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| **Final Order Decision** |
| Site visit made on 22 August 2023 |
| **by Mrs A Behn Dip MS MIPROW** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 1 August 2024** |

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| **Order Ref: ROW/3297207M** |
| * This Order was made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as The Essex County Council Definitive Map Modification No. 681 (Restricted Byway 67 Shalford, Braintree District) Order 2021. |
| * The Order, dated 14 October 2021, was made by Essex County Council (the Council) and proposed to modify the Definitive Map and Statement for the area by upgrading part of Footpath 63 and Footpath 67 to a Restricted Byway as shown on the Order Map and described in the Order Schedule. |
| * The Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation. * In accordance with Paragraph 8(2) of Schedule 15 to the 1981 Act I have given notice of my proposal to confirm the Order subject to modifications. |
| **Summary of Decision: The Order is confirmed, subject to the modifications that I previously proposed as set out in the Formal Decision, with additional modifications that do not need advertising.** |
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Procedural Matters

1. This decision should be read in conjunction with my Interim Decision of 23 October 2023, in respect of the Order, which outlined the main issues to be addressed and my findings on these matters.
2. The effect of the Order if confirmed with the modifications that I proposed, would be to show bridleway status for the Order route.
3. Further to the advertisement of the proposed modifications, one objection from the landowner was received, along with three representations from the Council, Essex Bridleways Association (EBA) and Mr and Mrs Gray.
4. In part the landowner objection sought to re-open the Interim Decision with regard to the evaluations made and the conclusion reached. No new evidence was submitted, albeit new arguments were made with regard to the decision of bridleway status being awarded, submitting that there is no substantive evidence to suggest that the route should be determined to be a bridleway in circumstances in which it has been determined not to be a restricted byway.
5. The purpose of the Interim Decision was to consider whether the Order should be confirmed to upgrade the status of the route to a restricted byway. As summarised in that decision, the evidence on both sides was very balanced and the conclusion marginal in regard to non- confirmation of restricted byway status.
6. To return and address each piece of evidence in the manner of assessing a bridleway rather than a restricted byway, when the evidence was previously assessed as so finely balanced in respect of the existence of a restricted byway seems unproductive. As outlined in the Interim Decision, it is the individual strands of evidence supporting the provenance of a bridleway, when considered with all of the evidence available for a restricted byway, that just tips the balance of probabilities in favour of a bridleway.
7. Two other matters were raised within the landowner objection which did not appear to be highlighted as matters of issue in original submissions, but are relevant matters that require addressing. These are the width of the Order route and whether a gate should be recorded as a limitation at point A.

**Width of the Order route**

1. The width of the Order route was determined by the Council to be between 2.5 and 9 metres, shown graphically by shading on a separate plan as part of the Order.
2. The landowner suggested that there was no good reason that the Order route should be the width that was currently shown on the ground, referencing *Hale v Norfolk CC 2000* and stating that the fact a public right of way runs between hedges or fences does not give rise to any presumption that public rights extend to those hedges. The landowner felt there was no reason to say that the public had ever had access to a width more than sufficient for two horses to pass each other, on the hardened track, where there is one. Accordingly they considered that a width of 2.5 metres, (the hardened track) was appropriate.
3. The Council advised that the width shading of the Order route under Plan No. 2 is intended to represent the extent of the route as shown excluded from the hereditaments on the Finance Act 1910 map, which was a document they felt, that was acknowledged by all parties as evidence of highway status. The Council accordingly considered that this map was sufficient evidence of the extent of the highway and had the advantage of more advanced surveying techniques than were previously available.
4. EBA, although acknowledging that it was unknown when the highway came into being, felt that it existed long before large scale OS maps were made. They considered it probable that the physical character of the way as mapped was also the character of the highway. They did not agree with the landowners suggestion that the route should be a regular strip, narrower than the lane or track within which it lies.
5. I consider the Council’s approach for ascertaining the width in this case both reasonable and acceptable and do not agree that the suggestion of using the current usable surface of the trodden path or a 2.5 metre strip is appropriate, given the variation of the excluded width shown on the Finance 1910 Act mapping. As the Council point out, this then raises the question of where within the varying width, such a strip of public rights would have been situated.
6. That said, I do accept the landowners point that features change, especially in regard to the Order route between point D to Lone Hill cottages, and to a lesser extent between points B-C, where there are no longer any defined features to reference the width on both sides. I also agree that the Order plan only refencing one minimum and one maximum point gives uncertainty to the landowner for practical management of the land, as well as to users.
7. The Council suggested that the process of identifying the boundaries as shown in Plan 2 of the Order could be completed outside of this Order decision. I agree with this approach and it is the case that such an exercise can be undertaken with the landowner, following the Final Order Decision, to give the clarity of width needed on the ground at different locations. Should any agreed measurements subsequently require alteration to the Order Plan, there is process available to address this.

**Consideration of a gate at point A as a limitation**

1. The current Order does not record a gate at point A as a limitation. The landowner considered that the Order Map shows the route beginning north of the field gate at point A, which means that the existing gate would be unaffected. However they also submitted that consideration should be given as to whether a gate should be recorded on the Order as a limitation, given that there was clear evidence that a gate had been present at that point for many years.
2. My attention was drawn to the Tithe Map of 1844, the 1876 and 1896 OS maps and the Finance Act 1910 Map which all denoted an obstruction at point A. The farm sale particulars of 1895 indicated the farm was well adapted for stock and the landowner considered it was likely a gate had been in existence to divide the road off from the farmyard, to prevent stock straying. The landowner also pointed out that there was also an obstruction shown on the 1969 OS map.
3. EBA submitted that to be a limitation, the gate must have existed at the time of dedication and that since the bridleway is confirmed on a raft of historical evidence (all taken together) going back to 1584, a date of dedication cannot easily be ascertained. They acknowledged that where a gate was consistently depicted on mapping over a long period of time and that the gate was at a boundary, it presumptively had a coeval origin with the highway and was a limitation. However EBA felt that as the landowner considered that the Order route began north of the field gate at point A, then it would not fall within the scope of the Order and could not be described as a limitation, although it could be stated as a point of reference.
4. The Council took the view that there was insufficient evidence to indicate that dedication of the highway leading to point A, or of the Order route beyond that point, were subject to the limitation of a gate. They pointed out that the Chapman and Andre map of 1777 did not show a gate at that location, albeit it did show gates elsewhere, nor the New Series Ordnance Survey edition of 1923. They also drew attention to the fact that Shalford Parish Survey of 1951/2 specifically recorded a gap at point A.
5. As a result the Council considered that although not conclusive evidence, the lack of a gate between 1923 and 1951/2 could indicate that any limitation to which original dedication may have been subject, had been superseded by a re-dedication free of that limitation between this period, referencing *Gloucester v Farrow 1985*. They felt that the presence of a gate on the OS map of 1969 did not bear on the point in question, as the DMS which did not record the structure was conclusive evidence that dedication of public rights had already taken place by the time the map was published.
6. I acknowledge the view of each party on the matter of a gate as a limitation at point A, and it is the case that a date of dedication is unable to be assessed to any particular degree of accuracy, since the evidence was considered as a whole and spanned centuries. However, I do agree with the landowner that the existence of a gate or obstruction which has been shown on most mapping over a long period of time, in this instance from 1844 to 1969, should not be dismissed without consideration.
7. Albeit the gate is not depicted on the 1923 OS map provided by EBA, the description of ‘gap’ is annotated on the 1953 draft map and the 1970 provisional map. This suggests that there was some sort of boundary structure in situ, such as fencing, a treeline or a gate. For the purposes of a footpath designation this would not necessarily have been a limitation due to the gap, but may well have been considered a limitation if a higher status have been awarded at that time.
8. Considering the above, I am persuaded that it is probable that dedication occurred subject to the limitation of a gate at point A and will amend the Order accordingly.

Other Matters

1. A representation was received by Mr and Mrs Gray asking why a decision had not been made yet. To clarify, the Interim Order Decision outlined the proposed decision to upgrade the Order route status from footpath to bridleway. As the original Order was upgrading the footpath to a restricted byway, the proposed lesser status of bridleway required advertising before the decision was finalised.
2. Mr and Mrs Gray also queried why there were no legal papers documenting that the route was a byway / bridleway, and that if there were such documentation, there would surely be legal papers for when the route was downgraded.
3. It is not uncommon with historical or ancient highways in rural locations, that there are few or no legal documents that specifically record their coming into existence. Albeit the Definitive Map and Statement are conclusive evidence of the rights of way shown on them, this does not preclude an application under The Wildlife and Countryside Act 1981, to upgrade the right of way if historical documentation, such as mapping, indicates that on the balance of probability, it was likely that the way was used historically by a higher status of traffic.

**Conclusions**

1. For the reasons set out in my interim decision I conclude that the Order should be confirmed with the modifications originally proposed plus an additional modification to record the gate at point A as a limitation. It was clearly understood by all parties that the intention of the Interim Decision was to record a bridleway. In view of this and as no prejudice is caused, for the sake of completeness I will additionally modify the Order Map to alter the line style to notate a bridleway.

Formal Decision

1. I confirm the Order with the modifications as set out in paragraph 64 of the Interim Order Decision and with additional modifications not requiring advertising.*HIGHWAY OF ONE DESCRIPTION*

* On the Order title, **delete** Restricted Byway and **insert** Bridleway.
* On the Order at section 3., **delete** Restricted Byway and **insert** Bridleway.
* On the Schedule, PART I, Description of path or way to be upgraded, section 1., **delete** Restricted Byway and **insert** Bridleway.
* On the Schedule, PART I, Description of path or way to be upgraded, section 2., **delete** the full stop after Lones Hole Lane and **insert** is upgraded to Bridleway.
* On the Schedule, PART I, Description of path or way to be added, section 3., **delete** Restricted Byway and **insert** Bridleway.
* On the Schedule, PART II, Variations of particulars of path or way, Position and Description for Path No. 63, **delete** RBWY 67 Braintree and **insert** BR 67 Shalford.
* On the Schedule, PART II, Variations of particulars of path or way, Classification for Path No. 67, **delete** RBWY and **insert** BR.
* On the Order Map, Plan No.1 Key, **delete** Restricted Byway and **insert** Bridleway.
* On the Order Map, Plan No. 1 Key, **delete** the notation for Restricted Byway and **insert** the notation for Bridleway.
* On the Order Map, Plan No.1 Title, **delete** Restricted Byway and **insert** Bridleway.
* On the Order Map, Plan No.1, **delete** notation for Restricted Byway and **insert** notation for Bridleway.
* On the Order Map, Plan No.2 Title, **delete** Restricted Byway and **insert** Bridleway.
* On the Schedule, at the end, **add** the following:

**PART III**

**Limitations**

**Gate at point A.**

Mrs A Behn

Inspector

