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| **Order Decision** |
| Site visit made on 25 February 2025 |
| **by Paul Freer BA (Hons) LLM PhD MRTPI** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 21 May 2025** |

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| **Order Ref: ROW/3332770** |
| * This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as The Staffordshire County Council (Regrading to Restricted Byway of Public Bridleway No.29 Bradnop and Cawdry) Modification Order 2023. |
| * The Order is dated 7 February 2023 and proposes to modify the Definitive Map and Statement for the area by reclassifying as Restricted Byway part of Bridleway No.29 Bradnop and Cawdry. |
| * There was one objection outstanding when Staffordshire County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation. |
| **Summary of Decision: the Order is confirmed** |
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**Main Issues**

1. The main issue here is whether the evidence is sufficient to show a Restricted Byway can be presumed to have been established.
2. The Order was made under the Wildlife and Countryside Act 1981(the 1981 Act) on the basis of events specified in sub-sections 53(3)(c)(ii). If I am to confirm it, I must be satisfied that, on a balance of probability, the evidence shows a Restricted Byway subsists along the route described in the Order and that other particulars contained in the map and statement require modification.

Reasons

1. Staffordshire County Council (SCC) made this Order in response to an application from Staffordshire Moorlands Bridleways Group. The case in support is based largely on documentary evidence. It is convenient to set out first that documentary evidence. I shall then turn to the one user evidence form that was submitted in connection with the application, and the objection to the Order (as Other Matters). I will then conclude by assessing all the evidence looked at in the round.

*The documentary evidence*

1. The principal evidence relied upon the by applicant is an Inclosure Award made in 1769 (for which a transcript is provided). That Inclosure Award describes a “Public Horse Carriage and drift Road” to Ashenhurst. At that time, ‘Ashenhurst’ related to Ashenhurst Hall, now demolished, and which has been replaced by Ashenhurst Hall Farm.
2. Specifically, the 1769 Inclosure Award makes reference to:
3. *“One other Publick Horse Carriage and drift Number 182 called Ashenhurst Road leading out of the beforementioned Turnpike Road between an ancient inclosure belonging to the said Lawrence Stanley called Jailors Meadow on the South East and the allotment number 181 hereinafter allotted to the said Thomas Mills on the North West from whence the said Road leads into and along the ancient Lane called Pinfold Lane to the allotment Number 180 hereinafter allotted to the said James Finney and by the East side of the allotment to the South corner thereof where the said Lane branches out into the two Roads one branch whereof lying between the last mentioned Allotment Number 180 and an ancient inclosure belonging to the said Elizabeth Higginbotham called the Fair Hayes from whence the said branch leads to a place in the Parish of Leek aforesaid called Middle Cliff and the other branch said allotment number 180 between the ancient inclosures to Ashenhurst aforesaid.”*
4. The 1769 Inclosure Award predates The Inclosure Consolidation Act 1801 and therefore falls under the category of a Private Inclosure Act. However, this does not detract from its legal weight or probity.
5. I note from excerpt above that the route is described in the 1769 Inclosure Award as:

*One other Publick Horse Carriage and drift Number 182 called Ashenhurst Road leading out of the beforementioned Turnpike Road….*

1. It is significant in my view that the above excerpt describes a “road” in its own right, as well as leading out of a “turnpike road”. It is also reasonable to conclude that the reference in the 1769 Inclosure Award to the terms ‘carriage’ and ‘drift road’ could suggest that the route was used by horse & carriage. This would be entirely consistent with the former status of the now demolished Ashenhurst Hall being a destination in its own right at that time. The width of Order route, of a consistent 30 feet, is also consistent with use of by horse and carriage, being excessive for a footpath or bridleway. These considerations all tend to suggest that, more likely than not, the route had a higher status than that of a footpath or a bridleway.
2. Although not included with the original application, SCC subsequently discovered the Plan for the Inclosure Award. The route is clearly numbered 182 on that Plan, which accords with excerpt above. The plan accompanying the 1769 Award shows the route only in part, albeit this map has been badly degraded in places. The ‘road’ depicted on that plan does not show the points referred in the excerpt above.
3. There is a slight discrepancy between the route shown on the Inclosure Plan and the current alignment of the route. Nevertheless, as a whole the route shown on that part of the Plan that is readable generally follows the current alignment of the Order route, including the branching of the road to Middle Cliff in one direction and Ashenhurst in the other. I acknowledge that it is curious why, if it did have higher rights, the Ashenhurst branch is not continued further on the Plan, nothing below this point being shown. However, this may simply be due to the map being degraded and does not necessarily indicate that the route was of a lesser status below this point, namely that of a bridleway or footpath.
4. Looked at in the round, I am therefore content that on the balance of probability the Plan to the Inclosure Award does depict the Order Route, and to that extent supports the description in the excerpt of the 1769 Inclosure Award itself.

*Smiths Map 1801*

1. There is no dispute that the Order route is depicted in the general locality of the claimed route and appears to follow the line of Ashen Hurst Lane to the south of Turnpike Road, and then forming a discernible crossroads with School Lane to the north. However, the clarity of this map is again less than optimum and is not corroborated by other evidence, unlike as with the Inclosure Plan being supported by the description in the Inclosure Award. It is also not evidence of the status of the route. In combination with other evidence, this map is good evidence of the existence of the Order Route at that time.

*Ordnance survey mapping*

1. The 1837 (2” to 1 mile) OS map clearly depicts the route of Ashenhurst Road and then to Ashenhurst Hall, which correlates with the claimed route at the present day. Later OS editions show no change to the route from 1837 to today. This is also supported by the Yates Map of 1798, which also appears to show no change.
2. Again, this is good evidence of the existence of the route at those times but provides no indication as to its status. However, there would have been little prospect that the route would have changed between the Inclosure Award and the 1837 OS mapping information and beyond in later editions. This lends credibility and weight to the evidence in the Inclosure Award and Inclosure Plan as describing the Order Route, especially as the Yates Map was produced within thirty years of the former.

*Other evidence*

1. The Parish Record card in denotes the route with the acronym ‘CRF’. The Commons, Open Spaces and Footpaths Preservation Society’s definition of CRFs is “highways which the public are entitled to use with vehicles but which, in practice, are mainly used by them as footpaths or bridleways”. SCC recognises this definition. The identification in the Parish Record card as a CRF lends support to the Order route having the higher status of a Restricted Byway.

*Conclusions on the Documentary Evidence*

1. The documentary evidence points to the Order route having existed along the claimed route since the 1769 Inclosure Award, with all subsequent maps consistently showing the route along broadly the same alignment. I am also mindful that the Inclosure Maps were not drawn for the specific purpose of identifying public rights of way. This explains any discrepancies between the route shown on the Inclosure Plan and maps that followed.
2. The Inclosure Award itself, and the identification in the Parish Record card as a CRF, point to the Order Route having a higher status than a footpath or bridleway. Inclosure Awards are generally taken as being strong evidence of the status of a route.
3. The documentary evidence, when read as a whole, leads me to conclude that on the balance of probability the Order Route should be afforded the higher status as a Restricted Byway on the Definitive Map.

*User Evidence*

1. Only one User Evidence Form (UEF) was submitted in connection with the application, this from an owner/occupier of the land. This UEF records use of the route by others without challenge over a period of 45 years, including seeing use by others on foot, riding or leading a horse and in a vehicle. This evidence shows the continued use of the route by those that would be expected on a route of this type and therefore adds some weight in support of confirming the Order.

*Other matters*

1. The Objector’s concerns relate to encroachment on their private drive, and the degradation of the surface of that drive as a result. Whilst these are clearly matters of importance to the objectors, they are not relevant to my consideration of this Order which seeks to determine whether or not the status of the route as a Restricted Byway has been established on the balance of probability having regard to documentary and user evidence.

Conclusion

1. Having regard to the evidence as a whole, I confirm the Order.

Formal Decision

1. The Order is confirmed.

Paul Freer

INSPECTOR

Order Map – Copy Not To Scale

