaper used to advertise the making of the Order. The Council confirmed that the newspaper used was available in the Longdon area. In any event, the landowner and other parties were aware of the making of the Order and I do not consider that any party has been prejudiced.
4. I will refer to various points and sections of the Order route using the references on the Order map. The two forks at the southwestern end of the Order route (D-C-E) are also known as Ford Lane. Most of the Order route is enclosed between boundary fences and hedges. However, the north-eastern end runs through a field before joining Bridleway 25 in Longdon Parish. A copy of the Order Map is appended to the end of my decision.

The Main Issues

1. The Order has been made under Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981. This requires me to consider if, on the balance of probabilities, the evidence shows that a public right of way shown on the definitive map and statement as a highway of a particular description ought to be shown as a highway of a different description.
2. The evidence submitted in support of the Order relies on the presumption of dedication arising from tests laid out in Section 31 of the Highways Act 1980 (the 1980 Act). This requires me to consider if the public have used the route as of right and without interruption, for a period of twenty years immediately prior to its status being brought into question. I must establish the date when the public’s right to use the Order route was brought into question and determine if use by the public occurred for a twenty-year period prior to this that is sufficient to raise a presumption of dedication. If this is the case, I must then consider if there is sufficient evidence that there was no intention on the part of the landowner to dedicate a public bridleway during this period.
3. Historical documents and maps were also submitted in support of the Order route. I need to consider if the evidence provided is sufficient to infer the dedication of higher public rights over the claimed route at some point in the past. Section 32 of the 1980 Act 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 appropriate, before determining whether or not a way has been dedicated as highway.

Reasons

*Documentary Evidence*

*Longdon Tithe Map 1846*

1. The Longdon Tithe Map of 1846 shows the Order route with double solid edges and coloured brown along its full length. It is unnumbered which indicates that it is exempt from tithe payments. The width of the Order route gradually increases after entering the field to its junction with Bridleway 25, and these two paths form a through route to Hilltop. Brook End, the public road through Longdon, and Bridleway 25 are shown in the same way.
2. The purpose of tithe records was to identify titheable land capable of producing crops. They were not produced to record public rights of way, although they can sometimes help determine the existence and status of such routes. The Order route is shown in a way that is suggestive of public rights with a higher status than footpath.

*Ordnance Survey maps*

1. An Ordnance Survey (OS) drawing of 1813 by Robert Dawson shows all of the Order route with double solid edges. It forms a continuous route with Bridleway 25 to Hilltop and appears to be part of the road network. It is shown in the same way on the 1834 one-inch OS map.
2. The six-inch County Series OS maps of 1883, 1903 and 1922 show the Order route with double solid edges along sections B-C-D and C-E. A ‘*foot bridge*’ is shown on the 1883 OS map between B and C but it is labelled ‘*ford*’ on the later maps. This indicates that the brook to the south of section C-D crosses the Order route here, although the brook’s alignment after this point is not clear. The Order route is shown heading northeast from point B with double solid lines until it enters a field where it continues to point A, with either double or single dashed lines, and is labelled ‘*F.P.*’. A route running parallel to the Order route between the ford and A is shown with double solid lines which then continues southeast to form a continuous route with Bridleway 25.
3. On the 1:25,000 OS map of 1952 the brook is coloured blue to the south of section C-D. It crosses the Order route between B and C at a *‘ford*’ which is then shown to the west of the Order route. The two parallel sections of track are now shown as one wider track until just after the entrance to the field. At this point, the Order route is shown with a dashed line running parallel to a double-edged track that continues into Bridleway 25. The dashed line is not labelled.
4. The OS maps show the physical existence of the Order route, with another route running parallel to part of it. However, since the late 19th Century, OS maps have carried a disclaimer that tracks and paths shown provide no evidence of the existence of public rights. Although the maps are suggestive of public rights higher than footpath, it could also be argued that the Order route is a private access track.

*Bartholomew’s Map*

1. Bartholomew’s map of 1902-06 shows the Order route with double solid lines with orange dashes along it. Bridleway 25 is shown with double solid lines. Both routes appear to be part of the road network. Bartholomew’s maps were intended to be used as touring maps for cyclists and walkers. Routes shown uncoloured indicated inferior routes not recommended for cyclists. However, the Order route is shown coloured indicating a route suitable for cyclists. Although surveys to determine the nature or status of routes shown on the maps were not undertaken, Bartholomew’s map suggests public rights higher than footpath.

*The 1910 Finance Act Map*

1. The enclosed section of the Order route and Bridleway 25 are excluded from the surrounding parcels of land on the 1910 Finance Act maps. The section within the field is included in parcel 457. Parcel 457 records a deduction of £8 for ‘*public right of way or user*’. This indicates that the owner of the land considered there were public rights of way over it. However, it does not indicate status and is part of a larger parcel which also includes Footpath 28.
2. The 1910 Finance Act imposed a tax on the increase in land value, which was payable when the land changed hands. Following a survey by the Board of Inland Revenue, maps were produced to show taxable land. It was a criminal offence to make false statements to reduce tax payments. The existence of public rights of way over land reduced its value and tax liability so they were recorded in the survey. The exclusion of part of the appeal route from the adjoining hereditaments could indicate public rights which were more likely to be at least bridleway status. However, it could also be argued that private rights had the same effect on the land.

*Ministry of Agriculture, Fisheries and Food (MAFF) Survey 1942*

1. The enclosed section of the Order route is excluded from the surrounding parcels of land in the MAFF Survey of 1942. The section within the field is shown as part of parcel 162/10. A track shown with double solid edges running parallel to the field section of the Order route is also excluded from the surrounding parcels.
2. As with the 1910 Finance Act map, unproductive land, which often included vehicular highways, was excluded from the surrounding parcels. The MAFF survey is suggestive of public rights higher than footpath for most of the Order route.

*Definitive Map Records*

1. The Order route was claimed as a public footpath by the Parish Council following a survey in 1951 and subsequently recorded as a footpath on the definitive map and statement. It has been suggested that this provides clear evidence that the Order route did not carry bridleway rights. The definitive map and statement provide conclusive evidence of the public rights shown within it. However, it can be modified if new evidence is discovered which indicates that it needs modifying, which could include adding, deleting, upgrading, or downgrading routes.

*Highway Records*

1. The two forks of Ford Lane are shown in the Council’s records as highways maintainable at public expense. These records are not proof of public status, but I have been advised that the majority of the ways recorded in these records carry public vehicular rights.

*Conclusions on the documentary evidence*

1. The documentary evidence is suggestive of public rights higher than footpath status for most of the Order route. However, some documents indicate two routes running parallel to each other at the north-eastern end of the Order route between the field entrance and the existing bridleway. The section of the Order route at this end appears to have a lower importance or status than the enclosed route running parallel to it. Overall, I do not consider the documentary evidence demonstrates, on the balance of probabilities, that public bridleway rights subsist over the Order route.

***User Evidence***

*Bringing into question*

1. For the public’s right to use the Order route to have been brought into question some actions or events must have occurred that brought home to at least some of those using it that their right to do so was being challenged. These must have been sufficiently overt to bring that challenge to the attention of the public using the route.
2. Those using the Order route referred to a field gate being locked across it in 1998 which prevented access on horseback. Four specify that this occurred in June 1998.
3. The agent for the previous landowners sent a letter in 2021 regarding their ownership. They purchased the land in 1988. Shortly after gates were left open on a couple of occasions and their cows escaped onto the road. Following these incidents, they locked the gate at the end of Bridleway 25 and on the Order route at the entrance to the field. They claim that these gates have been kept locked since then. They agreed to swap the field through which the Order route runs with the uncle of the current landowner shortly after they purchased it.
4. The daughter of a previous landowner stated that when her father owned the field, he did not try to stop anyone from using it and the gate was not locked. He owned it from 1992, when he swapped it with the previous owners, until his death in 1995. The land was inherited by his nephew who is the current landowner.
5. A letter from the current landowner dated 6 August 2021 stated that the gate on the Order route had been locked for 23 years after gates were left open and cattle strayed onto the road. This would suggest that the gate was locked around 1998 as indicated by the path users. It is claimed that it was reported in the June 1998 Farmers Weekly magazine that the Health and Safety Executive instructed the landowner to fence the Order route following this incident, but a copy of this has not been provided. Around this time the landowner began storing caravans at the farm and locked most of his gates for security reasons.
6. Although the landowners claimed that they first locked gates in 1988, none of the path users recall any locked gates until 1998. Therefore, I consider the date of challenge to be June 1998, with the relevant twenty-year period being June 1978 to June 1998.

*Analysis of Use*

1. To satisfy the requirements of Section 31, use must be by those who can be regarded as the public. For use to be as of right it must be without force, secrecy, or permission. Use should be without interruption, and to be effective, any interruption must be by the landowner, or someone acting on their behalf. I must also be satisfied that there was sufficient use by the public to raise a presumption of dedication.
2. User evidence forms were completed by thirteen people who rode a horse along the Order route. Letters were received from five other people who indicated that they used the Order route. Two people who had not previously supplied evidence spoke at the Inquiry, although one had not used the Order route until after 1998.
3. In total twenty people claimed use on horseback during the relevant twenty-year period. Eleven people indicated use for the full twenty years and others used it for shorter overlapping periods. One person stated that she first used the Order route in 1956 and several others started using it in the 1960s and 1970s. Eight people used the Order route on horseback at least once a week with two others using it monthly.
4. Nobody remembered any challenges to use, obstructions, or notices until the gate was locked in 1998.
5. Two people recalled that the Order route was enclosed within the field between a hedge and a barbed wire fence although they did not recall when they were removed. The daughter of the landowner of the field between 1992 and 1995 said that her father removed some of the hedges and fences on either side of the Order route and part of Bridleway 25 when he first took ownership. A sketch plan was produced which showed a hedge on the west side of the Order route and a fence on the east side from the gate to Bridleway 25. The current landowner also confirmed that the hedges were removed shortly after his uncle acquired the land.
6. None of the path users asked for permission to use the Order route and considered that they did not need to because the Order route was a public bridleway. The father of one person owned part of the Order route from 1992 and it was then inherited by a member of her family. Therefore, I consider her use after 1992 to be private, not public use. However, she used the Order route for many years before 1992 which I consider was public use.
7. The landowners did not recall seeing horse riders using the Order route or any signs of their use and considered the amount of use to be limited. Whilst the number of people using the Order route on horseback is low, their use was frequent. Given the route’s location in a small village, I consider use was sufficient to have been by the public.
8. On 3 June 2012, a letter was sent to an adjoining landowner, who had also previously owned the field section of the Order route, on behalf of horse riders. The letter stated that they knew the bridleway stopped at the bottom of the green lane, did not connect to Longdon, and had locked gates across it. However, there was a request to the Council to determine if an old bridleway existed which could be re-established. They were aware that the adjoining landowner had let some riders go across their field and wanted to know if they would consider making this a permanent link. They were happy to buy the land or pay rent on it.
9. It was suggested that this meant that the path users knew that the Order route was not a public bridleway, therefore riders used it with permission or knew that they were trespassing. One of the parties who wrote the letter appeared at the Inquiry and explained that they were trying to find an alternative solution because the application to record a bridleway was taking so long.
10. The letter was written fourteen years after the gate was locked. This brought to the attention of the public that their right to use the Order route was being challenged and that it was not a bridleway. I accept that by 2012 the public were aware that the Order route was not a public bridleway. However, the letter does not indicate what the correspondents, or wider horse-riding community, believed the Order route to be before 1998. The user evidence forms completed when the gate was locked show that path users believed that the Order route was a public bridleway, including the form from one of the correspondents.
11. I consider that there is sufficient evidence of use on horseback, as of right during the relevant twenty-year period, to demonstrate a presumption of dedication as a public bridleway.

*Lack of intention to dedicate*

1. To demonstrate a lack of intention to dedicate, a landowner must take action to make the public aware that they have no intention of dedicating a public right of way. There are various ways of demonstrating this, but the most common ways are erecting notices denying public rights or granting permission, physical obstructions, or verbal challenges. Any action taken should be with the intention of preventing use of the way by the public and not for other purposes such as car parking, building works, or preventing livestock from straying.
2. Reference is made to the gate at the entrance to the field being left open on various occasions around 1988, 1992 and 1996 which led to the cows escaping onto the road. It is claimed that after each of these incidents, the landowner locked the gate and kept it locked to prevent the further straying of cattle. The user evidence supports the locking of gates from around 1998, but not before. The daughter of the landowner between 1992 and 1995 stated that her father did not lock the gates. If they were locked at an earlier date, it may only have been for a limited period that did not effectively challenge use by horse riders. Had the gate been kept continuously locked as claimed, the subsequent landowners would not have needed to lock it.
3. The current landowner also locked most of the gates on the farm for security reasons after he began storing caravans at the farm in 1998.
4. From the evidence provided, the landowners locked the gates to prevent cattle escaping and for security reasons, rather than to prevent the public from using the Order route on horseback.
5. It was claimed that the grazing of cattle and calves is not compatible with horse riding due to safety and conflict issues. Therefore, this demonstrates a lack of intention to dedicate the land as a bridleway. Many rights of way, including bridleways, cross land used for grazing livestock, therefore I do not agree with this view.
6. I conclude that there is insufficient evidence to demonstrate a lack of intention to dedicate bridleway rights by any of the landowners.

*Conclusions on Section 31*

1. I consider that there is sufficient evidence of use by the public as of right on horseback and without interruption between June 1978 and June 1998. I do not find sufficient evidence of challenge, permission, or other action to demonstrate that the landowners had no intention of dedicating a public bridleway.

*Overall Conclusions*

1. I am satisfied that the user evidence before me is sufficient to show that, on the balance of probabilities, a public bridleway subsists over the Order route. The documentary evidence also suggests bridleway rights and supports its local reputation as a bridleway.

**Other Matters**

1. Several matters were raised that related to issues of suitability and desirability such as livestock welfare, public safety, traffic-free riding routes, security, benefits to local businesses, and illegal motorbike use. Although I understand these concerns, I cannot consider them when determining the Order.

Conclusions

1. 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

1. I confirm the Order.

Claire Tregembo

INSPECTOR

**APPEARANCES**

**In Support of the Order:**

David Rice

Alan Rowe

who called:

Jayne Rawlinson

Lynn Marshall

Sue Boston

Samantha Bunn

Karen Lisle

**In Objection to the Order:**

Mr D Loweth On behalf of the landowner

Sally Boston Daughter of the landowner

**Others who spoke:**

Trevor Johnson

**DOCUMENTS PRODUCED AT THE INQUIRY**

Sketch map of the field before the removal of hedges and fences

**Order Map**

