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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: 05 February 2025** |

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| **Appeal Ref: ROW/3336204** |
| * 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 10 April 2018 was refused by Staffordshire County Council on 8 December 2023.
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| * The Appellant claims that the appeal route, Footpath 18 Quarnford, should be upgraded to a Restricted Byway.
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| **Summary of Decision: The appeal is dismissed** |
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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 Staffordshire Moorlands Bridleways Group (‘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 documentary. 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 a way has been dedicated as a highway.
4. Staffordshire County Council (‘the Council’) declined to make an order to upgrade the Footpath to a Restricted Byway. The Appellant’s grounds of appeal are that the evidence shows the route of Quarnford Footpath 18 has consistently been regarded as a public right of way with vehicular rights and the Definitive Map and Statement (‘DMS’) should be modified to show it as a restricted byway.
5. It is not disputed that the appeal route is a public highway, the main issue is its status.

**Reasons**

1. The appeal route commences at the junction of Moss Bar and Turn O’th Rake at its eastern end and terminates at a county road north of Gradbach House Farm at its northwestern end. Part has a stone surface, and the remainder is grass.

***Documentary evidence***

*Quarnford Harpur Crewe Estate Terrier Map and Ordnance Survey Map 1830*

1. An extract from the Terrier map shows the appeal route between Goldstitch Moss and Clough Head, but not beyond there. This is consistent with the depiction on the Ordnance Survey (‘OS’) map of the same date. Both documents were provided by an interested party affected by the appeal.

*Alstonefield Inclosure Award and Map 1839*

1. The eastern section of Footpath 18 Quarnford is shown on the Inclosure map where it is named ‘Stone Pit Road’. It terminates at an enclosure, described in the Award as a stone pit on Gradbach Common, with no onward connection to a highway. This is consistent with the mapping described above (paragraph 10).
2. The Award lists it under the heading ‘Carriage and Drift Roads’ as 18 feet wide and leading from the Turnpike Road on Goldstitch Moss. The Award sets out its use by *“all persons whose Lands adjoin the same or who may require or think proper or have occasion to use the same”*. This indicates adjoining landowners could use it along with anyone else who needed to, presumably to access the stone pit as the route was a cul-de-sac.
3. The Award states the appeal route *“shall be made and for ever hereafter supported and kept in repair by and at the expense of the several owners and occupiers for the time being of the lands and hereditaments within the said Township of Quarnford by a General Rate or Assessment according to the value thereof respectively”*. This provides that maintenance was to be funded by means of a levy placed on all landowners and occupiers within the Parish according to the amount of land they owned or occupied.
4. There are only extracts of the documents available to me, so it is not clear if the Award differentiated between public roads and carriage and drift roads, or in terms of their width and rights conferred over them. Neither is it clear under which Act the Award was made, or whether the inclosure was by agreement, so it is not possible to establish what powers the commissioners had in relation to the ways to be awarded and set out. The Council considers a drift road more likely to be private for driving cattle, although I do not consider it would rule out the existence of a public right of some status subsisting –the route is currently recorded as a footpath. That the awarded route terminated at a ‘stone pit’ suggests it provided access to a place to which parishioners at least had access for collecting stone for building, or for maintenance work purposes.
5. Whilst there is clear evidence of the physical existence of a bounded way at the eastern end of the appeal route, the evidence is of a cul-de-sac at this time, terminating at the stone pit.

*Ordnance Survey maps*

1. One-inch OS maps dated 1887 to 1941 show the appeal route as a through route supporting its longstanding existence as a physical feature. Keys to the maps identify it as a minor, unmetalled, or unfenced road. None represent it as a footpath or bridleway, which may indicate it was a vehicular road.
2. The 1953 OS map shows it as “Minor roads in towns, Drives and unmetalled roads (unfenced roads shown by pecked lines)”. Again, this is supportive of its availability for use other than on foot.
3. OS maps provide good evidence of the physical features that exist on the ground rather than of the status, public or private, of the route depicted. Nevertheless, there is some consistency in the way the appeal route has been depicted as a ‘road’.

*Handover records, Local Government Act 1929, Leek Rural District Council*

1. The handover records list two types of roads. The schedule is headed ‘Mileage of Public Highways Rural District Roads (not Main Roads)’, and lists for Quarnford 5.4 miles of ‘scheduled roads’ and 13.5 miles of ‘other roads’, with no reference to bridleways or footpaths. All are through routes, and apart from the appeal route, which is currently recorded as a footpath, all are recorded today as ‘ordinary’ vehicular roads.
2. This suggests the appeal route was regarded as a road, although this could include vehicular, equestrian, or pedestrian rights. The Council comments that routes shown on the maps came to be known as Unclassified County Roads, though this does not necessarily mean they were vehicular ways.
3. Handover records were drawn up when the responsibility for publicly maintainable highways was transferred from Rural District Councils (‘RDCs’) to County Councils. Maps and lists were prepared showing the ways RDCs believed they had maintenance liability for. The records were principally for internal administrative use and generally not available to the public. They provide conclusive evidence of the highway authority’s acceptance of maintenance responsibility. However, they were not a record of public rights. It is noted that some highway authorities included footpaths and bridleways on their handover maps, whilst others included only public vehicular ways.
4. In this case, it is evident that the appeal route was regarded as a publicly maintainable highway. It is possible, given that all the other routes listed are vehicular ways and no publicly maintained footpaths or bridleways are recorded, that it enjoyed higher rights than those on foot.

*Definitive Map records*

1. The DMS was drawn up following a survey carried out in the early 1950s. The Parish Survey for Quarnford was carried out by 4 local residents. The Parish Survey card for Footpath 18 records the appeal route as a public footpath. It is described as running through 6 fields with ‘communicating stiles’ then changing to a cart track to the council road at Gradbach House. It is stated that the route has been used by the public for at least 40 years without dispute.
2. Beside the designation ‘FP’ and in a different handwriting is ‘& CRF’, which has been crossed out. Similarly, ‘CRF’ is crossed out on the Survey map. The term ‘CRF’ represents a way the public can use with a vehicle, a public carriage or cart road, or green (unmetalled) lane which is mainly used as a footpath.
3. A Council document provided by the Appellant in relation to Quarnford lists as query 4, “Path 18 shown as FP & CRF – FP throughout?” and alongside under the heading “Decision”, is “Yes”. In addition, it is recorded that the Parish was not to be informed of the alteration. The appeal route subsequently came to be recorded as a footpath in the DMS.
4. Although the Parish was not informed of this decision, the original survey carried out by the Parish itself had claimed a footpath only. Further, there was a procedure to publicise the various stages of the DMS and for objections and representations to be made to it. No evidence has been provided to indicate its status was disputed.

*Other evidence*

1. Current members of the Parish Council and local residents believe the appeal route has been used and designated as a footpath for at least 70 years. This accords with the Parish Survey when it was claimed and added to the DMS.

***Analysis***

1. The evidence provided indicates the eastern end of the appeal route has existed since at least 1830. In 1839 the Inclosure records show it as a Carriage and Drift Road 18 feet wide to access a stone pit for the use of landowners and others, to be maintained by the owners and occupiers of land within the Parish. Based on the inclosure evidence provided I do not consider the appeal route is unequivocally a public vehicular road. It formed a cul-de-sac to access a source of stone for the Parish. With only extracts from the records provided, and in the absence of the enabling Act, it is not possible to reach a definitive conclusion as regards that part of the appeal route set out.
2. OS mapping indicates that by 1895 it had become a through route, and it is then consistently shown as a minor, unfenced or unmetalled road, suggesting it was more than a footpath. This is good evidence of the physical existence and alignment of the route, but not of its status as public or private, although it may be suggestive of the former.
3. The 1929 Handover records confirm the appeal route was maintained at public expense and list it amongst others which are all recorded as ordinary roads today. It does not necessarily follow that it too was an ordinary road, although given that no routes with lesser rights were listed, it is suggestive that the appeal route enjoyed a higher status than footpath.
4. However, the Parish Survey records show it was claimed and later added to the DMS as a footpath. It is significant that part of the route was described as having stiles which suggests it was not accessible to users other than on foot. However, it is not known how long the stiles had been in place such that it is possible that any higher rights that may have existed over the way as a through route may have fallen into disuse.
5. The evidence in this case is contradictory and yet finely balanced. There are unanswered questions concerning the inclosure records (paragraph 14). On balance, I find the evidence adduced to date as a whole to be insufficient to meet the hurdle set out in section 53(3)(c)(ii) of the 1981 Act that an existing right of way ought to be upgraded to a higher status.

**Other matters**

1. Several interested parties refer to suitability, desirability, safety, security, privacy, fairness, that the appeal route passes through a working farm, that any upgrade to its status should be based on need, and that the basis of the claim is historical evidence rather than the situation as it is today. Whilst I appreciate these are genuinely held concerns, they are not relevant to the tests to be applied under the 1981 Act and cannot be considered.
2. Reference is also made to new Department for the Environment and Rural Affairs guidance concerning rights of way through contained spaces such as working farmyards. However, this relates to other legislation and is not relevant to the present appeal.

**Conclusion**

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

S Doran

**Inspector**