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| **Appeal Decision** |
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| **by Laura Renaudon LLM LARTPI Solicitor** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 18 October 2024** |

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| **Appeal Ref: ROW/3327755** |
| * This Appeal is made by Julie Turner under Section 53(5) of and Paragraph 4(1) of Schedule 14 to the Wildlife and Countryside Act 1981 (‘the 1981 Act’) against the decision of Staffordshire County Council (‘the Council’) not to make an Order under section 53(2) of the 1981 Act.
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| * On 14 July 2023 the Council determined to refuse the application dated 10 April 2018.
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| * The appellant claims that part of Public Footpath 12, Grindon Parish between Fleets Lane and BW9 Grindon should be upgraded to Restricted Byway status (‘the claimed route’).
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| **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 Wildlife and Countryside Act 1981 (the 1981 Act).
2. I have not visited the site but I am satisfied I can make my decision without the need to do so.
3. The application was made to the Council in April 2018 by a Louise Redfern who is said to have been a committee member of the Staffordshire Moorlands Bridleways Group. This appears to be an unincorporated association and the appellant is not the original applicant; nonetheless no issue is taken with this by the Council and the present appellant’s application for a Direction pursuant to paragraph 3(2) of Schedule 14 to the 1981 Act was accepted for consideration (and made) by an Inspector in 2019. Thus I proceed on the assumption that the appeal is validly made. The present appellant is also said to represent the Staffordshire Moorlands Bridleways Group.

The Main Issues

1. Section 53(3)(c)(ii) of the 1981 Act provides that an Order should be made to modify the Definitive Map and Statement if evidence is discovered 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 there shown as a highway of a different description.
2. Some of the evidence supplied by the appellant relates to usage of the claimed route, as well as to historical documents. In respect of this usage, the requirements of Section 31 of the Highways Act 1980 (the 1980 Act) are relevant. This states that where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The period of 20 years is to be calculated retrospectively from the date when the right of the public to use the way was brought into question.
3. Common law also requires me to consider whether the use of the path and the actions of the landowner have been of such a nature that the dedication of the path by the landowner as a restricted byway can be inferred.

Reasons

1. The Council declined to make the Order sought, which is to modify the Definitive Map and Statement so as to show a Restricted Byway over land presently forming part of what is recorded as a public footpath, shown as part of Grindon FP 12. Grindon FP 12 starts at the end of the County Road Fleets Lane south west of Buckfurlong Farm. It then runs in fields alongside the eastern wall of the remainder of Fleets Lane (which is a track enclosed by walls on both sides). At the end of the enclosed track the southern section of Grindon FP 12 runs along the western side of fields alongside stone wall field boundaries. The southern end of Grindon FP 12 terminates at its junction with Grindon Bridleway 9.

*Documentary evidence*

1. The existing Definitive Map and Statement (‘DMS’) is conclusive evidence that footpath rights exist, although this is without prejudice to the question of there being any higher rights.
2. Documents submitted with, or subsequent to, the application consisted of, as well as the prescribed forms, an 1844 Tithe Map and award relating to the adjoining parish of Waterfall; a series of Ordnance Survey (‘OS’) maps beginning with a First Series Map Sheet of 1856 and including benchmark data; handover maps and schedules relating to highways in the area upon maintenance responsibilities being passed over to County Councils following large-scale local government reorganisation in the 1930s; a marked up map and commentary on such highways in the local area produced by the appellant, and a copy of papers relating to a report to a different committee on a different application in 1993 which concerned similar subject matter; photographs of the route; and user evidence forms.
3. The Council consulted on the application and received a number of responses, referred to in their officer report, including two from the affected landowners. The Council also consulted the ‘parish survey’ card dating from 1951 as well as a Grindon Tithe Map from 1839. I have had regard to all these documents in reaching my decision.

*Tithe Maps*

1. The 1839 Grindon Tithe Map, although referred to by the Council, was not originally supplied. However, because it was evidence apparently considered by the Council when determining the application, I asked to see it. The field pattern depicted on the Tithe Map is still in evidence, found in the plan (Council Appendix B) of the claimed route. The Tithe Map depicts parts of the southward route from Grindon in a sienna colour, but not where the route passes the fields marked as numbers 130 and 131. Thus whilst the part of the claimed route at field 129 appears to have been recorded for tithe purposes as a road, this does not apply to the route as a whole.
2. The 1844 Waterfall Tithe Map and Award were supplied to me. The map is of the adjoining parish of Waterfall and does not depict the claimed route at all because not dealing with that area. The way leading north (after bending to the east) from Waterfall is clearly depicted in a sienna colour as far as the parish boundary, with a carefully drawn width. This, as well as another way (Slade Lane) further west but also heading north towards Oldfields Farm, is curtailed at the parish boundary with the words ‘to Grindon’. Neither of those ways is presently recorded as having vehicular highway rights over it north of the parish boundary. Unlike the western Slade Lane route, however, the eastern route (which leads to BW9 which itself links with FP12 and the claimed route) is an adopted highway south of the parish boundary, forming the D1129 ‘Back o’ th’ Brook’ Road. The owner at the time of the Tithe Award is recorded as having been the Surveyors of Highways, and it is described as a public road (no. 206).
3. The Waterfall Tithe Map also depicts several ‘foot roads’ shown on the map by dashed lines. I am not informed as to any Tithe Awards in respect of them . One such foot road ran adjacent to the public road no. 206.
4. Accepting that the route was a ‘public road’ as far north as the parish boundary, the appellant suggests that this is evidence of a through road from the north east sector of Waterfall village to the centre of Grindon Village, and that a public road would not simply have terminated at a parish boundary. One difficulty with this analysis is that there is more than one way of getting to Grindon once within the parish boundary. What was the D1129 heads north towards Saucefield Farm and beyond that there is a network of paths that might eventually lead to Grindon. The most direct route is to join BW9 and then FP12, so using the claimed route. However, another route depicted on old maps heads north west from Saucefield Farm to join Oldfields Farm Lane. The BW9 itself connects with Weags Bridge Road to the north east. The Grindon Tithe Map depicts these various routes by broken lines, rather than the sienna colouring of what appear to be roads, in the vicinity of the claimed route.
5. The Grindon Tithe Map 1839 also depicts a gap in, or fails to record, the way between fields 178 and 182. It is possible that this small (unnumbered) parcel will have been a holding pen and not sufficiently large to warrant depiction of a route through it, if there was one.
6. I am mindful that the purpose of tithe documents was not to record public rights of way, but to identify productive (titheable) land. Whilst accepting that the description of the way in the Waterfall Tithe Award as a public road is highly suggestive of it having vehicular rights (as it does, within Waterfall parish) I am unable directly to infer that this means that the claimed route benefits from the same rights. It is however depicted differently on the Grindon Map.

*Historic OS maps*

1. The claimed route is depicted as a physical feature on OS maps including the ‘First Series Map Sheet 72’ dated 1856. Its exact depiction, although not its route, changed over the course of time. A series of small scale map sheets from 1889 to 1967 depict the route as a minor unfenced road and as a significant physical feature. Its status appears broadly consistent with the route between Saucefield and Deepdale farms, and with what is now Slade Lane passing Oldfields farm.
2. The Council refers me to the case of *Attorney-General v Antrobus* [1905] 2 Ch 188 and suggests that these maps are of limited evidential value as to public rights.
3. The appellant produces bench marks depicted along the claimed route in 1965, together with an extract of an (undated) descriptive manual of OS Maps by JB Harley. In it, reference is made to surface heights having been shown ‘along roads’ after 1929. This is unpersuasive as apparently part of a chapter discussing geodetic levelling and not expressly (or even impliedly) a discussion about the status or public rights of such ‘roads’ (or even whether used as a synonym for ‘route’). It is not clear whether ‘roads’ was being used as a term of art and, even if it was, nothing is said about whether such roads are public ones.
4. Although the OS maps are useful indicators of the physical existence of the route, they are not determinative as to the existence of any public rights. The route centres on what appears to be a significant farmstead, Saucefield Farm, that would plausibly justify having tracks for private purposes. The route is however one of only two direct routes between Waterfall and Grindon, the other being what is now Slade Lane.

*1929 Handover Maps*

1. Section 30 of the Local Government Act 1929 provided that the council of every county was to become the highway authority in respect of rural districts, and accordingly a series of ‘handover maps’ were prepared in relevant areas of the country, including here. I understand from the parties that it is common ground that these handover maps represented the routes over which the rural district councils considered a maintenance liability was to be transferred to the relevant county council.
2. The 1929 Handover Map depicts the claimed route, among others. The relevant extract depicts the stretch of FP12 between Grindon and BW9. No key to the map is given: the extract depicts a number of roads in different colours, with the claimed route appearing as dark blue. This is the same colour as two other roads emerging generally south from Grindon, both of which are now recorded as being vehicular highways.
3. Other routes, although not, apparently, BW9, are also depicted on the Handover Map, which is consistent with the OS maps of the time. The Handover Map itself appears to be superimposed onto an OS map rather than having been independently produced by the relevant highways surveyor. Nonetheless it depicts the claimed route as having been a maintainable highway of some description.
4. The appellant invites the inference that the absence of any mention of footpaths or bridleways from the Handover Schedule means that the claimed route must have fallen within the description of either ‘scheduled’ or ‘other’ roads that are described. Having analysed all other routes shown on the Handover Map, the appellant contends that the claimed route is the only route (save for Fleets Lane to the north, adjoining the remaining FP12) not now recorded as an ordinary public road. Reference is made to another ‘upgrading’ application at nearby Waterhouses, whereby the report to the highway committee found that the existence of the relevant route on the 1929 handover map was supportive of other evidence in the case that a public vehicular right of way existed there.
5. On its own the Handover Map is evidence of the highway authority’s acceptance of responsibility for maintaining the claimed route; and it appears to have been described as a ‘road’ at the relevant time. By itself it does not purport to be a record of public rights, although it is unlikely that the Council would have accepted a maintenance responsibility over a private road. Should there be other evidence in the case suggestive of public vehicular rights, the Handover Map could potentially support it.

*Photographs of the route*

1. The photographs supplied by the appellant are useful in understanding the various points made by the parties, but of themselves are not of evidential value as to the historic user of the route rather than its existing record as a public footpath.

*Parish survey card*

1. A parish survey card was completed in around 1951, referring to the route having been surveyed on 18 October 1951. This card will have been produced in support of the original Definitive Map and Statement produced pursuant to the National Parks and Access to the Countryside Act of 1949. It describes the route, which includes the claimed route, from Grindon Post Office to the Waterfall parish boundary. It describes “CRF & Footpath” but with the ‘CRF’ element crossed out in different ink and ‘FP’ inserted (in the same ink, but possibly in different handwriting from the rest of the card). Overleaf, it describes the route as “CRF starts at Post Office & finishes at narrow field about 200 yards from Post Office & carries on as a footpath without obstruction to the Parish of Waterfall”.
2. This incontrovertibly describes the section of the route claimed here as a footpath. Whilst the northern 200 yards might have been a carriage road used as a footpath, the remainder of it is not so described.
3. The author of the survey card gave a domestic address within Grindon. No reference was made to having consulted any Tithe Maps or other documentary evidence, and the reasons given for the recommendation were that the route was “used by Public without dispute for 40 years & over”.

*Conclusions as to documentary evidence*

1. Support for the appellant’s case is obtained from the 1929 Handover Maps, with the Tithe documents offering some corroboration. Although the post-war parish surveys were not infallible, and this particular one does not expressly refer to any evidence other than the author’s own knowledge of the route, I nonetheless give it considerable weight as an accurate document of what was known about the historic use of the route at the time by a person living locally. However there is no evidence that any other documents were then consulted when completing the parish survey card. On balance the depiction of the route as a road on Tithe and historic OS maps coupled with the acceptance of public maintenance of it as evidenced by the 1929 Handover Map indicates that some vehicular use of the route was historically established.

*User Evidence*

1. Correspondence in support of the Order was received from an individual who believed it to have been used regularly in the 1970s and 1980s, together with Byway 9, by members of the North Midland Group of the TRF. No personal knowledge or use of the route is claimed. Support was given by the Ramblers to the application although with no evidence held or supplied. The parish council noted ‘the unlawful use by different groups of people’ although no timeline was supplied. Whether such use was challenged was not expressly stated although reference was made to ‘the issues that have occurred as a result’ thus suggesting that the use has not been without controversy.
2. Two user evidence forms were also supplied. One claimed use on horseback and by carriage of the route between 1989 and 2001 mainly as a circular route, sometimes accompanied. Other users were witnessed around once a month. The use of the whole route ceased with the installation of a locked gate (at or about the boundary of fields 130 and 131) in around 2001.
3. The other claimed use dating back to the 1960s, again until the use as a thoroughfare (other than as a footpath) was stopped in 2001 by a locked gate. Use was weekly, on horseback. The question whether permission was ever given was not answered, although it was stated to be a public right of way. Use for payment was indicated, in the form of a local trekking centre, although it was not stated whether the witness ever paid. Use by horses, cycles and horse carriages was witnessed. The witness also claimed personal motorised vehicular use of the way, both for pleasure and animal rescue purposes. Use by others on foot or horseback on a weekly basis was witnessed.
4. Both witnesses referred to an ‘AA’ sign near the White House in Grindon appearing to indicate the route as a ‘leisure’ trail. It is not clear when this sign was erected or whether it remains or was removed, or what rights exactly the ‘leisure’ trail sign may have indicated.
5. On the whole this evidence is by itself insufficient to establish, on the balance of probabilities, the user rights to a restricted byway in the 20 years, or any other period, before the locked gate was installed in 2001 hence bringing the use into question. The first witness referred to above claimed only 12 years’ weekly use, with no indication given of the frequency of carriage riding. The second, who has known the route since the age of five, has not said whether or not her use benefitted from any permission given by the relevant landowners. In particular, the motorised vehicular use for animal rescue purposes is not explained further. As to the landowners, their interests were respectively purchased in 2009 and 2010 so they are of no assistance in assessing the use before it was brought into question.
6. Taking the user evidence in the context of the historical documents, however, the use for carriage riding and on horseback is consistent with the apparent historical existence of a road. The user accounts, whilst insufficient by themselves to demonstrate the existence of the claimed user rights, are of a piece with the documentary evidence and add some support to the appellant’s case.

*Other matters*

1. It is pointed out in representations that the route passes over a wildflower meadow that is managed under an Environmental Stewardship scheme, and concerns about the effects of making an Order on the precious habitat are expressed. Such concerns could be relevant to management decisions relating to the use of the route, but they are not material to my considerations here, which concern solely the evidence as to the user of the route. The existence of a bridleway in close proximity to this route is also not a relevant matter.

Conclusion and Formal Decision

1. For the above reasons I conclude that the requirements for making the Order sought are satisfied.
2. In accordance with paragraph 4(2) of Schedule 14 to the 1981 Act, the Council is directed to make an order under section 53(2) and Schedule 15 of the 1981 Act not later than three months from the date of this decision to modify the definitive map and statement to upgrade an existing footpath to a restricted byway as set out in the application dated 10 April 2018. This decision is made without prejudice to any decision that may be given by the Secretary of State in accordance with their powers under Schedule 15 of the 1981 Act.

Laura Renaudon

INSPECTOR