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| **Appeal Decision** |
| **by G D Jones BSc(Hons) DipTP DMS MA MRTPI** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 03 June 2025** |

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| **Appeal Ref: ROW/3353251** |
| * This Appeal is made under Section 53(5) and Paragraph 4(1) of Schedule 14 of 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 that Act. |
| * The application dated 5 February 1999 was refused by the Council on 13 September 2024. |
| * The Appellant claims that the definitive map and statement of public rights of way should be modified by adding a public footpath from Gamesley Bridge on the B5405 to the A5013 opposite Worston Lane, Stafford.   **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 1981 Act.
2. This appeal has been determined on the papers submitted.
3. In arriving at my conclusions, I have taken account of the evidence submitted by the parties and the relevant part of the 1981 Act. I have also taken into consideration the findings of the Courts, including in respect to the following cases:

* R v Secretary of State for the Environment ex parte Simms and Burrows [1990] 60 P & CR 105 (Simms and Burrows);
* Mayhew v Secretary of State for the Environment [1992] 65 P & CR 344 (Mayhew);
* R v Secretary of State for the Environment ex parte Bagshaw and Norton (QBD) [1994] 68 P & CR 402, [1995] JPL 1019 (Bagshaw and Norton);
* R v Secretary of State for Wales ex parte Emery [1996] 4 All ER 367 (Emery);
* Kotarski V Secretary of State for Environment, Food and Rural Affairs [2010] EWHC 1036 (Kotarski); and
* R (oao Roxlena Ltd) v Cumbria County Council [2019] EWCA Civ 1639 (Roxlena).

Main Issues

1. The principal issue is whether there has been a discovery of evidence so that the terms of Section 5(3) of the 1981 Act were engaged. If they were engaged, the issue would be whether the documentary evidence demonstrates that the route in question should be recorded in the definitive map and statement.

**Legislative Framework**

1. The need for an Order to be considered when evidence is submitted in support of a claim that a public right of way which is not shown in the definitive map subsists is dealt with under Section 53 of the 1981 Act. Section 53(3)(c)(i) provides that a modification order should be made on the discovery by the surveying authority of evidence which, when considered with all other relevant evidence available, shows that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates.
2. It is the discovery of evidence by the surveying authority which engages the provisions of Section 53(3) and the ‘events’ specified in Section 53(3)(c). Evidence can be discovered by the surveying authority or by a third party, for instance a member of the public, and provided to the surveying authority for its consideration. In Simms and Burrows, Mayhew, Kotarski and Roxlena, the Courts have examined what the ‘discovery of evidence’ entails.
3. If the surveying authority has ‘discovered’ evidence, then the question arises as to whether it can be concluded that a public right of way subsists or can be reasonably alleged to subsist. As made clear by the High Court in Bagshaw and Norton, this involves two tests:

**Test A** - Does a right of way subsist on the balance of probabilities?

**Test B** - Is it reasonable to allege that a right of way subsists? For this possibility to exist, it will be necessary to show that a reasonable person, having considered all the relevant evidence available, could reasonably allege that a right of way subsists.

1. In relation to Test B, the Court of Appeal recognised in the Emery case that there may be instances where conflicting evidence was presented at the schedule 14 stage. In Emery, Roche LJ held that "… The problem arises where there is conflicting evidence … In approaching such cases, the authority and the Secretary of State must bear in mind that an order … made following a Schedule 14 procedure still leaves both the applicant and objectors with the ability to object to the order under Schedule 15 when conflicting evidence can be heard and those issues determined following a public inquiry."
2. No evidence of use has been submitted in support of the appellant’s contention of the existence of the claimed public right of way that is the subject of the appeal. The appellant’s evidence is derived from documentary sources.

**Background**

1. The application was made to add a public footpath (the claimed route) to the Definitive Map and Statement (DMS) from Gamesley Bridge on the B5405 to the A5013 opposite Worston Lane, in the Parish of Seighford, Stafford. The application was made on 5 February 1999. The claimed route follows something of an L‑shaped alignment, with the northern section labelled A to B and the southern section B to C.
2. On 23 January 2019, the Council was directed to determine the application by an Inspector on behalf of the Secretary of State by no later than 23 July 2019. However, the Council did not determine the application until 13 September 2024. It decided that no Order should be made as a result of the application on the basis that the claimed route was not reasonably alleged to subsist as a public right of way and the Council determined that the evidence was insufficient such that the test under Section 53(3)(c)(i) had not been met over the way described in the application.
3. The Council has not directly commented on the matters raised by the appellant after it made its decision not to make an Order, which form the basis of his appeal. Nor has the Council expressly indicated what it considers should be the outcome of the appeal. Nonetheless, given that the decision was made fairly recently and there is no reason to believe that it has changed its position on the application, it is implicit that the Council still considers that the Order should not be made, such that the appeal should, in its view, be dismissed.
4. The evidence includes that submitted by the appellant with additional material and comment from the Council, as well as that made on behalf of the landowner. Collectively, it comprises a range of material including historic maps and records. The issue between the appellant and the Council relates to whether the historic documentary evidence together is sufficient to conclude that Test A or Test B is satisfied. I consider the various evidence types in turn and then draw an overall conclusion on the evidence in its entirety.

**Documentary Evidence**

*Deposited Railway Plan 1863*

1. The Plan post-dates the Railways Clauses Consolidation Act 1845, which required public rights of way that crossed the route of a railway to be retained unless their closure had been authorised. Accordingly, such plans can be evidence of whether a way was public or private in nature. The Plan shows a route that is consistent with a small section of the claimed route. It does not indicate where the route originates or terminates.
2. The associated Field Book refers to this parcel of land, No 6, as “Field and bridle road”, with the owners listed as Francis Eld and surveyors Joseph James, John Mann and Joseph Talbot. As the Council states in its Committee report, the ‘surveyors’ would appear to have been of the opinion that the depicted route was a bridle road that was publicly maintainable.
3. Only a very small portion of the claimed route is directly affected by this evidence. Nonetheless, it would be reasonable to conclude that if the portion shown crossing the planned rail corridor was a public right of way, it would be very likely that the parts of the claimed route to either side, within at least section B to C, would also have been public bridleway at that time. Section A to B of the claimed route is not directly affected.
4. The railway scheme in question was not completed. The plans for such schemes, while forming part of the legislation, are less reliable than those that passed through the entire parliamentary process as they were subject to less scrutiny.
5. I note the Council’s submissions regarding the consistency of the Ordnance Survey (OS) map accompanying the Deposited Railway Plan showing the intended line of the railway and the depiction in the more detailed Plan. Nonetheless, the route depicted as part of plot No 6 strongly resembles the route shown on the accompanying OS map, such that there can be little doubt that they are the same.

*1910 Finance Act*

1. Within plot No 948 of the Finance Act Plan there appears to be two footpaths shown. The accompanying Valuation Book refers to “Two alleged public footpaths viz. through enclosures 153 & 166 (considerably used) and [through] 133, 155, 132, 156 (not much used). Including ref nos 949-951.” A deduction of £20 for “footpaths” within plot No 948 is also recorded therein. The Council states that *this evidence is supportive of the alleged claimed footpath marked A to B*.
2. I note the use of the word ‘alleged’ in the Valuation Book. Yet, given that it was an offence to make a false claim under that Act, the fact that there was a deduction for ‘footpaths’ suggests that the claim by the landowner and conclusion of the valuer were both well founded.
3. The Council’s Committee report refers to potential ambiguity regarding which parcels of land are being referred to, particularly regarding plot No 939. However, since that report was drafted the appellant has undertaken further research, cross‑referencing the field parcel numbers from an online version of the 1901 OS map, which if correct appears to address the Council’s misgivings in this regards, at least in respect to section A to B of the claimed route. Indeed, the appellant additionally says that the 1901 OS map also shows this section of the claimed route and that it is annotated ‘FP’. I return to this latter point under the ‘Ordnance Survey Maps’ subheading below.
4. There is not a detailed copy of the 1901 OS map before me, so I cannot readily verify either of these assertions. Nonetheless, I note that they have gone uncontested by the Council at the appeal stage, such that I have no good reason to disbelieve either regarding section A to B of the claimed route.
5. Hereditament 806 is located at the western end of section A to B of the claimed route. The appellant asserts that the Valuation Book shows “a deduction in duty value was provided for it through this Hereditament as well” and that it is “the only path shown on the Finance Act Plan crossing Hereditament 806 and is annotated FP on the base OS map.” Again, I note that in spite of having had the opportunity to do so, these assertions have gone unchallenged by the Council.
6. I note the Council’s submissions regarding the Valuation Book entry in respect of plot 939. Nonetheless, much clearer copies of the relevant Plans for this area have now been provided. With reference to these, rather than there being two erroneous plot 939s, it seems more likely, as suggested by the appellant, that the three areas marked ‘939’ are treated together in the Valuation Book rather than as two or three separate entries. This matter is, however, uncertain and would benefit from further investigation of the Valuation Book in order to establish greater certainty.
7. Only the southernmost the three 939 plots, annotated ‘Pt 939’ relates to the claimed route, in respect to section B to C. There are no visible footpaths shown on the Plan through the two northern sections. In contrast, this section of the claimed route, B to C, first passes through a short “whited out” uncoloured section of land on the Finance Act Plan with no hereditament number on it and then follows the hedge line to point C where it meets the B5405, opposite a known public bridleway.
8. There is a £10 deduction for public rights of way or user footpath recorded within the Valuation Book for plot 939. This may be evidence that this part of the claimed route was declared and treated as a public right of way.

*Parish Survey & Objection*

1. The Parish Survey Map 1950/51, undertaken under the National Parks and Access to the Countryside Act 1949, clearly shows footpath Nos 24 and 25. They appear to follow the alignment of sections B to C and A to B of the claimed route, respectively.
2. The Council was required to contact Parish Councils after the initial survey was carried out to clarify any queries. The records of this correspondence also went towards the completion of the survey. The Council maintains that a degree of re‑interpretation appears to have occurred when the routes were added to the first draft map. By way of example, it refers to the Parish Card entry of 1951 for No 24 saying, “This bridle road starts close to the bridge carrying the Newport Road over the Gamesley Brook …”, whereas on the Parish Survey Card it was *175 yds N.E.* of Gamesley Bridge when the draft statement was compiled. I note though that the relevant Card actually says “north west” rather than “N.E.”
3. Both routes were included on the draft map of public rights of way. The landowner at that time objected to them being formally added to the DMS. In turn, there were counter objections made. The outcome was that both footpaths were deleted and omitted from the DMS. However, there is no clear record of the full process that led to their deletion or of the reasons why either were omitted. While I note the appellant’s assertion that there is no evidence of due process having been followed, equally there is no evidence that it was not. Further research might help bring greater clarity.

*Ordnance Survey Maps*

1. The OS maps ranging from 1879 to 1968 show a route corresponding with the claimed route along A to B. Indeed, it appears to be shown as a footpath up to the 1954 map. In contrast, section B to C of the claimed route is not clearly apparent on the OS maps. In any event, the evidential weight of OS maps is necessarily limited bearing in mind that there can be no confidence that any such route had public use rights and that not all public rights of way would necessarily be shown.
2. The appellant asserts that, while it is no longer there, a mile post was once located at point C on the B5405. This would appear to be the case as ‘MS’ or ‘MP’ is noted on a range of maps before me. The mile stone or post would have aided travellers, potentially including those using the claimed route at point C. Nonetheless, its presence can be accounted for by its location on a well-used road, close to a known public bridleway. Accordingly, this matter attracts little weight.

*Seighford Tithe Map & Award 1846*

1. I note the Council’s submissions that the Tithe Map does not appear to depict a line of any route along the claimed route section A to B but that it could be alleged that a way or route is shown along a similar line to section B to C, albeit that this cannot be inferred with any certainty. Based on the information before me, the Tithe Map and Award offers very limited evidence to support the claimed route.

**Conclusion**

1. Having considered the evidence in its totality, I have found that it falls short of the standard of proof required to show that, on a balance of probability, any form of public right of way subsists along the claimed route. Nonetheless, there is no incontrovertible evidence that the claimed right could not have existed. Indeed, the information before me is open to interpretation and inconclusive. The matter is finely balanced. I am satisfied, nonetheless, that the evidence is collectively sufficient to show that the existence of the public right of way claimed can be reasonably alleged. In weighing that balance, I found the evidence associated with the Deposited Railway Plan and the Finance Act to be the most weighty. Further investigation, particularly in respect to the Parish Survey process, may yield greater certainty either way.
2. Having regard to these and all matters raised in the written representations, I conclude that a public right of way as a footpath can be reasonably alleged to subsist along the full length of the claimed route. Accordingly, the appeal should be allowed and the Council required to make an Order. In coming to this conclusion I have taken into account the submissions made on behalf of the landowner, including that it has historic interest in this area and is not aware of any public right of way ever existing along the claimed route.

**Formal Decision**

1. In accordance with paragraph 4(2) of Schedule 14 to the 1981 Act, Staffordshire County Council is directed to make an order under section 53(2) and Schedule 15 of the Act to modify the definitive map and statement for the area to add a public footpath from Gamesley Bridge on the B5405 to the A5013 opposite Worston Lane, Stafford, not later than 3 months from the date of this decision. This decision is made without prejudice to any decisions that may be given by the Secretary of State in accordance with powers under Schedule 15 of the 1981 Act.

G D Jones

INSPECTOR