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| **Appeal Decision** |
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| **by Charlotte Ditchburn BSc (Honours) MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 04 April 2024** |

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| **Appeal Ref: ROW/3323544** |
| * This Appeal is made under Section 53 (5) and Paragraph 4 (1) of Schedule 14 of the Wildlife and Countryside Act 1981 (‘the 1981 Act’) against the decision of Central Bedfordshire Council (‘the Council’) not to make an Order under section 53 (2) of that Act.
* The application dated 11 February 2019 was refused by the Council on 31 May 2023.
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| * The Appellant claims that Caddington Public Bridleway 40 (‘the appeal route’) should be upgraded to a 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 1981 Act.
2. I have not visited the site. However, I am satisfied I can make my decision without the need to visit the site. This appeal has been determined on the basis of the papers submitted.
3. Comments and submissions have been made by the Appellant and the Council, I have taken into account all the evidence available to me in this decision.

Main Issues

1. The application was made under Section 53(3) of the 1981 Act which requires the surveying authority to keep their Definitive Map and Statement under continuous review, and to modify them upon the occurrence of specific events cited in Section 53(3).
2. Section 53(3)(c)(ii) of the 1981 Act specifies that an 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.
3. The evidence adduced is documentary. 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 is appropriate, before determining whether or not a way has been dedicated as a highway. Therefore, the main issue before me is whether the documentary evidence discovered demonstrates that the appeal route is a public vehicular carriageway which should be recorded in the definitive map and statement as a Restricted Byway.
4. The test to be satisfied is on the balance of probability.

Reasons

1. The appeal route commences at the junction of Mancroft Road and runs in a generally northerly direction to the junction of Manor Road.
2. The Appellant acknowledges that no single piece of evidence is conclusive, but taken as a whole, considers it demonstrates the appeal route’s reputation as a highway over many years, and full vehicular rights up to the passing of the Natural Environment and Rural Communities Act 2006 (NERC), hence the application being made for a restricted byway.

***Documentary evidence***

*Commercial and Ordnance Survey (OS) Maps*

1. Early historic maps submitted in support of the existence of the appeal route include Dury and Andrews’ (1766) and Bryant’s (1822) showing it in a similar manner to other routes they depict. Together with the First Edition OS 25 inch map, they are all consistent in showing the appeal route from Mancroft Road to Manor Road.
2. The Bartholomew’s Map 1903 shows the appeal route as an inferior road, Bartholomew’s maps carry a disclaimer advising that the representation of a road, track, or footpath on it is not evidence of public rights. Whilst the Council assert that less weight can be given to this commercial map as Bartholomew did not employ independent surveyors to carry out on the ground surveys, or to determine the status of the roads they depicted. The appellant argues that following on from *Commission for New Towns and Another v J. J. Gallagher Ltd (2002)* at least some weight must be given to this source. As the route is shown as an inferior road rather than as a footpath or bridleway, and cyclists at the time of publication had no right to use bridleways, having been declared to be carriages by Section 85 Local Government Act 1888, it is appropriate that at least a little weight be given to this document as evidence of vehicular status. I conclude that the Bartholomew map shows the physical existence of the appeal route and are suggestive of public rights, including for cyclists, but it could also be argued that they are private routes.
3. The Council concluded these old maps show the appeal route, but they do not consider they provide evidence of its status. Conversely, the Appellant considers it more likely than not that the appeal route as shown is a public road. Arguably, such maps were produced for the travelling public who might have had an expectation that they could use the routes shown. Although the Council suggests the appeal route could have been a private road, no examples of private roads on the maps have been identified by them. I agree with the appellant as these maps are promoting routes for the public to use and there is nothing to indicate that permission was required.
4. Accepting the limitations of the accuracy, in particular the earliest examples, these maps provide good evidence of the physical existence of the appeal route from at least 1766.
5. The OS 1901 25-inch map, 1924 25-inch map and 1944 6-inch map, show a wide track along the appeal route which is shaded in the same colour and manner as the two highways today to which it connects.
6. OS maps have long carried a disclaimer as regards the routes they show, so do not provide evidence of status but are useful evidence of the physical existence and alignment of the routes recorded at the time. Nevertheless, the inclusion of the route on a series of OS maps, as here, can be useful evidence in helping to determine status when considered together with other evidence. The same is the case for the old maps considered above, which are rarely sufficient on their own to reach the conclusion that a route shown is a highway. I conclude that alone, the OS maps are of limited value as regards status but show a route capable of use on horseback or with a vehicle.

*Inclosure Award*

1. The appeal route is recorded on the 1798 Parliamentary Inclosure Award of Caddington, described as the “12th” Awarded “Private Carriage Road and Driftway” in the accompanying Award Book. The private road is described as “One other Private Carriage Road and Driftway leading out of the bottom Lane Road into the last described Road near Tipple Hill Farm”. The appeal route is depicted as starting from “Lane Road”, now known as “Mancroft Road” and continues in a generally North easterly direction towards “Tipple Hill Lane”, now known as “Manor Road”, on which “Tipple Hill Farm” was situated.
2. The Award conveys that a track with a suitable width for horse and cart was available on the ground. The appellant asserts that no limitations or conditions are shown on the Inclosure Map and that in *Craggs v Secretary of State for the Environment, Food and Rural Affairs (2020)* that the bridleway rights deduced from ‘driftway’ were created without the ‘Private’ label. The appellant submits that the definitive statement should note the public driftway rights as these are effectively a limitation on the use as a public right of way, that is public rights of way users must expect the right of driftway occasionally to mean that their way is delayed. I conclude that this is not required as the likely use of the driftway would be for driving livestock, this was common practice at the time and delays would be expected whilst this occurred, it is not necessary to note this as a limitation in the definitive statement today.

*Finance Act Records*

1. The Council concluded that the Finance Act 1910 map and 1926 Inland Revenue Valuation Map are evidence of the existence of the route but not of its status or rights. On the other hand, the Appellant considers inferences can be drawn from the Finance Act records regarding the existence of public rights, in particular public vehicular rights, where highways shown uncoloured and unnumbered so that they are outside of hereditaments are indicative of public vehicular highways.
2. The Appellant described the route in connection with the Inclosure Award as having at least seven frontages to the ‘private carriage road and driftway’, the result of this being that it is unlikely that the landowners could have acted in unison to prevent dedication of the way for whatever use was made of it by the public and that the absence of gates along the route support this statement as gates would interfere with the statutory private rights of way conferred by the Inclosure Award. The Council argue that such a shared route would have been considered by the 1910 valuers to have been untaxable, and thus uncoloured, due to its multiple occupancy and use.
3. Finance Act records are not definitive. However, on the Finance Act Map the appeal route is shown uncoloured and thus not within any hereditament for which tax was payable. Mancroft Road and Manor Road are shown in the same fashion. As an uncoloured road this points strongly towards the conclusion that the road in question is a public vehicular highway and that the white road status in the absence of actual evidence to the contrary such as a deduction noted in *Maltbridge Island Management Company v Secretary of State for the Environment and Hertfordshire County Council (1998)*, is very good evidence of public vehicular status. In my view the depiction of the appeal route in this manner is consistent with it being a public vehicular highway.

*Definitive Map Records*

1. The appeal route was included on the original definitive map, the route is shown as Public Bridleway 40 on the 1952 Parish Survey Map, the 1953 Draft Map of Public Rights of Way for South Bedfordshire and Luton Rural District, the 1963 Provisional Map for South Bedfordshire and Luton Rural District and the 1964 Definitive Map for Leighton Buzzard and Luton Rural District.
2. The Council state that the claimed restricted byway was not depicted on any of the maps produced under the National Parks and Access to the Countryside Act 1949 as a Road used as Public Path (RUPP) which was the precursor status to a restricted byway (as introduced by the 2000 Act). Instead, the claimed route was claimed by the parish council as Caddington Bridleway No. 40. I conclude that whilst the route was not recorded as a RUPP, that does not mean that the route did not have the status being claimed.

*Aerial Photographs*

1. Aerial photographs from the late 1940s to 2002 show a visibly worn track running from Mancroft Road to Manor Road with vegetation growth decreasing the visibility of the worn track over the years, but clearly showing the route as a feature in the landscape. They help to demonstrate the existence of a path over those years, but not its status. Little weight can therefore be attached to the aerial photographs beyond them verifying that the line of the appeal route existed during that period.

*Conclusions on the evidence*

1. I consider the old commercial map evidence confirms the longstanding existence of the appeal route. Neither these nor the later evidence are inconsistent with the possible existence of public rights, perhaps vehicular, which favours the Appellant’s case. Alone, the OS maps are of limited value as regards status but show a route capable of use on horseback or with a vehicle.
2. The Inclosure Award set the status as ‘Private Road and Driftway’ and there is no evidence since to the contrary of there being vehicular rights along the appeal route. The Finance Act records support the existence of the appeal route as a vehicular highway excluded from hereditaments.
3. Having regard to the submissions in this appeal and for the above reasons, I conclude that the evidence before me is finely balanced, but for the sake of the appeal it does show that, on the balance of probabilities, a restricted byway subsists between Point A and Point B. I am satisfied that NERC leads to the status of Restricted Byway in this instance.

###### 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 to the 1981 Act, Central Bedfordshire 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 record Caddington Bridleway No.40 as a restricted byway in the definitive statement as proposed in the application dated 11 February 2019 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.

Charlotte Ditchburn

Inspector