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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: 16 January 2024** |

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| **Appeal Ref: ROW/3326236** |
| * 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 4 July 2018 was refused by the Council on 23 June 2023. |
| * The appellant claims that Footpath 60 Waterhouses Parish should be upgraded to restricted byway.   **Summary of Decision: The Appeal is allowed.** |
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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. 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 The case in support relies on the historical documents and maps.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 highway.
3. User evidence has also been submitted in support of the appeal route. Section 31 of the 1980 Act relies on a statutory presumption of dedication as a highway where it has been actually enjoyed by the public as a right of way and without interruption for a full period of twenty years. The date when the public’s right to use the route was brought into question would need to be established. I would then need to 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 was 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 restricted byway during this period.
4. 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 has accepted that dedication. Use by the public can be evidence of the intention to dedicate; this use should be as of right without force, secrecy, or permission. There is no fixed period of use at common law and use may range from a few years to several decades, based on the facts of the case. The more intensive and open the use, the shorter the period required to raise the inference of dedication. The burden of proof lies with the claimant to demonstrate that the evidence is sufficient to indicate an intention of dedication.
5. The Natural Environment and Rural Communities Act 2006 (the 2006 Act) 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 runs from Duke’s Lane to Tatlers Lane. Duke’s Lane runs from Stony Lane south of the appeal route to the A523 to the north. Part of Duke’s Lane is recorded on the Definitive Map and Statement (DMS) as a byway open to all traffic 128 (BOAT 128) and the rest is recorded on the List of Streets (LOS) as a highway maintainable at public expense under section 36(6) of the 1980 Act. Tatlers Lane runs west from the appeal route to Ellastone Road and is also recorded on the LOS. I have appended a map showing the appeal route and surrounding area to the end of my decision.

*Cauldon Tithe Records 1845*

1. The appeal route and all of Duke’s Lane are shown on the Cauldon Tithe Map 1845 with double solid edges. There is a line across the appeal route near the northern end and the section north of this line is labelled 48. This line could indicate a change in ownership as suggested by Staffordshire County Council (SCC) or a gate. The appeal route is unnumbered south of this line. Parcel 48 is described as a ‘Road’ owned by John Bill in the Tithe Award.
2. BOAT 128 is numbered 41, but the rest of Duke’s Lane is unnumbered. The Tithe Award describes parcel 41 as ‘Dukes Road’ owned by the Duke of Devonshire. I only have a limited extract of the Tithe Records before me, so it is not possible to see how other public roads are shown.
3. The purpose of Tithe records was to identify titheable land capable of producing crops. Normally a detailed survey was undertaken. They are statutory documents that 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.

*Ordnance Survey Maps*

1. The 1856 First Series Ordnance Survey (OS) map shows the appeal route as part of a through route between Stony Lane and Ellastone Road in the same manner as other public roads including Stony Lane, Tatlers Lane, Duke’s Lane, and BOAT 128. No key is provided, but footpaths and bridleways do not appear to be shown on this map.
2. On the 1897 1-inch OS map the appeal route is shown as part of a ‘metalled third-class road’ running between Stony Lane and Ellastone Road. Other public roads including Stony Lane, Tatlers Lane, Duke’s Lane, and BOAT 128, are also shown as third-class roads.
3. The appeal route is shown on the 1947 1-inch OS map as part of an ‘Other Motor Road, narrow, bad’, running between Stony Lane and Ellastone Road. Duke’s Lane heading northeast of the appeal route and BOAT 128 are shown as a ‘Minor Road’ suggesting the appeal route was a more significant route.
4. On the 1957, 1962 and 1967 1-inch OS maps the appeal route, Tatlers Lane, Duke’s Lane and BOAT 128 are shown as a ‘Road under 14 feet of Metalling, Untarred’. The appeal route forms part of a through route between Stony Lane and Ellastone Road. On the 1967 OS map the appeal route, BOAT 128 and the start of Footpath 140 are also shown as a Road Used as a Public Path (RUPP).

*Finance Act Map 1910*

1. The appeal route, Stony Lane, Duke’s Lane, BOAT 128, Ellastone Road and Tatlers Lane are all shown excluded from the surrounding parcels on the 1910 Finance Act map.
2. The Finance Act 1910 imposed a tax on the increase in land value, which was payable when the land changed hands. Maps were produced to show taxable land following a survey by the Board of Inland Revenue. 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 the liability for tax so they were recorded in the survey. The exclusion of roads and tracks from adjoining hereditaments is suggestive of public highway rights. However, it could also be argued that private rights had the same effect on land.

*Handover Records 1929*

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 on the Cheadle Rural District Council Handover Map as an Unclassified Road between Stony Lane and Ellastone Road, along with part of Duke’s Lane and Tatlers Lane. The rest of Duke’s Lane and BOAT 128 are not shown on the Handover Map. Stony Lane is also shown as an unclassified road.
3. The appeal route, part of Duke’s Lane and Tatlers Lane are listed in the Cheadle Rural District Council (CRDC) Handover Schedule under the headings ‘Rural District Roads (not Main Roads)’, ‘Unclassified Roads’, and ‘Other Road Waterbound Gravel or Flint etc.’ They are described as ‘Stoney Lane to Wallbank Grange’ with a length of 1.5 miles. Wallbank Grange is shown on the Handover map on Ellastone Road south of Tatlers Lane.
4. The appeal route is not recorded on the current LOS. Analysis of the highway records shows all the other routes included on the Handover records as Unclassified Roads are recorded on the LOS as C or D-class roads. Duke’s Lane and Tatlers Lane, which are part of the through route between Stony Lane and Ellastone Road are both recorded as the D1127.

*Definitive Map Records*

1. The Survey of Rights of Way Memorandum issued by the Ministry of Town and Country Planning advises local authorities on how to prepare the DMS. It contains definitions of the different highways which should be recorded. It explains that footpaths and bridleways are combined in the National Parks and Access to the Countryside Act 1949 (the 1949 Act) by the expression ‘public paths’. A RUPP is defined as a highway, other than a public path, used by the public mainly for the purposes for which footpaths or bridleways are so used. The Memorandum advises that highways which the public are entitled to use with vehicles but which in practice, are mainly used by them as footpaths or bridleways, should be marked on the map ‘C.R.F. or C.R.B.’ (carriage roads used as a footpath or bridleway).
2. A survey was carried out under the 1949 Act to identify routes to be recorded on the DMS. The Parish Survey map shows the appeal route in black labelled C.R.F. 60 from its junction with Footpath 63 to Tatlers Lane. Path 60 initially included Footpaths 63 and 64 but they are not labelled C.R.F. and were renumbered in pencil. The section of the appeal route between Duke’s Lane and the junction with Footpath 63 is shown as 60A in blue. This suggests it was a later addition to the map. BOAT 128 and FP 140 also appear to be later additions as they are both shown in pencil and labelled R.P.
3. The Parish Record Card for the appeal route lists the path symbol used on the map as R.P. indicating it is a RUPP. Originally it was described as starting at Path 59, which is at the south-eastern end of Path 64, and ending at the ‘Lane which leads to Leek-Uttoxeter Road near M.P.’ (Tatlers Lane). However, both were crossed out and it was amended to start from ‘County Road N of Limestone View Farm’ (Duke’s Lane) and end at the Parish Boundary.
4. The appeal route between Duke’s Lane and Footpath 63 is not described on the Parish Record Card, but this could be because it was a later addition. The rest of the appeal route is described as ‘a semi-metalled lane’ from ‘about halfway along the lane from Park View Farm to the M.P. on the Leek-Uttoxeter Rd. but only the last few hundred yards from the Parish Boundary to the Leek-Uttoxeter Road appears to be well used. The lane is properly metalled here.’ The well-used, properly metalled section is Tatlers Lane. Park View Farm is at the junction of Duke’s Lane and Stony Lane.
5. The Draft Statement dated 27 November 1954 records the whole of the appeal route as a RUPP. Footpaths 63 and 64 are shown as footpaths.
6. An undated 1:10,560 scale Definitive Map (DM) extract shows the appeal route with a dashed line with arrowheads along one side. This is the line style currently used to depict restricted byways on the Definitive Map and Statement but was previously used to show RUPPs. BOAT 128 and FP 140 are also shown with the same line style.
7. Another undated 1:10,560 scale DM extract shows the appeal route with dashed lines. This is the line style used to depict footpaths on the DMS. BOAT 128 is shown with a dashed line with arrowheads along one side. From the statements before me, I believe this to be the current DM, but this is not clearly stated.
8. The appeal route was reclassified from RUPP to footpath following a County Council Special Review in 1969 under the provisions of the Countryside Act 1968 (The 1968 Act). The review was completed before *R v Secretary of State for Environment Ex parte Hood* [1975] QB 891 (Hood) which found RUPPs could not be reclassified as having rights lower than bridleway unless there was evidence to the contrary.
9. Objections were received to the reclassification of some RUPPs as footpaths and hearings were subsequently held. Reclassified routes which received objections were subsequently shown on the DMS as bridleways. RUPPs which were reclassified as footpaths but received no objections were subsequently shown as footpaths.

*Photographs of the Appeal Route*

1. Photographs of the appeal route show an earth and stone track with narrow grass verges on either side running between two drystone walls. There is also some grass growing along the centre of the track. No gates or obstructions are shown along it. Short sections of Duke’s Lane and Tatlers Lane are visible in two of the photographs and these appear to be the same width as the appeal route with a tarmac surface and narrow grass verges on either side.

*Conclusions on 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 many 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 having public vehicular rights.
2. The appeal route is shown on the Tithe map in the same way as other vehicular highways. The parcel number on part of it could indicate this section was capable of producing crops and therefore titheable whilst the rest was not. BOAT 128 was also numbered. Grass-surfaced highways were used to graze livestock and could therefore be subject to tithes. However, private roads could also be unproductive and therefore not tithable. Overall, I consider the depiction of the appeal route in the same way as other vehicular highways to be suggestive of vehicular rights.
3. The OS maps show the physical existence of the appeal route since 1856. It is consistently shown as part of a longer route between Stony Lane and Ellastone Road with part of Duke’s Lane and Tatlers Lane, both of which are vehicular highways. The 1947 OS map shows it as a more significant route than BOAT 128. Since the late 19th century, OS maps have carried a disclaimer stating tracks and paths shown provide no evidence of public rights which limits the weight I can place on them. However overall, I consider the OS maps to be suggestive of public vehicular rights.
4. The appeal route is excluded from the surrounding parcels in the Finance Act map as are other public vehicular highways, including Duke’s Lane and Tatlers Lane which form a longer thoroughfare with the appeal route. I consider this indicative of public vehicular rights.
5. The Handover records show the appeal route was considered to be a publicly maintainable unclassified road in 1929. Unclassified roads are normally local roads for local traffic. 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.
6. All other routes included in the Handover records are shown in the LOS as C or D-class vehicular highways suggesting that CRDC only included vehicular highways. The appeal route is also shown as part of a continuous route with Duke’s Lane and Tatlers Lane, both of which are recorded on the LOS as the D1127. This suggests the appeal route should have the same status as the highways at either end of it. Furthermore, Duke’s Lane northeast of the appeal route and BOAT 128 are not shown on the Handover records indicating the appeal route was a more significant route at the time. Overall, I consider the Handover records indicate vehicular rights over the appeal route.
7. The Parish Record Card, Parish Survey Map and Draft Statement all show the appeal route as a RUPP. Part of the appeal route was originally considered with Footpaths 63 and 64 and the other section appears to be a later addition. This suggests the status of the appeal route was considered and found to have higher rights than footpath. The Parish Record Card also suggests the appeal route was considered to be part of a longer lane between Stony Lane and Ellastone Lane.
8. The appeal route was later reclassified from RUPP to footpath under a Special Review before the decision in Hood. Subsequent case law has established that reclassification under a Special Review did not extinguish any higher rights that existed.
9. On their own, none of the documents provide conclusive evidence as to the status of the appeal route. However, all the documents before me are suggestive of public rights at a higher status than footpath, with most indicating vehicular rights. The documents span a period of over one hundred years, and the appeal route is consistently shown as part of a longer route with two other public vehicular highways. When taken as a whole, I consider there is sufficient evidence, on the balance of probabilities, to show public vehicular rights over the appeal route.

**User Evidence**

1. As I have considered the documentary evidence sufficient to show the existence of public vehicular rights, I do not have to consider the user evidence. However, in the interests of completeness, I will briefly comment on it.
2. Eight user evidence forms show use of the appeal route on horseback for between six and thirty-six years. Four people used the appeal route for over twenty years. Six people used it at least once a week and two others used it every few months. From the late 1990s, between five and seven people were using the appeal route every year. Use was for pleasure or leisure, and several referred to it as a safer route with less vehicular traffic. None of the path users recalled any challenges to use, interruptions, obstructions, or gates on the appeal route. None of the path users had permission to use the appeal route. Some path users remembered seeing RUPP signs with one giving a date of 1997.
3. SCC considers two of the user evidence forms should be discounted because they were completed by minors who would not have been on their own and they would have no concept of use ‘as of right’. This is not a view I share.
4. There is a limited amount of user evidence before me, although this is not surprising given the location of the appeal route. Taken at face value, the user evidence is finely balanced and further testing would be necessary to determine if it meets the tests for statutory dedication under Section 31 of the 1980 Act. However, the user evidence does demonstrate the continued use of the appeal route with horses and shows that path users considered the appeal route to have higher rights than those recorded on the DMS. Therefore, the user evidence adds weight to the documentary evidence.

**Natural Environment and Rural Communities Act 2006**

1. The definitive map modification order application was made in 2018, after the 2006 Act cut-off date. None of the exemptions listed in the 2006 Act apply. Although I have found, on the balance of probabilities, that vehicular rights exist over the appeal route, the 2006 Act would have extinguished them. Therefore, only unmotorised vehicular rights would remain and the status would be a restricted byway, as applied for.

###### Overall Conclusions

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

###### Formal Decision

1. In accordance with paragraph 4(2) of Schedule 14 of 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 upgrade the public footpath to restricted byway, as proposed in the application dated 4 July 2018 and shown on the plan appended to this decision.
2. This decision is made without prejudice to any decisions that may be given by the Secretary of State in accordance with his powers under Schedule 15 of the 1981 Act.

Claire Tregembo

INSPECTOR

**Appeal Route and Surrounding Area**

