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| **Order Decision** |
| On papers on file |
| **by Mrs A Behn Dip MS MIPROW** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 16 August 2024** |

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| **Order Ref: ROW/3328534** |
| * 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 Regrading to bridleway of public footpaths No.68 Madeley Parish and No.24 Whitmore Parish Staffordshire, Modification Order 2022. |
| * The Order is dated 26 April 2022 and proposes to modify the Definitive Map and Statement (DMS) for the area by upgrading Footpath No 68 (FP68) in the parish of Madeley and Footpath No 24 (FP24) in the parish of Whitmore to Public Bridleways, as shown on the Order Map and described in the Order Schedule. |
| * There were 2 objections outstanding when Staffordshire County Council (the Council) submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation. |
| **Summary of Decision: The Order is confirmed.** |
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Procedural Matters

1. An application to upgrade FP24 and FP68 (the Order route) plus an adjoining Footpath No 67, was made by Mr M Reay (the applicant) in February 2000. It was initially declined by the Council in 2021, however following a partially successful appeal under Schedule 14 of the 1981 Act, the Council were directed to make an Order for FP24 and FP68 only, in 2022.
2. A neutral stance has now been adopted by the Council in the matter of this Order.
3. I have not visited site but I am satisfied that I can make my decision without the need to do so. In writing this decision I have found it convenient to refer to points marked on the Order Map and therefore attach a copy of this map.

The Main Issues

1. The Order has been made under section 53(2)(b) of the 1981 Act in consequence of the discovery of evidence as provided in section 53(3)(c)(ii) of that Act. The requirement of the legislation and what I must consider on the balance of probabilities, is whether the evidence discovered by the surveying authority, when considered with all other relevant evidence available, shows that a right of way that is shown on the Definitive Map and Statement as a highway of a particular description ought to be there shown as a highway of a different description.
2. In his application, Mr Reay contended that available documentary evidence demonstrated that the route in question was historically subject to equestrian rights and should be amended on the Definitive Map and Statement to show bridleway status. No user evidence was received, and the claim is solely based on historical documentation.
3. As regards the documentary evidence adduced, section 32 of the Highways Act 1980 requires that I take into consideration any map, plan or history of the locality, or other relevant document provided as evidence, giving it such weight as is appropriate, before determining whether a way has been dedicated a highway. There are several records, before me, as evidence discovered, and in making my decision I have considered them below.

Reasoning

*Highways Orders 1834*

1. An 1834 Bridleway Diversion Order and a Highway Stopping up Order of the same year were submitted in evidence. In the Bridleway Diversion Order the Justices of the Peace diverted a bridleway to make the way more commodious to the public. Named as Ram Lane, this bridleway is notated at its western end as ‘From Madeley’ and appears to follow the line of the Order route at its eastern end before continuing westwards across Three Mile Lane, and then gradually bearing southwards. Being a legal document, this provides strong evidence of the existence of a bridleway running along at least part of the line of the Order route in 1834.

*Railway Plans 1858*

1. An 1858 railway plan shows the western end of the Order route, notated as ‘occupation road and Public Bridle road’. The purpose of the railway plan was not to adduce public rights, and so whilst not conclusive evidence of public bridleway rights, when considered alongside the presence of a bridge over the railway track at that location and a former railway station shown on later maps, this record does suggest higher rights than a footpath existed at this time.

*Ordnance Survey Maps 1833, 1876, 1901*

1. Excerpts from the above Ordnance Survey (OS) mapping were provided as evidence, most of them showing the route in its entirety. Additionally, the 1901 map depicts the existence of a railway station adjacent to the bridge over the railway track at the western end of the Order route.
2. Ultimately, the purpose of OS maps was not to record public rights of way, but rather what features existed on the ground. From 1888 OS maps carried a disclaimer to the effect that representation of a track or a way on the map was not evidence of a public right of way. The disclaimer was presumed to apply to earlier as well as later maps. Furthermore, in 1905 surveyors were instructed that ‘OS does not concern itself with rights of way and survey employees are not to inquire into them’. Subsequently these maps hold little weight in demonstrating the status of rights of way.

*Finance Act 1910*

1. The Finance Act 1910 map appears to show the Order route uncoloured and falling outside of land holdings. The route is bounded by solid lines. It is considered that roads shown in this manner are good evidence of a public right of way possibly at vehicular status, however the lack of colouring leaves open the possibility that the highway was no more than a bridleway. A designation of bridleway would be consistent with the earlier railway plans and Highways Orders.

*Bartholomew’s Map 1924*

1. On this map the Order route loop is shown in full. Albeit Bartholomew’s map was sold commercially, it did not address public status of any routes shown and bore a disclaimer to that effect. Accordingly this map is good evidence of the existence of the route but not of any public rights.

*Definitive Map Process*

1. The records before me indicate that the Order route was originally recorded as a Road Used as a Public Path (RUPP) and then reclassified as a footpath as part of the First (General) and Special Review in 1969.
2. There is no evidence before me to indicate the grounds on which the RUPP was reclassified to a footpath in 1969, and later, the Court of Appeal held in *R v Secretary of State for the environment ex parte Hood [1975]* that in the absence of new evidence to the contrary, designation as a RUPP conferred a presumption of the existence of bridleway rights.
3. Ultimately, the DMS is conclusive evidence of what was recorded at that date but is without prejudice to a question of whether higher rights may have existed.

**Other Matters**

1. Two objections were received following the making of this Order from the owners of land adjoining, or close to the Order route.
2. Both objections related to concerns about safety along the route, being that it was a narrow single lane track with blind bends, few passing places and limited visibility at its junction with Three Mile Lane. The objectors advised that the ‘lane’ was subject to frequent use by lorries, tractors and trailers in relation to farming practices, the movement of cattle to different fields, alongside a high volume of vehicles accessing the increased number of dwellings along the route.
3. Due to this, they considered there was insufficient room for vehicles and horses to pass safely and that the already hazardous nature of the route would be exacerbated further by use from horses and cyclists. Reference was made to the 1.5 – 2 metre gap suggested by the Highway Code guidelines when overtaking pedestrians, cyclists and horses, with specific reference to the speed limit of 60mph on the Order route. The objectors considered that this gap was not achievable and as a consequence this made the Order route unsuitable as a bridleway.
4. I acknowledge and recognise all of the above as very genuine concerns, however the legal basis on which I must determine this case does not allow me to consider matters such as safety, suitability and desirability. These are factors that I am unable to take into account in reaching my decision.

Conclusions

1. Overall the evidence submitted is consistent with the Order route being of a higher status historically than the footpath that was ultimately recorded in 1969.
2. The Highways Orders of 1834 provide strong evidence of the existence of a bridleway along at least part of the Order route and the Railway Plans of 1858 are also good evidence that the entire of the Order route was likely considered a bridleway at this time. The later Finance Act 1910 mapping adds further support to the earlier evidence, inferring that the route in question was a public highway, possibly of vehicular status, albeit in this case the earlier evidence is only supportive of a bridleway. Although the status of footpath was designated in 1969, the previous status of a RUPP also suggests higher status than a footpath historically existed.
3. Albeit no single piece of evidence conclusively points to the application route having a higher status than currently designated, there are several documents before me which, when considered together, have a synergy that suggests higher rights than a footpath exist along the application route. Accordingly, I am satisfied that on the balance of probabilities, the available evidence is sufficient to indicate that the Definitive Map and Statement should be amended, to show the Order route of FP68 and FP24, having bridleway status.
4. Having regard to these and all other matters raised in the written representations, I conclude that the Order should be confirmed.

Formal Decision

1. The Order is confirmed.

Mrs A Behn

Inspector

