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| **Interim Order Decision** |
| Site visit made on 19 August 2024 |
| **by Charlotte Ditchburn BSc (Hons) MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 03 October 2024** |

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| **Order Ref: ROW/3322875** |
| * This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as Staffordshire County Council (Public Footpath at Cheadle Road to Footpath 39 at Woodlands Hall, Cheddleton) Modification Order 2020. |
| * The Order is dated 10 May 2022 and proposes to modify the Definitive Map and Statement for the area by adding the public footpath as shown in the Order plan and described in the Order Schedule. |
| * There was one objection outstanding when Staffordshire County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation. |
| **Summary of Decision: The Order is proposed for confirmation subject to the modifications set out below in the Formal Decision.** |
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Procedural Matters

1. None of the parties requested an inquiry or hearing into the Order. I have therefore considered this case on the basis of the written representations forwarded to me. I made an unaccompanied inspection of the Order route on Monday 19 August 2024 viewing the claimed footpath.
2. The Council adopted a neutral stance in relation to the Order having been directed to make it by the Secretary of State following an appeal by Mr Rice against the Council’s decision not to make an Order following its consideration of the application.
3. The case in support of the Order is based on historic documentary evidence with reliance being placed on the Quarter Sessions in 1807 (‘the 1807 Order’).

The Main Issues

1. The Order has been made under Section 53(2)(b) of the 1981 Act in consequence of the occurrence of events specified in Section 53(3)(c)(i) of that Act.
2. Section 53(3)(c)(i) provides that a modification order shall be made where evidence is discovered which (when considered with all other relevant evidence available) shows that a public right of way which is not shown in the definitive map and statement (DMS) subsists over land in the area to which the map relates.
3. Whilst it suffices under Section 53(3)(c)(i) for a public right of way to be *reasonably alleged* to subsist, the standard of proof is higher for the Order to be confirmed. At this stage, evidence is required on the balance of probabilities that a right of way subsists. Section 53(3)(c) requires there to have been a ‘discovery’ of evidence for the provisions of the section to be engaged. That evidence has been discovered is not disputed in this case.
4. The evidence adduced in this case is documentary; no evidence of recent use of the Order route by the public on foot or horseback had been submitted. Section 32 of the Highways Act 1980 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.

Reasons

*County Maps*

1. Yates’ 1775 and 1798 maps show the route along a northern alignment, showing the old road which was diverted to make the new road by the 1807 Order as discussed in paragraphs 12 to 17 below.
2. Smith’s 1801 map shows the Order route from Felthouses to Woodlands Hall, it is not clear whether this is the old road or new road as they run parallel and the map is of poor quality.
3. The Greenwood map is undated, it shows A-B as an enclosed track by means of double parallel lines but does not show any feature beyond point B. The Greenwood map is of little assistance regarding the route beyond the Order route.
4. The depiction of the Order route in such a manner on these early maps gives an indication of the significance of the route as part of the highway network of the area at a time when travel on foot or by horseback was more prevalent than today. Although the maps depict the Order route as existing on the ground at the time of their creation, these maps carry little weight in determining status due to the scale, accuracy and purpose of their creation.

*Quarter Sessions*

1. Quarter Sessions were local courts where Justices of the Peace met quarterly to deal with county administration. The above Quarter Sessions record of 1807 ordered the diversion of a footpath and a bridleway in the parish of Chedleton to make the routes more commodious to the public.
2. The description of the footpath contained in the Quarter Sessions is as below:

“…that a certain part of a publick Footway within the Parish of Chedleton, in the said Hundred and County lying between the Portersflatts Gate adjoining the Turnpike Road from Leek to London, in the Parish of Chedleton and County aforesaid, and Felthouses, in the same Parish for the Length of 1100 yards, or thereabouts, and particularly described in the plan here unto annexed, may be diverted or turned so as to make the same nearer or more commodious to the publick and having viewed a course, proper for the new Footway in lieu thereof through the Lands and Grounds of William Sneyd Esq. of the length of 1307 yards or thereabouts, and of the Breadth of five feet or thereabouts particularly described in the Plan hereunto annexed…”

1. The description of the bridleway contained in the Quarter Sessions is as below:

“…that a certain part of a publick Bridleway, within the Parish of Chedleton in the said County lying between Porters Flatt Gate, and the Felthouses for the Length of 1335 yards, or thereabouts, and particularly described in the Plan hereunto annexed, may be diverted, and turned, so as to make the same, nearer, and more commodious to the Publick; and having viewed a course, proposed for the new Bridleway in lieu thereof, through the Lands and Grounds of William Sneyd Esq of the Length of 1307 yards of thereabouts, and of the Breadth of Eight feet, or thereabouts, particularly described in the Plan hereunto annexed…”

1. The description of the terminuses and length of both routes is the same therefore it is reasonable to assert that the 1807 Order was in actuality two routes diverted onto the same alignment.
2. Prior to the 1835 Highway Act different rules as to Highway maintenance applied. Footpaths as well as bridleways could have been publicly maintained which was not automatically the case after 1835. What would seem to be the case is that the two routes were both public highways and that there was no ground for extinguishing or stopping them up. Then, as now, to do so requires evidence that the route in question was no longer required for public use. The Justices were satisfied that this could be done, so made 1807 Order referred to above. No contrary orders have been discovered to challenge its validity, so the Order is still in force.
3. The Quarter Sessions have considerable legal standing and show the route in question quite clearly as being a public bridleway at the time of the 1807 Order when it was diverted to its current line. I therefore give this document significant evidential weight of the way being a pre-existing highway of bridleway status in 1807.

*Ordnance Survey (OS) Maps*

1. The OS Maps from the 1830’s to 1926 depict the Order route as partly an enclosed track running between fences or hedges and partly by a pecked line which denotes an unfenced road.
2. 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 limited weight in demonstrating the status of rights of way. 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. I conclude that alone, the OS maps are of limited value as regards to status but show a route capable of use on foot and horseback.

*Width*

1. The width of the Order route is set out in the Schedule as being 1.8 metres. The 1807 Order states that it had been set out at a width of 8 feet (2.4 metres).
2. In this case, as reliance is placed upon the 1807 Order as evidence of the status of the Order route, reliance must also be placed upon it as evidence of the lateral extent of the public right created. In the absence of compelling evidence to the contrary I am satisfied that no order to reduce this width has been made to change the width since the 1807 Order. On my site visit, it was evident that the route on the ground was defined by a tarmac track and wide grass verges and appeared to be little changed from how it was depicted in the Quarter Sessions plan. It follows that the width specified in Part II of the Schedule should be modified accordingly if I were to confirm the Order.

*Length*

1. There appears to be no dispute between Mr Rice and the Council that a public right of way legally exists between a point on what is now Cheadle Road and a point on Cheddleton Public Footpath 39 in the vicinity of a property called Felthouses, as detailed in the Resolutions of the Council’s Rights of Way Panel at Item 55 in the Minutes of the August meeting and Item 64 of the minutes of the Council’s Panel Meeting held on 19 October 2018. Both the Council and Mr Rice have attempted to clarify the alignment and the extent of the claimed route by using modern technology to measure it. They have arrived at different figures, with Knights PLC submitting representations favouring the Council’s measurements. The section in dispute is the part running between the Cheadle Road in the west and Cheddleton Public Footpath 39 at Woodlands (or formerly Felthouses) in the east.
2. The earliest OS map of the 1830’s depicts the route clearly connecting with Cheddleton Footpath 39 at its eastern termination, this being the first map produced since the 1807 Order, I find this strong evidence that the physical route continued beyond point B of the current Order.
3. In any event, I consider it highly unlikely that the 1807 Order to divert the bridleway to make it more commodious for the public, would remove its terminus meeting with Cheddleton Footpath 39, it is more likely it would have served the same function as the path set out in the Quarter Sessions which met with the Public Footpath.
4. The bridleway set out under the 1807 Order appears to have remained as an observable feature within the landscape until the mid-1920s as it was recorded on successive editions of OS maps, although the alignment of the Quarter Sessions route appears to have changed with the passage of time. Notably, the eastern end of the route has moved from what was set out by the Justices of Peace from what is now through buildings at Felt House Farm to a more southerly position along a tarmac driveway meeting Cheddleton Footpath 39. The fundamental principle of ‘once a highway, always a highway’ must prevail in the absence of any legal undertaking to amend or downgrade documented rights, even should the highway no longer seem suitable. No evidence of formal action having been taken to extinguish or divert any part of the public’s rights established by the Quarter Sessions, it follows that the Order should be amended to record the route on the alignment set out by the 1807 Order if I were to confirm the Order.
5. The Council state that there is not sufficient evidence for them to determine the line or terminus of the way. Whilst the Quarter Sessions map is not easily transposed to modern mapping today, at this stage, it is my role to assess whether the evidence shows on the balance of probabilities that a right of way subsists. The Quarter Sessions record describes the route clearly as being “*between Porters Flatt Gate, and the Felthouses*” therefore even though modern day measurements are conflicting I am satisfied that on the balance of probabilities the route connected to the Footpath.

Conclusions

1. The Order route is very clearly described and illustrated as a pre-existing bridleway in the 1807 Order, when it was ordered to be diverted for reasons of commodity. The Quarter Sessions were the legal authority at the time and consequently this is a very significant document.
2. The County Maps indicate the existence of a way on the approximate line of the Order route, although I give them little weight for the reasons given above.
3. Due to the absence of formal user evidence and the Order originally being made for footpath status, the width of the route is currently recorded in the Order Schedule as 1.8 metres. I am obliged to determine matters based solely on the evidence put before me therefore the width should be recorded as 2.4 metres (8 feet).
4. Accordingly, it is my view that on the balance of probabilities, the available evidence does indicate that the DMS should be amended, to show the Order route continuing to join Cheddleton Footpath 39 having bridleway status.
5. Having regard to these and all other matters raised in the written representations I conclude that the Order should be confirmed with modifications.

Formal Decision

1. I propose to confirm the Order subject to the following modifications:
2. **Delete** all references to a ‘footpath’ and **insert** ‘bridleway’.
3. **Insert** ‘May’ to the date of the Order.
4. In the Schedule, Part I, in the description of path or way to be added **delete** ‘for approximately 217 metres’, ‘on the map (NGR 397777 – 350720) approximately 60 metres west of Felt House Farm’ and **insert** ‘at its junction with Cheddleton Footpath 39.’
5. in the Schedule, Part II, in the description of where the path terminates **delete** ‘Track approximately 60 metres west of Felt House Farm’ and **insert** ‘Cheddleton Footpath 39’. In the description of the width of the path **delete** ‘1.8’ and **insert** ‘2.4’.
6. in the Order map, **delete** ‘B’ and **continue** the path line from B in a straight line to its connection with Cheddleton Footpath 39 and label that connection as B. **Insert** the notation for bridleway for the entire length of the route.
7. Since the Order as proposed to be confirmed would affect land not affected by the Order, show a way not shown in the Order, and show as a highway of one description a way which is shown as a highway of another description in the Order as submitted, I am required by virtue of Paragraph 8(2) of Schedule 15 to the 1981 Act to give notice of the proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modifications. A letter will be sent to interested persons about the advertisement procedure.

Charlotte Ditchburn

INSPECTOR

COPY OF MODIFIED ORDER MAP – NOT TO SCALE

MODIFICED ORDER MAP
