



Order Decisions

Site visit made on 30 November 2021

by I Radcliffe BSc(Hons) MRTPI MCIEH DMS

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 29 December 2021

Order A - Ref: ROW/3255575

- This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Shropshire Council (Bridleway Addition, Parish of Adderley) Modification Order 2018.
- The Order is dated 21 June 2018 and proposes to modify the Definitive Map and Statement for the area by adding a bridleway as shown in the Order plan and described in the Order Schedule.
- There were 2 objections outstanding when Shropshire Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed.

Order B - Ref: ROW/3255576

- This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Shropshire Council (Footpath Addition, Parish of Adderley) Modification Order 2018.
- The Order is dated 21 June 2018 and proposes to modify the Definitive Map and Statement for the area by adding a footpath as shown in the Order plan and described in the Order Schedule.
- There were 3 objections outstanding when Shropshire Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed.

Procedural matter

1. I made an unaccompanied visit to the location of the Order routes. During the visit I was able to view those parts of the routes in Orders A and B visible from the highway and public rights of way.

The Main Issue

2. Shropshire Council made the Orders under section 53(2)(b) of the 1981 Act on the basis of an event specified in section 53(3)(c)(i). Whilst it suffices under section 53(3)(c)(i) for a public right of way (PROW) to be reasonably alleged to subsist for an order to be made, the standard of proof is higher for the order to be confirmed. At this stage, evidence is required which demonstrates, on a balance of probabilities, that a right of way subsists.
3. As a result, the main issue in relation to both Orders is whether the discovery by the Council of evidence, when considered with all other evidence available, is sufficient to meet this test. If it is shown that a PROW subsists over each route, then Orders A and B should be confirmed and the definitive map and statement modified accordingly.
4. Evidence has been submitted of public use of the footpath routes in Order B. Although Shropshire Council does not rely on public use to justify this Order,

should the documentary evidence be insufficient to show that a public footpath exists, I shall consider whether dedication of a public footpath can be deemed to have occurred under section 31 of the Highways Act 1980.

Reasons

5. An application was received by Shropshire Council in 2004 to add a bridleway along the route in Order A. The same year an application was also made to record two public footpaths along the route in Order B. Both applications were investigated. On the basis of historical documents, the Council determined in 2018 that, on the balance of probabilities, on the respective routes a public footpath with two arms and a bridleway subsists.

Documentary Evidence

Order A

6. The road from Wilkesley to Heyfields Farm transitions to a bridleway recorded on the definitive map for Cheshire. The Order route extends the bridleway at its eastern end (point A on the Order plan) into Shropshire across a brick built bridge over the river Duckow to the A529 road that leads to Adderley (point B on the Order plan).
7. The route is first shown on the deposited plan for the Birmingham to Mersey Tramway which is thought to date from around 1824. The land parcel concerned is described as '*plantation with a Bridle road through it leading from Wilkesley to Adderley*'. This wording is suggestive of a public route.
8. The route is not shown on Greenwood's Map of Shropshire (1827), but is shown on the Ordnance Survey (OS) map of that year and on subsequent editions (1827, 1833, 1883 and 1901). It is also shown on the Corbet Estates plan of 1833 and the Adderley Tithe Map of 1840, with the route continuing on to Wilkesley in the neighbouring Tithe map of 1842. The inclusion of the route on these maps is strong evidence of its physical existence, and is evidence of it forming part of a longer route that linked Adderley with Wilkesley in Cheshire, but does not add weight to its claimed status.
9. The Order route on the 1902 OS map gave access to a sand pit and woods. As a result, it is plausible that it could have been used solely by Corbet estate staff. The field books and plans created under the Finance Act 1910 though can contain evidence as to whether it was acknowledged that a public right of way crossed land. On the relevant plan, the Order route is located within Hereditament 10. No other public rights of way are shown within this hereditament or are recorded in the field book. As a deduction was made for the presence of a public right of way within this hereditament this is good evidence of that the Order route was considered at that time to be a public right of way. Given the legal maxim of '*once a highway, always a highway*', even when a route has not been in use for many years, this is good evidence in favour of confirming the Order route.

Order B

10. In concise terms, from the County Road (point A on the Order plan) the Order route follows the driveway to Pool House, passes through its yard and a field before crossing Adderley Pool bridge where it turns northwards. The Order route continues onwards for several hundred metres before splitting into two arms (point B on the Order plan) which connect some distance further on with

two footpaths in Cheshire on the county border (points C and D on the Order plan).

11. The first document to show the Order route is the Corbet Estate Plan of 1833. A deposited plan for the nearby railway dating from 1845 also shows the Order route as do the OS maps of 1883 and 1902. The OS Boundary Sketch Map of 1878 also shows the northern end of the Order route where its two arms meet the Parish and county boundary and join two separate public footpaths in Cheshire. I have also been referred to untitled maps of the area by an objector, which it is stated date from 1833 to after 1862, which do not show the Order route. As the provenance of these maps is not stated, the weight that I can attach to them is limited. I have also been provided by the same objector with a map, dated 1877-1899, that appears to be an OS map which shows the Order route, and a 1938 Land Registry Map which shows part of the Order route. Taken together with the maps referred to that have been submitted by the Council, evidence of the physical existence of the whole route therefore dates back to 1833 and uncontested evidence in this regard exists between 1877 and 1902.
12. One possibility put forward by objectors is that the Order route was only used by Corbet Estate staff who resided on the estate. However, the field book and plan made under the Finance Act 1910 includes a significant reduction for a public right of way. On the basis of the Finance Act plan, the accompanying field book and the above plans, it is reasonable to assume that this payment relates to the Order route. As such, this is good evidence that it was considered at that time to be a PROW. Accordingly, as explained in relation to Order A, even when a route has not been in use for many years, this is good evidence in favour of confirming the Order route.

Orders A & B

13. Both Order routes were identified in the original Parish Claim map of 1950, which informed the preparation of the draft Definitive Map, as public rights of way. However, the landowner, Sir John Corbet, objected on the grounds that the routes were not PROWs but were accommodation paths for the workers and tenants of the Corbet Estate.
14. Following a hearing, the Order routes were deleted. There is no evidence that this decision was made following the consideration of any documentary evidence, or consideration of the anomaly created by the fact that both routes continued at that time into Cheshire and are included on that County's definitive map. Instead, the evidence is that the decision was made on the basis of the oral evidence of the landowner and some of his tenants.
15. The absence of Order route B from the land search carried out when Pool House was purchased in 1958 is explained by the fact that it did not form part of the definitive map and statement. Frustrating though it may be for the owners of this property that this can change many years after purchase, this is not a valid reason not to confirm Order B.
16. In relation to Order route A, no evidence that an application had been made to modify the definitive map to include a PROW appeared in searches carried out by one of the owners of land across which this route passes when he purchased the land in 2014. The County Council though states that their records show that no rights of way search was undertaken in relation to the affected land that year. Unfortunate as this situation is, it is not a matter that negates the evidence in support of confirming Order A.

Conclusions on the documentary evidence – Orders A & B

17. On the basis of my examination of all the historical mapping and documents that have been submitted, I therefore conclude that on the balance of probabilities the evidence is sufficient to show that both Order routes are PROWS and should be added to the definitive map and statement.

Other matters

Order B

18. Concerns in relation to privacy and anxiety induced by users of Order route B as it passes by houses close to its southern end have been raised. Article 8(1) of the Human Rights Act confers the right to respect for private and family life. However, the Order seeks to record a public right of way on the basis that it already exists under the law. In so doing there is no scope to consider its effect on individuals and their human rights and, by virtue of section 6(2) of the Human Rights Act, it is lawful not to do so. The issue of diverting the Order route has been raised by the Parish Council. If an application is made, and Shropshire Council considers it appropriate, it has the option of doing so, but this is not a matter for me to consider.

Orders A & B

19. Objectors to the Order routes have raised a number of other concerns. These include the risk of trespass, proximity to a historic ice house, the investment in livestock infrastructure, absence of need given the proximity of other PROWS, the cost of establishing and maintaining the routes, risk of Bovine TB spread by route users, risk of route users allowing dogs off leads and allowing livestock to stray by leaving gates open, highway safety and the danger bulls pose to route users. I understand these concerns. However, as they relate to matters outside the criteria set out in the relevant legislation, I have been unable to take them into account in reaching my decisions.

Overall conclusion – Orders A & B

20. For the reasons given above, and having regard to all other matters raised in the written representations, I conclude that the Orders should be confirmed.

Formal decisions – Orders A & B

21. The Orders are confirmed.

Ian Radcliffe

Inspector



