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| **Appeal Decision** |
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| **by Claire Tregembo BA(Hons) MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 17 January 2024** |

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| **Appeal Ref: ROW/3314444** |
| * This Appeal is made under Section 53 (5) and Paragraph 4 (1) of Schedule 14 of the Wildlife and Countryside Act 1981 against the decision of Staffordshire County Council not to make an Order under section 53 (2) of that Act. * The application dated 16 September 2015 was refused by the Council on 9 December 2022. |
| * The appellant claims that Footpath 76 Waterhouses Parish, should be upgraded to restricted byway as shown on the plan appended to this decision.   **Summary of Decision: The Appeal is dismissed.** |
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Preliminary Matters

1. I have been directed by the Secretary of State for Environment, Food and Rural Affairs to determine this appeal under Section 53(5) and Paragraph 4(1) of Schedule 14 of the Wildlife and Countryside Act 1981 (the 1981 Act).
2. Both the applicant and Staffordshire County Council called the road at the north end of the appeal route Stoney Lane. However, on the maps and plans before me, it is shown as ‘Stony Lane’ and I shall adopt this spelling for the purposes of my decision.
3. The appeal has been determined on the papers submitted. I have not visited the site, but I am satisfied I can make my decision without the need to do so.

Main Issues

1. Section 53 (3)(c)(ii) of the 1981 Act provides that a modification 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. The evidential test to be applied is on the balance of probabilities.
2. The case in support relies on historical documents and maps. 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 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.
3. The Natural Environment and Rural Communities Act 2006 had the effect of extinguishing unrecorded public rights of way for mechanically propelled vehicles unless one or more of the exemptions in Section 67(2) or (3) is applicable.

Reasons

1. The appeal route is currently recorded on the definitive map and statement (DMS) as Footpath 76 Waterhouses Parish and runs between Stony Lane and the A523. The Milkgate Link Road is directly opposite the southern end of the appeal route.

*Commercial Maps*

1. Cary’s 1805 and Greenwood’s 1820 maps of Staffordshire show the appeal route and the Milkgate Link Road as a through route between Milk Gate and Stony Lane. The A523 was not in existence at this time. The key to Greenwood’s map indicates the appeal route is a cross road.
2. In *Fortune v Wiltshire Council* [2012] EWCA Civ 334 and *Hollins v Oldham* [1995] C94/0206 it was considered that cross roads could be highways available to the public, particularly when supported by other documents.

*Tithe Map 1844*

1. The northern end of the appeal route is shown on the Calton Tithe map of 1884 as an enclosed access track into a field numbered parcel 66. It is uncoloured and a brace at the southern end indicates the track is part of parcel 66. The rest of the appeal route is not shown but it would run along the western edge of parcel 66. Stony Lane, the A523 and the Milkgate Link Road are all coloured brown.
2. The purpose of the Tithe records was to identify titheable land capable of producing crops. Normally a detailed survey was undertaken. They are statutory documents which were in the public domain. They were not produced to record public rights of way, although they can be helpful in determining the existence and status of such routes. Public roads were normally shown coloured brown on Tithe maps.

*Handover Records and Other Highway Records*

1. The Local Government Act 1929 transferred responsibility for unclassified publicly maintainable roads from Rural District Councils to County Councils. Rural District Councils were required to produce Handover Maps and Schedules to identify roads maintainable at public expense.
2. The appeal route is shown coloured black on the 1929 Mayfield Rural District Council (MRDC) Handover Map. The key indicates this is an ‘Other Road’ maintained by MRDC.
3. In the accompanying ‘Schedule of Rural District Roads (not main roads)’ it is listed with the Milkgate Link Road as route No. 34 ‘Stoney to Milkhill House’ as an ‘Other Road, Waterbound’ with a ‘gravel or flint etc.’ surface and a length of 0.46 miles.
4. A memorandum dated 17 February 2004 from the Land Charges Manager to the Legal Section states their records show the appeal route as a highway maintainable at public expense under Section 36 of the 1980 Act. They also had an application dated 21 October 2003 to add it to the list of publicly maintainable highways under Section 36(6) of the 1980 Act (the List of Streets (LOS)). The applicant claimed the route was an ancient highway, potentially a byway open to all traffic.
5. In response, a memorandum dated 19 April 2004 from the Corporate Director (Resources) into the alleged publicly maintainable highway states they had concluded the appeal route should not be added to the LOS and it would retain its current classification as a public footpath shown on the DMS.
6. The appeal route is not on the current LOS. The Milkgate Link Road on the south side of the A523 is on the LOS as a G-class road. Analysis of the highway records indicates all the other routes shown on the 1929 Handover Records are currently recorded on the LOS. The Rights of Way Improvement Plan for Staffordshire states that G-class roads are available for walkers, cyclists, horse riders and motorised users.

*Definitive Map Records*

1. The appeal route is included as path number 76 in the Parish Survey cards of 1951. It is described as running from the Leek-Ashbourne Road (A523) to Stony Lane and Calton Village. It is described as leaving the A523 ‘via stone gap stile, proceeds along edge of field, becomes a lane at corner of field which leads on to Stony Lane through a cartgate and stone gap stile’.

*Ordnance Survey Maps*

1. On the 1881 25-inch Ordnance Survey (OS) map the northern end of the appeal route is shown as an enclosed track which gets wider as it approaches Stony Lane. Within the wider section, there is a dashed line along the eastern boundary which continues into Footpath 129. The rest of the appeal route is shown with double dashed lines running along the edge of a field.
2. The appeal route is shown in the same way on the 1925 25-inch OS map. Footpath 129 and a route to the south between the A523 and the Milkgate Link Road are also shown with double dashed lines, and both are labelled *F.P.* Other footpaths recorded on the DMS are also shown in the same way with some labelled *F.P* and others unlabelled.
3. On the 1889 1-inch OS map the appeal route is shown as a mostly ‘unfenced ordinary metalled road or minor road’. It is shown on the 1897 and 1908 1-inch OS maps as a mostly ‘unfenced metalled third-class road’. The 1921 and 1940 1-inch OS maps show the appeal route as an ‘unfenced minor road’. It is not coloured and the 1921 map states ‘private roads are uncoloured’. On the 1953 and 1967 1-inch OS maps the appeal route is shown as an ‘unfenced minor road in a town, drive or unmetalled road’.
4. On all the OS maps, footpaths and bridleways are shown with a single dashed line and the 1953 and 1967 maps also show tracks with the same line.

*Local History*

1. In *Calton is My Dwelling Place* [2006] by David Swinscoe a local historian whose research for the book was accepted by Staffordshire Records Office, the appeal route is described as a public footpath which used to be a continuation of the lane to Broadhurst Farm (the Milkgate Link Road) from the old toll road prior to 1824 which took a steeper incline to the bend on Stony Lane. The A523 became the toll road when it was opened in 1824. It was built because the old toll road between Waterhouses and Calton Lane was difficult in winter and was often blocked by snow.
2. New Stonyrock Cottage was used as a toll house which Swinscoe claims was disliked by the residents of Calton and led to more frequent use of the steep tracks up the Cliff from Manifold Valley by those travelling from Waterhouses to avoid paying the toll.

*Evidence on the ground*

1. Photographs of the appeal route show the northern end as a track between old walls. It continues as a visible hollow way alongside the field boundary but appears to be narrower than the enclosed section.

*Conclusions on the Documentary Evidence*

1. I must consider the evidence before me as a whole, weighing up the evidential value of each document accordingly. A consistent depiction of the appeal route over a number of years can be a positive indication of status. I need to consider if there is synergy in the documents that points, on the balance of probabilities, to the appeal route being a restricted byway.
2. I consider the depiction of the appeal route as a cross road on Greenwood’s map to be suggestive of public rights higher than footpath. It is also shown on Cary’s map in the same way as other vehicular highways. However, the evidential weight that can be given to these maps is small.
3. The appeal route is shown on two maps produced before 1835. Highways existing before then automatically became maintainable at public expense under the 1835 Highways Act. However, highways include footpaths and bridleways as well as vehicular routes. Therefore, I do not consider the physical existence of the appeal route before 1835 provides any evidence as to its status.
4. Only a short section of the appeal route is shown on the Tithe map, and it is not shown in the same way as other public roads. The rest of the appeal route is not shown suggesting it did not physically exist. I consider the Tithe map provides no evidence of public vehicular rights.
5. The OS maps provide evidence of the physical existence of the appeal route since 1881. The keys for the 1-inch OS maps identify the appeal route as a minor road which is suggestive of vehicular rights. However, the 25-inch maps show the appeal route in the same way as other footpaths, and it forms a continuous route with Footpath 129 to the north. Furthermore, since the late 19th Century, OS maps have carried a disclaimer stating tracks and paths shown provide no evidence of public rights. This limits the value I can place on them. I consider the OS maps to be inconclusive as to vehicular rights.
6. The Handover Records indicate the appeal route was a publicly maintainable road in 1929. These records were produced to show who was responsible for maintaining public highways. However, they were not intended to record status and they can include non-vehicular highways. There is also no legal definition of a road, and it can include footpaths and bridleways.
7. All the routes included in the Handover records are on the LOS as D or G-class vehicular highways except the appeal route which suggests MRDC only intended to show vehicular highways. I consider the inclusion of the appeal route in the Schedule with Milkgate Link Road suggests both routes had the same status. However, it is also possible that the Milkgate Link Road acquired vehicular rights at a later date.
8. The appeal route was recorded as a public footpath when the DMS was produced and is not recorded on the LOS. Memorandums from 2004 show consideration was given to including it and the existence of vehicular rights. The memorandums do not indicate what evidence was considered, but it was found to be a footpath which did not need to be added to the LOS.
9. It is suggested that the appeal route was part of the road network before 1824 but fell out of use due to the opening of the new toll road which made access to Calton easier. However, Swinscoe claims the residents of Calton tried to avoid paying the toll at Stonyrock although no materials are cited for this claim. The Milkgate Link Road and the appeal route could have been used to reach Calton without passing Stonyrock. Therefore, continued, or increased use of the appeal route would have been more likely while tolls were payable.
10. The appellant considers a hollow way indicates an old road. I am not aware of any authority which indicates the status of hollow ways.
11. Some of the documents are suggestive of public vehicular rights, although their evidential value is limited. Other documents are inconclusive or provide no evidence of vehicular rights. Overall, the appeal route has not been consistently depicted in the maps and records before me as a vehicular route. Therefore, I do not consider there is sufficient evidence, on the balance of probabilities, to show the appeal route is a vehicular highway which should be recorded as a restricted byway.

###### Conclusions

1. Having regard to these and all other matters raised in the written representations, I conclude that the appeal should be dismissed.

###### Formal Decision

1. I dismiss the appeal.

Claire Tregembo

INSPECTOR

**Appeal Route**

