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| **Appeal Decision** |
| **by D. M. Young JP BSc (Hons) MA MRTPI MIHE** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 12 June 2025** |

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| **Appeal Ref: ROW/3351452** |
| * The appeal is made under Section 53(5) and paragraph 4(1) to the Wildlife and Countryside Act 1981 (the 1981 Act) 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 was dated 9 January 2017 was refused on 28 August 2024.
* The Appellant (Staffordshire Moorlands Bridleway Group) claims that the Definitive Map and Statement for the area should be modified by upgrading Public Footpath 1a Waterhouses to a Restricted Byway.
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| **Summary of Decision: The appeal is allowed.** |
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Procedural 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 to the 1981 Act.
2. The appeal route is marked yellow on the copy of the Definitive Map and Statement (DMS) at Appendix A. It encompasses Public Footpath 1a Waterhouses (PF1a) which is already recorded on the DMS. The landowners of the affected land are (i) Dog Lane Farm, (ii) Huddale Farm, (iii) Slade House Farm, (iv) Greendale Farm, (v) 8 Greenway, (vi) 5 The Greenacre and (vii) Broadclose.
3. The application was considered in a report to the Council’s Countryside and Rights of Way Panel on 9 August 2024 where it was decided not to make an Order due to insufficient evidence to show on the balance of probabilities that the route subsists as a restricted byway. This appeal relates to the Council’s decision not to make an Order.

The Main Issue

1. The main issue is whether the available evidence shows that, at some time in the past, a public right of way for vehicles was established along the full length of the appeal route which, in the absence of evidence of legal closure, still exists today and should be recorded as a restricted byway.

Legislative Framework

1. Section 53(2) of the 1981 Act requires the surveying authority to make orders to modify its DMS in consequence of certain specified events, as set out in Section 53(3).
2. Sub-section 53(3)(c)(ii) sets out a type of event involving the discovery of evidence which shows: “*that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description*”.
3. The Appellant’s claim relies on sub-section 53(3)(c)(ii) in seeking to upgrade sections of recorded public footpath to restricted byway. The relevant test to be applied to the evidence is: Does a right of way subsist on the balance of probabilities? For this possibility to exist, clear evidence in favour of the appellant and no credible evidence to the contrary is required.
4. In this case, following enactment of the Natural Environment and Rural Communities Act 2006, any public rights that may once have existed for motorised vehicles will now have been extinguished. If the evidence shows that the route was once a public carriageway, restricted byway would consequently be the appropriate status to be recorded.

Reasons

*The Route*

1. The appeal route comprises the whole extent of FP1a in Waterhouses Parish, Staffordshire. It is also referred to as Cartlow Lane. The south-western end of the route commences at its junction with Farwall Lane, a publicly maintained highway. The northern end of the route terminates at its junction with Soles Hollow Road (G1414) also a publicly maintained highway. The majority of the route is a walled track approximately 3.5m (12 feet) in width separated from adjoining fields.

*Documentary evidence*

1. The salient historical evidence submitted by the Appellant is set out below in chronological order.

*Tithe Maps*

1. There are four Tithe maps which were submitted in support of the appeal; 1) The Blore: Calton Township Tithe Map dated 1844, 2) The Waterfall: Calton Township Tithe Map dated 1844, 3) the Mayfield: Calton Township Tithe Map dated 1848 and the Ilam Tithe Map and Award 1838. The standard key used for Tithe Plans in England indicates that solid lines were used to show “*bye or cross roads*”. Bridleways and “*open roads*” were shown with parallel dashed lines of different widths. Footpaths are shown with single dashed lines.
2. The application route is shown not to be ‘titheable’ on all four maps. This indicates a route which could be public or private. There are a number of single dashed lines on the maps indicating the presence of footpaths, the appeal route is not one of them.
3. On all four maps the appeal route is coloured sienna. The southern half of the route is shown to be of a greater width between double solid lines indicating a ‘*bye or cross road*’. The northern half of the route is between two dashed lines which indicate an ‘*open road*’. The route is shown as separate from adjoining landholdings. To use the Council’s words this is “*highly suggestive*” of higher rights than footpath or bridleway.
4. Appendix 11 to the Appellant’s evidence contains a useful comparison between what is shown on the 1848 Tithe map and the current status of the routes in the area. As a result of that exercise, the Appellant draws the following conclusions
5. There were no footpaths coloured sienna on the tithe map.
6. Of the routes coloured sienna, 12 are currently used by motor vehicles - 9 are C or D class roads and 3 are G class roads.
7. Two of the routes coloured sienna are bridleways, however there is evidence showing that these were originally old roads.
8. The three routes that are currently footpaths are all former Roads Used as Public Paths\* (RUPP’s) that were downgraded by the Council in the Special Review under the provisions of the Countryside Act 1968. Staffordshire Moorlands Bridleways Group has submitted Section 53 applications to have all these upgraded - based on historical evidence.

\* The definition of a RUPP in the 1949 Act is a ‘highway, other than a public path, used by the public mainly for the purposes for which footpaths or bridleways are so used’.

1. While not conclusive, the above evidence demonstrates that the appeal route’s current status is inconsistent with other routes shown on the 1848 Tithe map.
2. The Ilam Tithe Map 1838 shows the northern section of the route as Number 71. The Tithe Award Index description for this number is “*lane*”. The Tithe Map marks the route as “*From Calton*”. I concur with the Appellant that the description “*lane*” suggests something more than a footpath or bridleway. Moreover, the Council accepts the annotation “*From/To Calton*” is suggestive of public rights and I see no reason to take a contrary view.
3. Taken together, the Tithe evidence demonstrates that the application route physically existed at the time. The consistent width and colouring suggest that the appeal route was considered to be suitable for vehicular use. The annotations on the 1838 map provide some support for the existence of public rights over the appeal route. Accordingly, the Tithe evidence weighs in favour of the appeal.

*Request to Repair Highway Documents*

1. Two documents dated 3 March 1900 are submitted by the Appellant in support of the application. The first was a request to repair a highway (Cartlow Lane) *Ratione Tenurae* under section 25 of the Local Government Act 1894. Ratione tenurae roads were expected to be used by the public, but with the adjacent landowners/occupiers of the road/lane being responsible for maintenance.
2. The documents were served by Mayfield Rural District Council on Mr John Ratcliffe of Farwall Farm, Calton on 3 March 1900. Both were signed by the Clerk to Mayfield Rural District Council. The first document states:

“*Whereas the Highway, known as Cartlow Lane from the southern end of Field No. 34 on the Ordnance map for the parish of Calton in Blore for a distance of 160 yards or thereabouts in a north eastern or northern direction to Slade House Farm yard in the said Parish of Calton within the Rural District of Mayfield, for the repairs of which you, the above mentioned John Ratcliffe are liable by reason of the tenure of the lands in your occupation, No. 34 on the Ordnance map for the said parish of Calton in Blore (adjacent to the said highway) appears on the Report of John Twemlow, a competent surveyor, not to be in proper repair, We, the Rural District Council of said District, in pursuance of the Local Government Act 1894, so hereby request you within one month of the date hereof, to place the said Highway in proper repair*”

1. The second document states:

*Whereas the Highway, known as Cartlow Lane from the South West corner of Field No. 1 on the Ordnance map for the parish of Calton in Mayfield (detached No.17) for a distance of 90 yards or thereabouts in a north easterly direction to the South East corner of the said field on the said Ordnance map within the Rural District of Mayfield, for the repairs of the northerly half of which right to the centre thereof you, the above mentioned John Ratcliffe are liable by reason of the tenure of the land in your occupation, No. 38 on the Ordnance map for the said parish of Calton in Mayfield (detached No. 17) (adjacent to the said highway|) appears on the Report of John Twemlow, a competent surveyor, not to be in proper repair, We, the Rural District Council of said District, in pursuance of the Local Government Act 1894, so hereby request you within one month of the date hereof, to place the said Highway in proper repair”.*

1. The Council argue that the document is a record of maintenance responsibility and not a record of the nature of any rights over a way but does concede the accompanying map is suggestive of higher rights than a footpath.
2. In my view, the repeated references to ‘*highway*’, the short deadline given to complete the work and the fact that the route had been inspected by a surveyor, all suggest it had a higher status than a footpath or bridleway. With cognisance to the width of the route, the documents and accompanying maps provide good contemporaneous evidence that the appeal route was reputed to be public. The highway repair documents thus weigh in favour of the appeal.

*Finance Act 1910*

1. The 1910 Finance Act was concerned with mapping lands for the purposes of taxation. Finance Act material consists of three documents, the Field Books, the Valuation Book, and the Increment Value Duty Plan. The Plan was based on an Ordnance Survey (OS) Map. The plans are annotated and show land divided into different plot numbers. These plot numbers correspond with entries in the field books. The landowner could claim tax relief for public rights of way and these deductions would be shown in the Field Books. Where a deduction was made, this would appear under public rights of user and in the entry under restrictions
2. A small part of the appeal route near to Farwall Lane is shown on the 1910 Finance Act map. It is excluded from surrounding land parcels and shown as a ‘white road’, meaning the land was unvalued. At paragraph 11.7, the Planning Inspectorate’s ‘Definitive Map Orders: Consistency Guidelines’ states:

*The 1910 Act required all land to be valued, but routes shown on the base plans which correspond to known public highways, usually vehicular, are not normally shown as included in the hereditaments,* *i.e. they will be shown uncoloured and unnumbered….* *if a route in dispute is external to any numbered hereditament, there is a strong possibility that it was considered a public highway, normally but not necessarily vehicular, since footpaths and bridleways were usually dealt with by deductions recorded in the forms and Field Books; however, there may be other reasons to explain its exclusion”*.

1. The Council acknowledges that the Finance Act map “*presents a strong possibility*” that the appeal route was considered a public highway. Although the Council states that the “*existence of public carriageway rights is [not] the only explanation for the exclusion of a route from adjacent hereditaments*”, it has not provided any alternative explanation in this instance. Accordingly, the Finance Act evidence weighs in favour of the appeal.

*OS Maps*

1. Various OS maps dating back to 1856 were submitted in support of the application. The purpose of these was to show physical features on, and the contours of, the ground at the date of the survey. They do not distinguish between public and private rights of way and since 1888 have carried a disclaimer to the effect that the representation of a track or way on the map was not evidence of the existence of a public right of way. That said there is some merit in the argument that there would have been limited utility in surveyors recording routes that the public could not use in those earlier maps which were expensive to purchase.
2. OS Sheet 72 dated 1856 shows the route in the same manner as other “*ordinary roads*” in the locality. All subsequent editions show the appeal route braced in solid double lines with the description changing between “*Ordinary Metalled Road*” in 1889, to “*Metalled Road; Third Class*” in 1897 and “*Other Motor Roads narrow bad*” in the 1947 map. The appeal route is shown as a RUPP on the 1967 map.
3. Therefore, for a period of 106 years from 1856 to 1962 the appeal route was shown as a road, and from 1967 onwards as a RUPP. Although the OS maps are not conclusive evidence of public rights, I find it unlikely that a private road would have been recorded in the manner it was, over such a long period of time. The OS evidence therefore weighs in favour of the appeal.

*Rights of Way Parish Survey 1950*

1. Parish surveys were carried out by parish councils under the provisions of the National Parks and Access to the Countryside Act 1949. The parish survey card for PF1a dated 5 August 1950 describes the route as: “*Old road from Wetton and for Grindon via Beeston Tor Cottage to Calton via Throwley Hall and Slade House*”. The reasons given for including the route are stated as “*Common usage for last 50 years*”. Despite some ambiguity about the alignment of other parts of the route in the Grindon area, the Council accepts that the route described includes FP1a and provides evidence that the Order route was reputed to be a road suitable for use by carts and carriages in the early 1950s.
2. The second part of the survey card refers exclusively to the appeal route. The description states “*the last stretch across two fields is well defined and gated, entering into Calton*”. Some sections are referred to as a “*path*” and others “*road*”. The survey card does not mention the presence of cart gates along the appeal route. The rest of the route does however have cart gates along it in parts and it does appear to be a continuous route and therefore likely to have been capable of being used by carts and carriages.
3. Extracts from the Rights of Way Survey Plan dated 1954 show the route marked as “*CRB1*” in ink and also marked in pencil as “*RB*”. It is not known why this addition was made or by whom. CRB referred to highways which the public are entitled to use with vehicles although in practice many were used as footpaths or bridleways. The annotation “CRB” supports all the other documentary evidence in this case indicating that the route was reputed to be a road or lane rather than a footpath or bridleway.
4. The northern section of the appeal route, south of Slade House has the annotation “*FP*” depicted alongside it. Again, the exact reason for the annotation is not clear. The Appellant suggests that the “*FP*” is to the east of the grass track whereas the Definitive Map shows the route of RUPP 1 and subsequently FP1a as following the grass track. It is therefore possible that the FP relates to a separate pedestrian footpath running alongside the appeal route.

*The Special Review*

1. The Draft Definitive Map dated 27 November 1954 shows the appeal route as a RUPP. However, it was subsequently downgraded to a footpath by the Council under the Special Review pursuant to provisions of the Countryside Act 1968. The Council has not provided any evidence to show why it took the decision to downgrade the appeal route under the Special Review.
2. The Review was in any event completed before the judgement of the *Court of Appeal in R v Secretary of State for the Environment Ex parte Hood* (1975) QB 891 (C.A.) which decided that nothing in the Countryside Act 1968 overruled the effect of section 34(4)(b) of the National Parks and Access to the Countryside Act 1949 - that depiction of a RUPP was conclusive evidence of a least bridleway rights.
3. However, due to a limited period for challenging the result of a Special Review, those RUPP’s already reclassified as footpaths by the Council have remained recorded as such. The impact of the Hood judgement was acknowledged by the Government in Circular 123/77 which set out guidance on how highway authorities should approach future RUPP reclassification under the Countryside Act 1968 and advised in paragraph 6:

“*There, will, however, be cases where some former RUPPs will be shown on footpaths on definitive maps, resulting from the Special Review. This could be the case where the Special Review was completed prior to the Hood decision ……. in such cases it appears to be open to the county council at their next general review to have regard to the Court’s decision and consider the use of their powers under Part 1 of Schedule 3 to the 1968 Act to restore the footpath to its former status of RUPP - although they appear to have no power to reclassify it a second time. In the meantime, the Secretaries of State consider it desirable that county councils should, on the Definitive Map resulting from the Special Review, put some suitable note against such footpaths in order that the general public may be aware of the position*”.

1. There is no dispute in this case that the Council has not put any such note against any of its footpaths that were downgraded from RUPP status as part of its Special Review. Citing *Trevelyan v Secretary of State for the Environment* [2002] the Council argues that there is no automatic assumption that a route should be upgraded to a bridleway or byway and the proper purpose of Section 53 is to ensure that the map is “*capable of revision of all kinds in order to ascertain the true state of affairs on the ground*”.

Conclusions on Evidence

1. The appeal route is a recorded footpath and therefore clear evidence in favour of the Appellant and no credible evidence to the contrary is required for a restricted byway to be considered to exist along it on the balance of probabilities.
2. The appeal route is shown not to be titheable on the Tithe Maps. It was separated from adjoining landholdings and indicated to be a bye/cross road or open road. Although not conclusive as to their being public rights, these maps support higher rights than footpath or bridleway. The annotations on the 1838 map indicates public rights over the appeal route.
3. The highway repair documents and maps provide good contemporaneous evidence that the appeal route was reputed to be public. The treatment of the appeal route as a ‘white road’ excluded from adjacent hereditaments in the 1910 Finance Act map provides strong evidence that the appeal route was considered a public highway.
4. Although they do not distinguish between public and private rights of way, the OS maps demonstrate the appeal route had the physical qualities of a road between 1856 to 1962. Thereafter it was shown as a RUPP. There is no positive evidence to explain why the route was downgraded to footpath under the Special Review pursuant to the 1968 Countryside Act. The Hood judgement establishes that the depiction of a RUPP is conclusive evidence of a least bridleway rights.
5. The first parish survey card from 1950 provides evidence that the Order route was reputed to be an “*old road*” with common usage for the last 50 years and suitable for use by carts and carriages. The annotation “*CRB1*” on the 1954 plan indicates that the route was considered to be a highway which the public were entitled to use with vehicles. The appeal route was shown as a RUPP on the 1954 Draft Definitive Map.
6. When taken as a whole there is clear evidence that at some time in the past, a public right of way for vehicles was established along the full length of the appeal route. There is no credible evidence to the contrary. In the absence of evidence of legal closure, that right of way for vehicles still exists today and therefore the appeal route should be recorded as a restricted byway.

Other Matters

1. While I have noted the comments made regarding safety, suitability, privacy, maintenance these are not matters I can consider under section 53 of the Act.

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. The appeal is allowed and 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 County of Staffordshire to upgrade Public Footpath 1a Waterhouses, to a restricted byway, as proposed in the application dated 9 January 2017 within three months of the date of this decision.
2. This decision is made without prejudice to any decisions that may be given by the Secretary of State in accordance with his powers under Schedule 15 of the 1981 Act

D M Young

Inspector

**APPENDIX A – MAP OF APPEAL ROUTE**

