

|  |
| --- |
| **Order Decision** |
| Accompanied site visit made on 24 September 2024  |
| **by Charlotte Ditchburn BSc (Hons) MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 22 October 2024** |

|  |
| --- |
| **Order Ref: ROW/3328377** |
| * This Order is 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. 697 Restricted Byway 4 White Roothing, Uttlesford District Order 2023.
 |
| * The Order is dated 20 March 2023 and proposes to modify the Definitive Map and Statement for the area by upgrading the Public Footpath to Restricted Byway as shown in the Order plan and described in the Order Schedule.
 |
| * There was 1 objection outstanding when Essex County Council (ECC) submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.
 |
| **Summary of Decision: The Order is not confirmed.** |
|  |

Preliminary Matters

1. In writing this decision I have found it convenient to refer to points marked on the Order Plan. I therefore attach a copy of this plan.

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 this 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. The findings of the court in the case of *Todd and another v Secretary of State for the Environment, Food and Rural Affairs [2004]* EWHC 1450 (Admin) were raised to me but having read this judgement it does not apply to this Order under section 53(3)(c)(ii). The standard of proof that the evidence must satisfy is the civil standard, namely the balance of probabilities.
3. In their application, Essex Bridleways Association contended that available documentary evidence demonstrated that the route in question was historically subject to public vehicular rights and should be amended on the Definitive Map and Statement to show restricted byway status. No user evidence was received, and the claim is solely based on historical documentation.
4. 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 as a highway. There are several records, before me, as evidence discovered, and in making my decision I have considered them below.
5. As this Order is concerned with possible unrecorded vehicular rights, should the route be confirmed, it will be necessary to have regard to the provisions of Section 67 of the Natural Environment and Rural Communities Act 2006, which extinguished rights of way for mechanically propelled vehicles, subject to certain exceptions. It is accepted that none of the exceptions in this Act are applicable and therefore if vehicular rights are proven to exist the route should be recorded as a restricted byway.

Reasons

*Commercial Maps*

1. Chapman and Andre’s Map of Essex 1777, shows the Order route denoted by pecked lines from the road by Cammas Hall to the road by Aythorpe Roding. There is a line across where it meets eastern road which could indicate a gate, the start of the route or a change in ownership. The route is shown in a similar way to the road to Langley which is not considered to be a public road but a footpath today.
2. Cary’s map of West Essex 1822 shows a route similar to the Order route with double solid edges. Other public roads are shown in the same way.
3. On Bartholomew’s map of 1902-06 the Order route is shown as a secondary good road according to the key. The key states that “the representation of a road or footpath is no evidence of the existence of a right of way.” Other public roads today are shown in the same way as the Order route.

*Estate Plans*

1. The Map of White Roding measured by Michael Sherwood 1703 was submitted by the applicant. It is an extract from a map entitled ‘the three farms belonging to Richard Luther Esq. called Cammis Hall, Prowes and Walker’s’. The document shows the Order route as two pecked lines and is labelled “The rods through this field to Hatfield”. The map shows the Order route connecting to other public roads, however, there is no key to indicate what the pecked lines represent with regards to the status being public or private.
2. The 1828 Plan and Valuation Report show the Order route as a route labelled “right of way” depicted with dotted lines in comparison to the public roads at either end which are shown with solid lines. In the description it is described as: “There is a public road through the estate which would not be objectionable if kept in repair, but is now almost impassable, never having been mended. It does not appear to admit of a doubt that the Parish would be bound to keep it up, but this farm being in the hamlet of Morrell Roothing, and of which it farms about one half, it is not deemed advisable to apply for that assistance, and being little used by the public passes unnoticed, the house and buildings are however in the Winter Season almost inaccessible from this cause.”

*White and Morrell Roothings Tithe Map 1840*

1. The Order route is shown with solid edges between todays Cammas Lane and Poplar Lane, the Order route is labelled as “Road” running through fields with apportionment numbers 11, 12 & 16 which are listed as arable in the apportionment. There is a line across it at the eastern end of the route and at its mid-point which could indicate gates or possibly the boundaries of the land parcels.

*Finance Act Maps*

1. 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 PROW over land reduced its value and the liability for tax so were recorded in the survey. The exclusion of a route from the adjoining hereditaments could indicate public rights which were more likely to be at least bridleway status. However, the Oder route is not shown excluded which is not supportive of it being viewed as a vehicular highway.
2. The Order route appears to be included within parcel number 1898, which in the valuation book is listed as Cammas Hall. There is a deduction for £50 for Public Rights of Way (PROW) but the valuation book does not indicate which rights of way are referred to.

*Highway Records*

1. The Local Government Act 1929 transferred responsibility for unclassified publicly maintainable roads from Rural District Councils to County Councils. Handover maps were produced to show which roads were transferred. The 1930 County Road Map is based on the Handover maps sent to ECC. The Order route is shown in part with two solid lines and in part with one single line. ECC only maintained major roads at this time and the Order route is not shown as a route they were responsible for.
2. The Main Roads and Bridges Map 1906 shows the Order route with two solid lines, no key has been provided to accompany this map.

*Definitive Map Records*

1. The County Surveyor’s 1932 Book of Maps shows the Order route as a blue dashed line denoting footpath status.
2. A report of the Council member who walked the ‘way’ on 9 July 1952 notes that there were two contradictory finger signs, one erected by Aythorpe Roding Parish Council stating “A public right of way to Cammas Hall” and one erected by Hatfield Broad Oak Parish Council stating “Public Footpath Bridle Path”.
3. The Parish Survey Map for the Parish of White Roding 1951/52 shows the Order route as a solid blue line denoting footpath status but has a note written above it stating ‘should be green’, green denoting bridleway status. The accompanying card reads “No.4 BP (bridlepath) to Aythorpe Roding … an unobstructed cart track throughout”. Although it appears that the Parish Council believed the Order route should be a bridleway, the route was recorded as a footpath at the end of the process and there are no further documents before me about how this conclusion was drawn.
4. The Order route is shown as a footpath on the Provisional, 1953 DMS, First Review 1963 and Special Review 1986/89.

*Ordnance Survey (OS) Maps and Records*

1. The Order route is shown on Mudge’s 1805 first edition 1-inch map of Essex with double solid edges connecting to highways depicted in the same manner at either end.
2. On the OS 1876 25-inch map, the Order route is shown as solid and dashed lines with the reference number of 53 which is listed as “Road” within the book of reference which correlates with other routes shown on the map that are roads today. A line is shown across the Order route where it meets the road at the eastern end. The OS 1896 25-inch is similar, the only difference being that a line is shown across the western end where it meets the road.
3. The OS 1920’s edition 6-inch is shown as a dashed line with a line across it at the eastern end of the Order route.

*Photographs*

1. Photographs from 2018, 2019 and some undated photographs were provided showing the Order route in a similar manner to the Order route’s condition when I visited the site.
2. Two undated Google Earth images were submitted showing the Order route in a similar condition as I viewed on my site visit.

*Aerial photographs*

1. The Order route is shown on the 1960, 1970, 1981, 1990 and 2000 aerial photographs, the entire southern boundary and a short section of the northern boundary at the eastern end of the route appears to be hedged. A worn track can be seen along the Order route.

*Conclusions on the documentary evidence*

1. The commercial and OS maps provide evidence of the physical existence of the Order route from 1777. It is largely shown as a route joining Cammas Lane to Poplar Lane and in the same manner as other minor public roads. Commercial maps were produced for travellers and there would have been little point in showing a road if the public did not have a right to use it. However, many of the maps also show private roads in the same way. Furthermore, since the late 19th Century, OS maps have carried a disclaimer that tracks and paths shown provide no evidence of the existence of public rights which limits the weight I attribute to these maps.
2. I need to assess the documents before me to determine how much weight to give them. I consider the commercial and OS maps to be suggestive of public rights of at least bridleway status, but there are also private routes shown in the same way as the Order route on most of the maps. This reduces their evidential value.
3. On the 1703 Estate Plan the Order route is described as “The rods through this field to Hatfield” but does not differentiate between public or private. It is shown depicted with dashes lines in contrast to public roads which are depicted with solid lines. As there is no key to accompany the 1703 map, I attribute little weight to this piece of evidence. Whilst the Order route is described as a “public road through the estate”, on the 1828 Estate Plan it is shown as ‘right of way’ and is depicted with dashed lines in comparison to the public roads at either end of the route which are shown with solid lines. Case law (*Commission for New Towns & Worcestershire County Council v JJ Gallagher Ltd [2002] EWHC 2668 (Ch), [2003] 2 P & CR 3*) supports the contention that the Order route was a public carriage way, albeit not a decisive indication on its own, of public carriage way status. I consider this to be the strongest piece of evidence showing the distinction between the status of the route from public footpath as currently recorded and public road as claimed by the Order.
4. The Tithe Maps did not differentiate between public and private roads, as the Tithe Commissioners were only concerned with the productiveness of the land. Roads marked upon them could have been private or public as both lessened the productivity of the land. Accordingly, I consider it good representation of the existence of a lane, but provides no clarification regarding its status.
5. With regards to the Finance Act evidence, my attention was drawn to *Maltbridge Island Management Company v. Secretary of State for Environment and Hertfordshire Council [1998]*, *Robinson Webster Holdings Ltd v. Agombar [2002], Fortune & Others v. Wiltshire Council & Taylor Wimpey [2010]* and *Fortune v. Wiltshire Council [2012]*. I have read these judgements but do not consider they have any relevance to determining the status of the Order route. The Order route is shown coloured within the hereditaments unlike other known public roads which are shown excluded. The deduction for public rights of way cannot be definitively associated with the Order route, even if it did explicitly relate to the Order route, this would not be inconsistent with its current status of footpath. I do not consider the Finance Act map provides any indication of public vehicular rights across the Order route. I do not consider it is possible to make conclusions about the existence of public rights or their status for the Order route.
6. The Order route is not shown as maintainable at public expense in the highway records. Whilst I acknowledge that the route was signposted at some point in time as a ‘Footpath Bridle Path’ there is no evidence submitted to provide further explanation to this possible error and it is shown as a footpath in the Definitive Map records. I consider these records do not provide any evidence of higher public rights over the Order route.
7. The photographs, google street view images and aerial photographs provide evidence of the physical existence of the Order route. However, they do not provide any evidence as to who used the Order route or how it was used. I do not consider they provide any evidence to support higher public rights over the Order route.
8. 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 point, on the balance of probabilities, to the appeal route having public vehicular rights.
9. Overall some documents are suggestive of public rights at a higher status than footpath, but others are more suggestive of private rights. I do not consider the maps which pre-date the Tithe map, to be sufficient on their own to show public rights over the Order route. Although the Estate Plan described the route as a public road, this piece of evidence alone is not a convincing indication of status and does not carry a significant amount of weight. The Tithe map and apportionment do not provide clear evidence of whether the Order route was a private road or part of the public road network. The Finance Act evidence provides considerable weight against the route being a vehicular highway.
10. Overall, I do not consider there is sufficient evidence, on the balance of probabilities, to show higher public rights over the Order route. As I do not consider there to be sufficient evidence of higher public rights, I do not need to consider the width of the Order route or any potential limitations.

Conclusions

1. Having regard to these and all other matters raised in the written representations I conclude that the Order should not be confirmed.

Formal Decision

1. I do not confirm the Order.

Charlotte Ditchburn

INSPECTOR

