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| **Order Decision** |
| Site visit made on 28 February 2023 |
| **by J Burston BSc(Hons) MA MRTPI AIPROW** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date:31 May 2023** |

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| **Order Ref: ROW/3281778** |
| * This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as The Staffordshire County Council Definitive Map (Public Bridleway from Syerscote Lane to Public Bridleway 33, Clifton Campville) Modification Order 2021. |
| * The Order is dated 27 April 2021 and proposes to modify the Definitive Map and Statement for the area by adding a public bridleway as shown in the Order plan and described in the Order Schedule. |
| * There was one objection outstanding when Staffordshire County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for determination. |
| **Summary of Decision: The Order is confirmed subject to the modifications set out in the Formal Decision.** |
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Procedural Matters

1. None of the parties requested an inquiry or hearing into the Order and I have therefore considered this case on the basis of the written representations put before me. I made an unaccompanied inspection of the proposed path on Tuesday 28 February 2023.
2. The OMA have drawn my attention to a minor drafting error in the Order which refers to the ‘*Secretary of State*’ rather than the ‘*Council*’ in the introductory paragraph. Given the nature of the error, I am satisfied that no party has been prejudiced by it. To correct that mistake I proposed to modify the Order accordingly.

The Main Issues

1. The Order relies on the occurrence of an event specified in Section 53(3)(c)(i) of the 1981 Act. Therefore, for me to confirm the Order, I must be satisfied that the discovered evidence shows on the balance of probabilities that a public right of way subsists.
2. Accordingly, it needs to be determined on balance whether the evidence is supportive of the dedication of a public right of way over the route claimed (“the claimed route”) under common law or statute. Reliance is placed by the Council on various historical documents in support of the common law dedication of a bridleway at some point in the past. However, the documentary evidence is also supported by evidence of use.
3. Section 32 of the Highways Act 1980 (“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 a highway.

**Reasons**

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. The Council considers that the application dated 21 June 1999 brought the Order Route into question. In the absence of any other earlier event I am satisfied that this is the date on which use was brought into question giving rise to a relevant twenty-year period of June 1979 – June 1999.
4. However, it is clear in this case that reliance is made on dedication at common law given that the applicant’s case rests on limited evidence of recent use, but this is coupled with evidence of earlier and long-standing public use. Under common law, an inference that a way has been dedicated for public use may be drawn when the actions of the landowners (or lack of action), indicate that they intended a way to be dedicated as a highway and where the public have accepted that dedication. The burden of proof lies with the claimant to demonstrate that the evidence is sufficient to indicate an intention of dedication under common law.

User Evidence

1. The evidence of use arises from the user evidence forms (“UEFs”) submitted in connection with the application. A total of 16 UEFs refer to use from the 1960s until use was stopped by the locking of a gate in 2011. Only 3 UEFs refer to use over the full relevant period and only 1 of these on horseback. None of the users report that their use of the route was interrupted by the gate, which was, until 2011, unlocked and used in relation to the moving of livestock.
2. It is apparent from the UEF’s that there is a strong possibility that the use by a number of people was of a permissive nature. In some cases, a distinction can be drawn between permission given to a wider body such as the local hunt and the use on other occasions by individuals or for access in connection with farming or employment activities. Whilst I treat the evidence of use by these parties with some care, it is unclear whether this permission extended to use for other purposes, such as recreation. Of the remaining 2 UEFs their use of the Order Route was seasonal and on foot.
3. The available evidence of public use is limited. Accordingly, it is not in my view sufficient to raise a presumption that the route has been dedicated as a public right of way of any sort in accordance with the provisions of the 1980 Act. Nonetheless, it does perhaps confirm that the route still existed and was available for use until 2011.
4. In reaching this conclusion I note the number of judgements referred to me by the Objector which I took into account namely:

* Todd & Bradley v SSEFRA [2004] EWHC 1450
* *R v Oxfordshire County Council and others ex parte Sunningwell Parish Council* (HL)[1999] UKHL 28, [2000] 1 AC 335,[1999] 3 WLR 160, [1999] 3 All ER 385
* *R v SSE ex parte Cowell* [1992] JPL 370, (CA)[1993] JPL 851
* *Mann v Brodie* [1885] HL 378, 10 App Cas 378
* *R (Lewis) v Redcar and Cleveland Borough Council* (QBD)[2008] EWHC 1813 (Admin), (CA)[2009] EWCA Civ 3, (SC)[2010] UKSC 11
* *R (oao) Godmanchester Town Council and Drain v SSEFRA and Cambridgeshire County Council* [2005] EWCA Civ 1597, [2006] 2 All ER 960, [2006] 2 P & CR 1) [2007] UKHL 28, [2007] 3 WLR 85, [2007] 4 All ER 273
* *Applegarth v SSETR* (QBD)[2001] EWHC Admin 487, [2002] 1P & CR 9, [2002] JPL 245, [2001] 27 EG 134 (CS)
* *Fairey v Southampton County Council* (QBD)[1956] 1 All ER 419, (CA) [1956] 2 QB 439
* *Jones v Bates* (CA)[1938] 2 All ER 237

***Documentary evidence***

1. The documentary evidenced adduced at the time the application was submitted included the 1910 Finance Act Field Book entry for the area, 1902 Ordnance Survey (OS) Map and a tracing of the 1838 Clifton Campville Tithe Award Map.
2. Following their investigations into the claim the Council found evidence of the path on the 1830, 1884, 1902, 1924 and 1925 OS maps as well as evidence submitted for the Parish Survey and the definitive map production process.
3. OS maps from the 1830 edition onwards show the whole of the Order route. The Ordnance Survey maps record the physical existence of a route between the end of BW33 and Syerscote Lane. The area is ascribed the field number 466, with double pecked lines running through the centre, east to west, which is usually used to show unenclosed roads. This is very visible on the 1907 and 1924 OS maps. Tracks nearby, such as Syerscote Lane, are marked similarly and are now considered to be public roads.
4. These OS maps assist in identifying the physical features present when the land was surveyed, but they do not distinguish between the public and private roads. Nonetheless, the Order Route is shown as a through route linking with recognised public roads. Whilst I accept that the evidential weight of the OS maps will be limited, they provide support for this road historically being part of the local public road network.
5. The 1836 Tithe Commutation Act required tithes in kind to be converted to monetary payments called ‘tithe rentcharge’. The Tithe Survey was established to find out which areas were subject to tithes, who owned them, how much was payable and to whom. These details were set out in the tithe apportionments.
6. The associated tithe maps provide a visual means of reference to the apportionments. Each piece of land liable to tithes was depicted and given a plot number, unique within that parish, by which it could be identified in the apportionment. Tithe maps vary in scale, accuracy and size. While roads are often shaded brown, there was no overall standard or key.
7. The tithe award map for the parish of Clifton Campville shows the entirety of the Order route as solid lines infilled with a darker brown colour wash. Other routes that may be recognised today as forming part of the existing road network are similarly depicted on the map extract before me. Nevertheless, I do accept that the track could be shaded because it was unproductive, rather than as marking any status.
8. The introduction of the Finance Act 1910 led to every property in England and Wales being valued. There was a complex system for calculating the ‘assessable site value’ of land, which allowed for deductions for land set aside for public use such as roads and bridleways.
9. The Finance Act Field Book entry notes the landowner’s comments that “*we are not aware of any specific rights of way if there are any an inspection will doubtless disclose them*”. For land over which the proposed route travels, the valuation book records a deduction for ‘Public Rights of Way or User’ of £75 and records restrictions of ‘footpaths (B/ch way)’. The Inspection notes also reference “*public footpaths through OS.96. OS.466 is a public Bridle Road continuing through OS 497, 496, 511 and 528*.”
10. I cannot discount the possibility that this deduction relates, in part, to the Order route, particularly as the Finance Act Map shows that reference ‘466’ refers to a solid double parallel outlined track, with a dotted double parallel line in between, which follows the claimed route and continues along the existing BW33. This track is shaded brown and is darker than the base map colour. Other known public roads are also shown in this shading. Had this track formed part of the property and been omitted from the valuation it would have formed a serious omission and evasion of tax and the landowner liable for criminal prosecution.
11. The objector comments that the Order route was excluded from the Finance Act Map because it was a private road used by the landowner to access fields. I accept that the track was undoubtably used for this purpose. However, that would not exclude other public rights, such as a bridleway, also existing. This would also tie in with the double dotted line that follows BW33 and continues along the Order Route. The objector also argues that the Finance Act Map shows that the track is separated from Syerscote Lane and the existing bridleway by solid lines and therefore it does not connect to any other right of way. I accept that the track is shown as fully ‘enclosed’ by a solid black line, to my mind this would represent a land boundary rather than a solid feature on the ground that would prevent access. Indeed, similar lines are shown across the existing BW33 but do not restrict access.
12. The Finance Act field notes sets out a schedule which refers to land parcel reference 466 as a road measuring 1.369 acres. The total schedule measures 270.090 acres. This figure is again repeated as under “*deduct market value of site under similar circumstances, but if divested off structures, timber, fruit trees and other things growing on the land.*” A monetary value of £3080 is attributed. The objector asserts that given that the road is included in this equation it cannot be a public road or bridleway.
13. Nonetheless, there is no reason why a private track cannot also carry public bridleway rights and I see no reason why a surveyor could not make a separate deduction in respect of the public bridleway. However, the deduction of £75 for public rights of way or user would relate to the whole hereditament which contains other known rights of way and therefore cannot be said to necessarily include the Order route. In any event, the Finance Act information certainly does not preclude the possibility of the route having been recognised as a public bridleway and the field notes suggest that in fact it was. Accordingly, this evidence attracts significant weight.
14. As part of the preparation for the production of the definitive map and statement surveying authorities required parish councils and parish meetings to co-operate with surveying authorities in preparing the draft map.  The parish role was fundamental and sought to ensure that public rights of way were correctly identified for inclusion on the definitive map.
15. The Order route was not identified on the draft and provisional maps prepared under the National Parks and Access to the Countryside Act 1949 as a bridleway. However, footpath FP34 and bridleway BW33 have a junction with the Order route. It is unlikely that the Parish Council considered that bridleway BW33 was a cul-de-sac and this suggests that the Order route may have been considered to be a route of higher status which did not need to be recorded on the definitive map.

Other records

1. In July 1905, the Clifton Hall Estate was offered for sale at auction. The plan accompanying the sales catalogue shows the Order route in full. It is shaded a similar colour to the entire ‘lot’.
2. The sales catalogue itself sets out the land surrounding the Order Route under Lot 15. A schedule of the land parcel numbers is provided which correspond to those shown on the OS and Finance Act maps. The Order Route is set out as land parcel 466 and described as a ‘roadway’ and ‘road’. I note the objector’s comments that other tracks which are not currently rights of way are shown similarly on the plans. Nonetheless, there is nothing in the catalogue for the sale that expressly supports or negates the possibility that public rights of way exist across the land. The catalogue extracts appear to be silent on this matter.
3. The Principal Vesting Deed of William Wakefield, dated 17 May 1926, bequeathed an area of land (including the Order Route) to his son. The map attached to the deed also refers to the Order Route as ‘466’ and is shaded in pink, which is the same colour as the surrounding land, whereas Syerscote Lane is left white. I agree with the objector that this does offer some evidence that land was not a public road and therefore available for private ownership.

Conclusions on the documentary evidence

1. It would appear that the Order route has existed as part of a longer route since at least the first half of the 19th century and there is a consistency with the Order Route and other public rights of way. With regard to the status of the route, the evidence is less conclusive. Nonetheless, it forms a short section of a longer through route, the remainder of which is known to carry public bridleway rights. It was clearly considered to have some sort of public status at the time of the Finance Act and Tithe Award and there would appear to have been no logical reason for awarding a public bridleway route which terminated as a cul de sac. However, I accept that the track may also have private status in terms of vehicular access so that landowners can reach isolated fields. This would be borne out of the sales particulars for the estate and the former landowner’s Will.
2. Taken individually, none of the above considerations are in themselves conclusive. However, when looked at together and taken in the round, the documentary evidence builds a picture of the Order route consistently being shown in the same way as other routes that are presently public rights of way. I find this evidence to be compelling.

***Conclusions***

1. Notwithstanding the suggestion of inconsistency raised by the Objector, I find the Finance Act documents to be strong evidence of the Order route being a public bridleway. Whilst none of the adduced evidence can be regarded as conclusive on its own, considering the evidence as a whole, reinforced toa limited extent by the evidence of users, I find, on the balance of probabilities, that the Order route not currently recorded in the DMS subsists and should be recorded with bridleway status.
2. 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 subject to the following modification:

* On the introductory paragraph on page 1 of the Order

“This Order is made by Staffordshire County Council under section 53(2)(b) of the Wildlife and Countryside Act 1981 (“the Act”) because it appears to the Secretary of State for Environment Food and Rural Affairs (who has directed the authority to that effect) that the Definitive Map and Statement for the District of Litchfield requires modification…”

Shall be replaced with

“This Order is made by Staffordshire County Council under section 53(2)(b) of the Wildlife and Countryside Act 1981 (“the Act”) because it appears to the Council that the Definitive Map and Statement for the District of Litchfield requires modification…”

J Burston

**Inspector**

**Diagram

Description automatically generated**