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| **Order Decision** |
| Site visit undertaken on 16 October 2024 |
| **by Mark Yates BA(Hons) MIPROW** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 28 November 2024** |

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| **Order Ref: ROW/3311106** |
| * This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (‘the 1981 Act’) and is known as The Cornwall Council (Addition of a Footpath and a Restricted Byway at Metherell in the Parish of Calstock) Modification Order 2021. |
| * The Order was made by The Cornwall Council (‘the Council’) on 13 May 2021 and proposes to add a footpath and a restricted byway which form a continuous route (‘the claimed route’) to the definitive map and statement. |
| * There were two objections outstanding when the Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs. |
| **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. One of the objections was withdrawn in light of advice obtained in relation to the documentary evidence. The remaining objector did not reply to correspondence from the Planning Inspectorate, and this was taken to indicate that they would not attend the scheduled public inquiry. It was therefore decided that the inquiry would be cancelled with the Order determined from a site visit and the written representations of the parties.
2. I sought clarification from the Council on the Finance Act maps provided and the existence of stiles, and their responses have been circulated to the other parties.
3. All of the points referred to below correspond to those delineated on the Order Map.

**Legal Framework and Main Issues**

1. The Order relies on the occurrence of an event specified in Section 53(3)(c)(i) of the 1981 Act. Therefore, for me to confirm the Order, I must be satisfied that the evidence shows on the balance of probabilities that a public right of way subsists.
2. The user evidence can be considered in accordance with Section 31 of the Highways Act 1980 (‘the 1980 Act’) or common law to establish whether there has been the dedication of a public right of way.
3. Section 31 requires consideration to be given to whether there has been use of a way by the public, as of right and without interruption, for a period of twenty years prior to its status being brought into question and, if so, whether there is evidence that any landowner demonstrated a lack of intention during this period to dedicate a public right of way.
4. Three main issues arise in relation to dedication at common law: whether the owner of the land had the capacity to dedicate a highway, whether there was express or implied dedication by the landowner and whether there has been acceptance of the dedication by the public. Evidence of the use of a way by the public as of right may support an inference of dedication and may also show acceptance of the dedication by the public.
5. In terms of the documentary evidence, consideration needs to be given to whether it is sufficient to infer the dedication of a public right of way at some unknown date in the past. Section 32 of the 1980 Act 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 appropriate, before determining whether or not a way has been dedicated as a highway.
6. The Council places reliance on both the documentary evidence and more recent user evidence. It therefore seems appropriate to firstly examine the documentary evidence to determine the extent of any historical public rights before turning to the much later user evidence. If unrecorded historical public rights are found to subsist over any part of the claimed route, then the subsequent use by the public of it would have been in relation to an existing highway.
7. None of the exemptions in Section 67(2) or (3) of the Natural Environment and Rural Communities Act 2006 are stated to be applicable and therefore any public right of way for mechanically propelled vehicles is extinguished. This means that if historical vehicular rights are shown to subsist, the appropriate status would be a restricted byway.

**Reasons**

***Consideration of the documentary evidence***

*Tithe map*

1. The A-B section is shown on the circa 1840 Calstock tithe map by way of double dashed lines indicating that it was an unenclosed track or path running through the tithed parcels of land. Whilst the depiction of a path in this way could provide some support for the route having public status, the absence of any further information on the map or from the tithe apportionment, means that limited weight can be attached to this map. It nonetheless clearly records this section of the claimed route continuing beyond the various field boundaries indicating that there was a means of access at these points.
2. The B-C section is shown between solid lines and separate from the surrounding tithed parcels on this map. However, the exclusion of a route in this manner could be indicative of a public or private road as both would have had an impact on the productivity of the land and this will invariably limit the weight that can be attached to the tithe map. It is also noteworthy that the B-C section is depicted as part of a cul de sac lane which terminated at a field. This is not suggestive of a vehicular through route and may indicate that this feature served as a private means of access to agricultural land. Nonetheless, the B-C section served as a link for anyone travelling between Newton and Metherell via the A-B section.

*Ordnance Survey (‘OS’) maps*

1. The 1883 OS 25-inch map shows the B-C section as an enclosed lane with the remainder of the route depicted mainly by way of double pecked lines in a similar way to the earlier tithe map. The A-B section is shown as a continuous feature even where it meets a field boundary, which is suggestive of the presence of stiles or gates at these points. There are the initials ‘*FP*’ annotated at one point to indicate a route that had the appearance of a footpath.
2. The same features are generally shown on the OS 25-inch map of 1906 and 6 inch maps of 1884 and 1907. The OS mapping reveals that the claimed route ran between Metherell and Newton at points A and C respectively. The route is also shown as a feature on the OS maps of 1931,1934,1946**,** 1954**,** 1959,1961 and 1978.
3. The evidential value of OS maps is that they generally provide a reliable indication of the presence of particular physical features on the date of the survey. However, they do not provide clarification regarding the status of the paths and roads shown. The OS maps indicate that the B-C section had the appearance of a road, and the remainder is depicted as a footpath, but no reliance can be placed on the OS maps as to whether the route had public status.

*1910 Finance Act evidence*

1. The A-B section crossed the hereditaments numbered 703 and 740 on both the working and valuation plans produced for the purpose of the 1910 Finance Act. It is evident from the Forms 37 that were compiled for these hereditaments that deductions were applied amounting to £2 and £25 respectively for ‘*Public Rights of Way or User’*.Section 25 of the Act specified that when assessing the value of the land consideration needed to be given to ‘*the amount by which the gross value would be diminished if sold subject to any… public rights of way*’.
2. The location of any public right of way is not identified in the forms. However, the OS mapping only records one path across these hereditaments, and this is strongly suggestive of the deductions relating to the A-B section of the claimed route. This is most evident in relation to 703 given the size of this hereditament. Accordingly, the Finance Act documents are supportive of a recognition that a public footpath existed between A and B at this point in time.
3. In terms of the B-C section, the Council refers to the exclusion of this section from the surrounding hereditaments. I sought clarification on this issue given that this section is shown running through the middle of hereditament 233 with only a short section at point C actually excluded from this hereditament. In response, the Council outlined that where a road crosses a hereditament in single ownership, surveyors did not generally show coloured boundaries on either side and instead identified the route as excluded by showing a deliberate break in the coloured boundary at the points where it entered or exited the hereditament. This arises in this case and there are instances nearby where known public roads are shown in the same way.
4. Having regard to the above, I find on balance that the B-C section was viewed as being external to hereditament 233. The representation of a route in this manner can provide good evidence of highway status and is more likely to be indicative of a vehicular highway. However, it is evident that the continuation of the road to the west of point B, which is a cul de sac leading to no apparent public location, is also shown excluded.

*Parish minutes*

1. Extracts have provided of minutes taken from the meetings of Calstock Parish Council, dating back to 1901, and these are set out below.
2. A minute of 28 October 1901 records that ‘*Mr Spear proposed & Mr Vosper seconded that some wrinkle be put over the Metherell end of the Newton footpath and that Mssrs White, Masters & Spear attend to the proposed carrying out of the work’.*
3. It is recorded in a minute of 4 January 1909 that ‘*Mr Martin proposed & Mr Masters seconded that the path from … and also from Metherell to Newton be cleaned up and Mr Spear be asked to attend to it’*.
4. A minute of 8 November 1910 sets out that ‘ *Mr Dawe proposed… that the path from Newton to Metherell… be repaired and that Mr Dawe be asked to superintend the work*’. It is noted on 7 November 1911 that ‘*Mr Dawe proposed & Mr Luscombe seconded that the Newton to Metherell path be repaired’*.
5. The minute of 2 June 1931 records that ‘*Mr Wilton reported that the path leading from Newton to Metherill had been damaged by water overflowing from Mr Cundy’s field & it was proposed by Mr Gray, Sec. by Mr Short that Mr Cundy be written to & asked to keep the water from the path, which was carried’*.
6. A minute of 6 January 1942 records that ‘*Mr Sleeman proposed & Mr Haddy seconded that the Clerk write to Mr J. Cundy, Metherell calling attention to the path through the fields from Metherell to Newton & asking him to attend to same*’. It is recorded on 4 September 1945 that ‘*The Clerk was asked to see Mr Langsford re the path at Metherell leading to Newton, which needs trimming*’.
7. It is recorded in a minute of 3 May 1949 that ‘*Mr Langsford proposed & Mr Sleeman seconded that Mr J Cundy, Metherell be asked to clean out the water table leading from Metherell to Newton*’. It is recorded on 16 August 1960 that ‘*Mr Langsford reported on the meeting of the Sub-Committee with Mr A.W. Cundy. Resolved. 1. That the Council supply an extra rail to the stile. 2. That Mr Langsford interview Mr Cundy and state that the Council has no objection to him fixing a swing gate providing the adjacent owners agreed’*.
8. The claimed route provides a direct link between the cluster of properties at Newton and the settlement of Metherell. In the absence of any other apparent direct path between these two locations, I consider on balance that the parish minutes relate either to the A-B section or the whole of the claimed route. Whilst it is not clear where precisely the path described terminated, pedestrians reaching point B would have had to continue via the B-C section in order to reach Newton.
9. The minutes reveal that the parish council discussed this path on a number of occasions and undertook to spend public funds to maintain it over a prolonged period of time. The initial minutes are contemporaneous with the Finance Act evidence which is supportive of the claimed route having public status. Overall, the parish council minutes are wholly consistent with the route being viewed as having public status during a proportion of the twentieth century. They provide evidence of a recognised public footpath between Metherell and Newton.

*Other evidence*

1. Although reference has been made to the absence of any mention of a footpath in property documents, these are concerned with the ownership of land rather than the existence of public rights of way.

*Conclusions on the documentary evidence*

1. The claimed route is consistently shown on the historical maps as a through route comprising of a section of enclosed lane and an unenclosed path across fields. It served as a route between Newton and Metherell linking with existing highways. This provides some limited support for the claimed route being a historical public right of way. I have noted that the continuation of the lane to the west has historically been represented as a cul de sac leading to a field, which is not necessarily indicative of a vehicular highway.
2. I find the minutes from the parish meetings to provide support for the existence of a public footpath at least over the A-B section. Further, pedestrian use is likely to have continued over the remainder of the claimed route. Given the information contained in these minutes I consider that they should carry a fairly significant amount of evidential weight.
3. The Finance Act documents provide evidence in support of the recognition of the existence of a public footpath between points A-B and again this evidence should attract a fairly significant amount of weight. The remainder of the route was considered to be separate from Hereditament 233 and this would be supportive of highway status. I accept that the representation of a route in this way would point more to the existence of a vehicular highway. However, I have highlighted that the lane continues to the west of point B and terminate at a field. Therefore, the evidence is not supportive of a public vehicular through route or a road that led to a place of public resort. Moreover, the Council do not assert that the continuation of this lane should be added to the definitive map as a restricted byway in the same manner as the B-C section.
4. Having regard to my conclusions above, I am not satisfied that the evidence, most notably the Finance Act evidence, is sufficient to demonstrate on balance that a vehicular highway subsists between points B-C. However, I consider that the evidence as a whole is supportive of the existence of a historical public footpath between points A-B and that the route used was likely to have continued over the B-C section. The evidence can therefore be viewed as being supportive on the balance of probabilities of the dedication of a public footpath over the whole of the claimed route at some unknown date in the past. This means that the Order should be modified in relation to the status of the B-C section.

***User evidence***

1. This evidence comprises mainly of user evidence forms in support of use on foot dating back to the early 1960s. Such use would be consistence with the existence of a public right of way. I note that there is conflicting evidence contained in the withdrawn objection and the user evidence in relation to matters that would determine whether a footpath has been dedicated in accordance with Section 31 of the 1980 Act. However, given my conclusion above, I do not need to reach a conclusion on whether the user evidence is supportive of the more recent dedication of a public footpath.

***Limitations***

1. The issue to be determined from the evidence is whether there were any structures in place when the route was dedicated.
2. I have found that the historical evidence is supportive of the dedication of a public footpath at some unknown date in the past. The map evidence shows that the route was in existence by around 1840 and it could have been a public right of way by this date. The tithe and OS mapping consistently show the A-B section passing either side of solid lines denoting field boundaries. In order to pass between these boundaries there would have needed to be some means of access. The more recent evidence points to longstanding stiles being in place and the Council has provided details of where stiles would have been located.
3. I consider that it is more likely that stiles were in place when the claimed route was dedicated to enable people to traverse the relevant field boundaries. The Order should therefore be modified to include the limitations of stiles at the relevant points.

**Other Matters**

1. Some matters have been raised that sit outside of the relevant considerations which I need to determine (set out in the main issues above). These include the need for a public right of way, the current condition of the route and its future maintenance.

**Overall Conclusion**

1. 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:

* Delete all references to ‘*restricted byway*’ and where appropriate insert ‘*footpath*’ and distinguish between the A-B and B-C sections.
* At the end of Part I of the Order Schedule insert the following:

‘Limitations:

A stile approximately 55 metres south-east of ‘Lower Brookland Farm’ at OSGR SX 4099/6943 shown as point ‘W’ on the attached Order map.

A stile approximately 225 metres south-east of ‘Lower Brookland Farm’ at OSGR SX 4113/6933 shown as point ‘X’ on the attached Order map.

A stile approximately 299 metres north-west of ‘Newton Farm’ at OSGR SX 4122/6927 shown as point ‘Y’ on the attached Order map.

A stile approximately 197 metres north-west of ‘Newton Farm’ at OSGR SX 4131/6921 shown as point ‘Z’ on the attached Order map’.

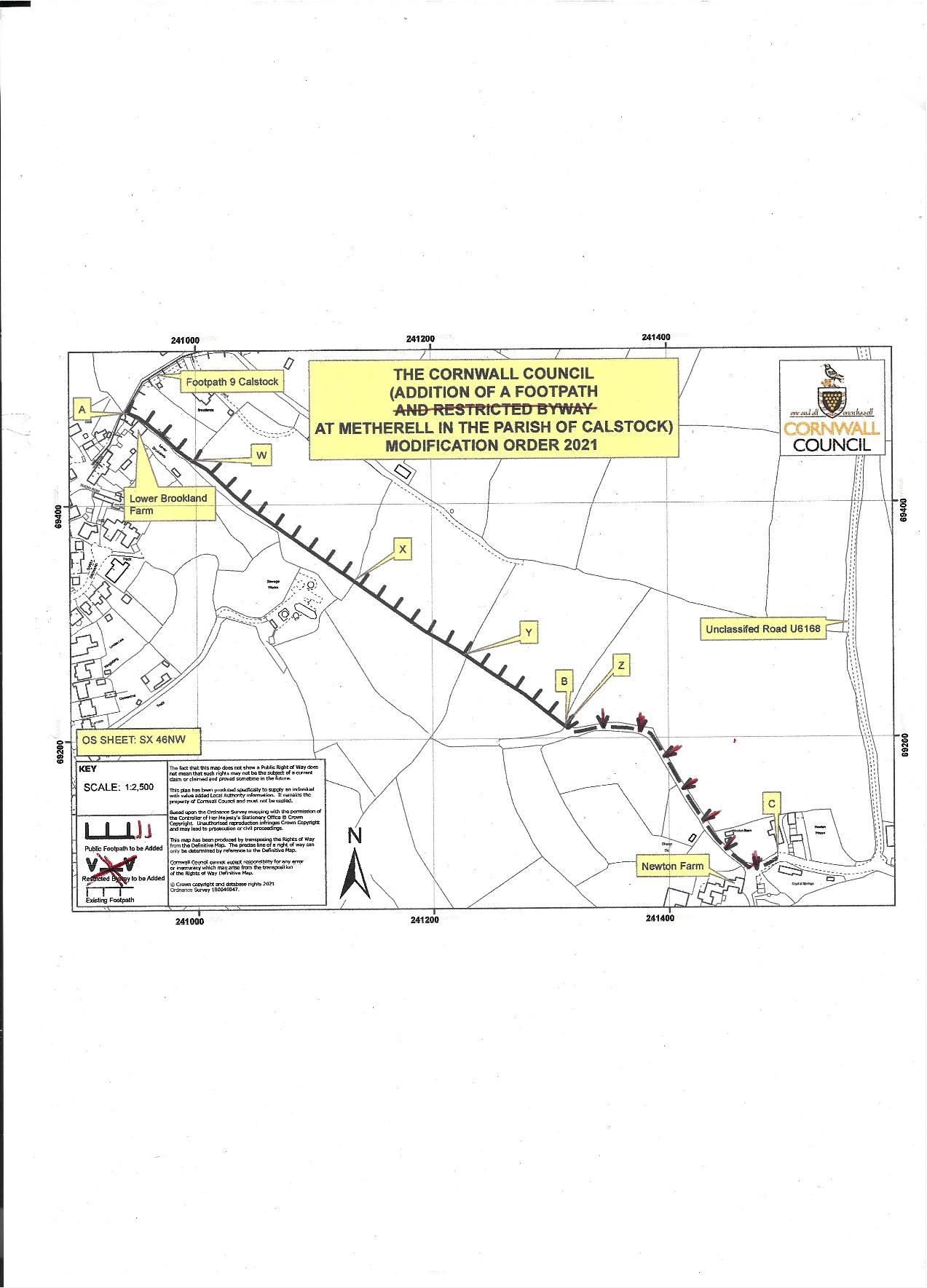
* Insert points ‘W’, ‘X’, ‘Y’ and ‘Z’ at the relevant points on the Order Map.
* Show the B-C section on the Order Map by way of the notation for a footpath and remove the references to restricted byway.

1. Since the confirmed Order would show as a highway of one description a way which is shown in the Order as a highway of another description 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.

Mark Yates

**Inspector**

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