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| **Appeal Decision** |
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| **by Susan Doran BA Hons MIPROW** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 14 January 2025** |

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| **Appeal Ref: ROW/3334566** |
| * This Appeal is made under Section 53(5) and Paragraph 4(1) of Schedule 14 of the Wildlife and Countryside Act 1981 against the decision of Staffordshire County Council not to make an Order under Section 53(2) of that Act.
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| * The Application dated 1 August 1992 was refused by Staffordshire County Council on 13 November 2023.
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| * The Appellant claims that the appeal route, Betley Footpath 20 should be upgraded to a Bridleway.
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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 an 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 appeal concerns an application made on behalf of the North Staffordshire Bridleways Association (‘the Appellant’).

Main issues

1. The application was made under section 53(2) of the 1981 Act which requires the surveying authority to keep their Definitive Map and Statement (‘DMS’) under continuous review, and to modify them upon the occurrence of specific events cited in section 53(3).
2. Section 53(3)(c)(ii) of the 1981 Act specifies that an order should be made on the discovery of evidence 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 shown as a highway of a different description.
3. The evidence adduced is both documentary and user evidence. Section 32 of the Highways Act 1980 (‘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 is appropriate, before determining whether a way has been dedicated as a highway.
4. As regards claimed use by the public, section 31(1) of the 1980 Act provides 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 to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it”* and section 31(2), that “*The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice … or otherwise”*.
5. Dedication may also be examined under common law whereby a right of way may be created through expressed or implied dedication and acceptance. The onus of proof is on the claimant to show that the landowner, who must have the capacity to dedicate, intended to dedicate a public right of way; or that public use has gone on for so long that it could be inferred; or that the landowner was aware of and acquiesced in public use. Use of the claimed way by the public must be as of right (without force, stealth, or permission). There is no fixed period of use, and depending on the facts of the case, may range from a few years to several decades, and no particular date from which use must be calculated retrospectively.
6. The Appellant’s grounds of appeal are as follows:
* Betley Footpath 20 continues into neighbouring Cheshire where it is recorded as a bridleway - there is no explanation for bridleway rights to stop at the County boundary thereby creating a dead end.
* Other than a small section approaching the border with Cheshire, the whole of Betley Footpath 20 was excluded from incremental duty tax under the 1910 Finance Act.
* Railway plans and the Book of Reference record the route. A substantial all-purpose bridge had to be built over the line on the Cheshire side of this route which connects publicly maintainable roads at each end.
* The Tithe map supports a more substantial route than just a footpath.
* At the time of the application none of the route was registered with Land Registry.
* Whilst the user evidence originally submitted was sparse, it has not been possible to contact the users as their evidence forms have been redacted, and some have since passed away or left the area.
* The Council’s Report contains errors and omissions.

**Reasons**

1. The appeal route forms a link between Common Lane in Betley, which is adopted highway, and the county boundary with Cheshire where it continues as Bridleways No 5 Chorlton and No 8 Blakenhall. The appeal route is named on historical and current maps as Common Lane and affords access to an area named Betley Common, before reaching the county boundary.

***Documentary evidence***

*County and other commercial Maps*

1. Of the range of maps consulted by the Council, only Greenwood’s 1819 map for Cheshire shows the appeal route’s continuation in that county, suggesting it was unlikely to be a footpath. Greenwood’s 1820 map for Staffordshire shows a track entering a large, enclosed area, but with no continuation to the county boundary.
2. Bartholomew’s 1902 map shows the appeal route as a track as far as Betley Common with no continuation to the county boundary or corresponding route on the Cheshire side.

*Ordnance Survey records*

1. An 1831 Ordnance Survey 2-inch map shows it as a bounded track, a through route, prior to the opening of the railway in 1837.
2. Later OS maps are consistent in their depiction of the appeal route. The c.1887 OS map for Staffordshire shows an enclosed track of varying width open throughout and passing between farm buildings. Where it leaves the track and crosses an open field (numbered 53) it is shown as a double pecked line to the county boundary, where there is a suggestion of a continuation across the boundary. Indeed the 1881 map for Cheshire shows a track crossing the railway and continuing as a mix of parallel pecked lines or solid and pecked lines as far as the county boundary to join it.
3. The 1889 map shows the appeal route (and its continuation east) as an open road from Betley, then as a continuous track open or enclosed to one side passing across the county boundary and continuing through Lower Den to the public highway in Cheshire. It is shown in the same manner on the 25-inch map. It is not annotated but a similarly double pecked line route to the south and another to the northeast are annotated ‘FP’ or footpath, connect to the appeal route, and are recorded as public today. This may indicate the appeal route was not considered by the surveyors to be a footpath as it was not similarly annotated. It appears in the same way on the Stoke on Trent map of 1902. On this map, the route to the south is shown by a single pecked line whereas the appeal route is marked by a double pecked line where it leaves the track. The 1912 map shows it in the same way, with the route to the south annotated FP. The appeal route appears as before on the 1954 map, and the 1968 map annotates it ‘Path’ where it leaves the track and heads towards the county boundary.

*Tithe records*

1. An extract from the 1842 Tithe Map shows the appeal route’s western end at Betley Common. It appears colour washed and is an enclosed track before crossing into a small field then into a larger one (numbered 549) as a double pecked line, again colour washed. The Council’s report indicates this was pasture known as ‘Adams meadow’ with tithe payable. No copy of the Apportionment is provided. The Council considered this evidence suggested higher rights than those on foot.
2. A tracing of the Tithe Map provided by The Ramblers’ marks some other routes by single pecked lines annotated ‘Footpath’, with one to the south of the appeal route annotated ‘From Wybunbury’ at the county boundary.

*Railway Plans and Book of Reference*

1. The Appellant argues a substantial bridge was constructed to accommodate the appeal route’s continuation in Cheshire, which suggests (as a whole) it carried higher rights than those on foot.
2. The Council notes a route shown on the Railway Plan numbered 47. The Book of Reference shows the entry for 47 in the township of Blakenhall (Cheshire) as an ‘Occupation Road’, rather than a public highway. The Appellant says no owner was recorded. The Council concluded from this entry that these records provided no evidence that the appeal route was public at the time, but rather for the use of occupiers and those with rights of common, not the public.

*Finance Act records 1910*

1. The appeal route is uncoloured and excluded from land parcels or hereditaments where it follows the Lane, suggesting it enjoyed public rights. It is generally accepted that these are likely to be vehicular rights since public footpaths and bridleways usually crossed hereditaments and attracted a tax deduction. However, the Council says there may be other reasons, for example where an inclosure award set out a private road for the use of several people but without its ownership being assigned to any individual. There is no evidence here of an inclosure award with such circumstances applicable, however, the Lane does lead to and through farms and this may explain the exclusion.
2. The remainder of the appeal route beyond the Lane passes through hereditaments. I am unable to determine the parcel numbers from the copy of the Map provided. In any event, the accompanying Field Book which may contain further information has not been provided.

*Definitive Map and other Highway Authority Records*

1. As previously stated, the appeal route was recorded as a footpath when the DMS was drawn up in the 1950s, although its continuation across the County boundary was recorded as a bridleway.
2. Correspondence dating to 1992, indicates the 1929 Handover Schedules together with other records held by the County Surveyor do not show the appeal route as ever having been a publicly maintainable highway. It is not stated what other documents were considered.

*Other records*

1. The land over which the appeal route passes was unregistered at the time of the application. Since then, part of it around Yew Tree Farm has been registered. The eastern end between Main Road and the end of the residential properties where it crosses a brook is maintainable at public expense. The Council regards it as ‘unclassified’.
2. The Council also comments the appeal route could be a private road to the common for use by those with commoners’ rights, although no evidence has been provided to support this.

***User and landowner evidence***

1. The application was supported by 13 user evidence forms (UEFs). For the purposes of section 31 of the 1980 Act, no event bringing into question the public’s right to use the appeal route on horseback is identifiable. Therefore, it is the date of the application that provides the 20-year period, in this case 1 August 1971 to 1 August 1991. None of the users reported having been challenged or obstructed in their use of the appeal route, and none had sought permission to use it. No signs contrary to use on horseback were encountered.
2. The Council’s analysis of the UEFs, was that 10 users claimed to have ridden the route on horseback within the 20-year period, with 4 commencing use in the 1970s, 5 in the 1980s and one in the 1990s. Frequency of use varied from occasional, 2-4 times a year, ‘several’ or ‘many’ times a year, 6-8 times a year to one claiming monthly use, another weekly and a third twice a week. Two users provided no dates of use, one did not use it, and another subsequently confirmed they did not think it was a bridleway. With only one user claiming regular use of the appeal route between 1972 and 1992, the Council concluded there was insufficient evidence to support dedication under statute. However, I note claimed use by one person for the full 20 years, one for 19 years, one for 15, one for 10 and the remainder between 1 and 6 years, therefore providing evidence of use throughout the relevant period.
3. The Council describe the appeal route as a private non-maintainable road with multiple houses along its length. They consulted residents and received responses including some disputing the frequency and veracity of use claimed. The landowner at Yew Tree Farm considered the appeal route to be a public footpath used occasionally by horse riders. One respondent said the route was described as a private right of way in their property deeds, a copy of which was not provided.
4. The Council went on to consider the user at common law, but concluded there was insufficient evidence to support dedication as a bridleway. I note one UEF records use between 1948 and 1954, and the remainder between 1972 and 1995.
5. Interviews with users were not carried out at the time the application was submitted, and some of those providing UEFs are no longer available. The evidence of use would have benefited from further scrutiny given some repetition of details in the forms, different handwriting within forms, and that all but one of the accompanying maps marking the claimed route were unsigned.

***Analysis***

1. The Council considered that the appeal route as depicted had higher rights than those on foot and they appear to suggest it was considered a bridleway from the 1800s to the 1950s when the evidence was examined at the DMS stage. However, if bridleway rights did subsist prior to the DMS, there is no evidence put forward of any legal stopping up of such rights.
2. I find that the appeal route has been depicted as a physical feature since 1831 as evidenced in the OS mapping, including its continuation into Cheshire across the county boundary. It is shown as a bounded track for the most part, then as a cross field feature at its western end. This depiction is consistent throughout subsequent OS mapping. On some maps other routes connecting to it are annotated as footpaths suggesting any public rights existing over the appeal route would have been of the same or higher status since it had no similar annotation. OS mapping latterly carried a disclaimer as regards public rights and this is presumed to apply also to earlier mapping, therefore taken on its own, this evidence is of greater assistance as regards the route’s features and alignment than of its status.
3. It is colour washed on the Tithe Map and like the OS mapping, some routes are annotated ‘footpath’, though not the appeal route. It is excluded from hereditaments on the Finance Act map save for the western end which passes through fields. The exclusion is usually consistent with the existence of vehicular rights. However, if it were due to multiple landowners accessing their land, by a private or occupation road, this would not rule out the existence of public rights as evidenced by the public footpath status currently enjoyed. Neither the Tithe Map apportionment, nor Finance Act Field Book, which may contain further relevant evidence, have been provided. Railway records describe the route as an occupation road, and in Cheshire a bridge was provided for it to cross over the railway line.
4. Nevertheless, an anomaly exists in the DMS between the recording of this cross boundary through route within Cheshire (as a bridleway) and within Staffordshire (as a footpath). It would be unlikely for bridleway rights to stop at the county boundary requiring users other than on foot to turn around and retrace their steps, especially given that the whole route connects two public roads, one at the settlement of Betley.
5. It appears to have been unregistered land until recent times. Whilst the appeal route provides access to Betley Common and to farms and other properties along its length, no evidence has been provided in relation to any possible commoners’ rights.
6. There is evidence of its use by people on horseback as of right and without interruption over many years commencing in 1948 for a short period and then for over 20 years from 1972 by 9 individuals, with varying frequency. On the face of it there does not appear to be sufficient evidence notably in respect of the frequency of use, to satisfy a claim based on user for the purposes of statute. However, given the historical evidence, the user arguably reflects the continued use of a route with equestrian rights.
7. Having weighed the evidence in the balance, and whilst there remain some unanswered questions, for example in relation to the Tithe and Finance Act evidence, I find the balance tips in support of the appeal route being upgraded to a bridleway.

**Conclusion**

1. Having regard to these and all other matters raised in the written representations I conclude that the appeal should be allowed.

Formal Decision

1. In accordance with paragraph 4(2) of Schedule 14 to the 1981 Act, the Staffordshire County Council is directed to make an order under section 53(2) and Schedule 15 of the 1981 Act within 3 months of the date of this decision to modify the Staffordshire County Council Definitive Map and Statement by adding a Bridleway as shown on the plan attached to the application dated 1 August 1992. This decision is made without prejudice to any decisions that may be given by the Secretary of State in accordance with their powers under Schedule 15 of the 1981 Act.

S Doran

**Inspector**