



PROOF OF EVIDENCE

Warwickshire County Council
Definitive Map Modification Order

Parish of Wolfhampcote
Sheet SP56NW16SW, SP16SE, SP15NE,
Order No. 2 2020
Path No. R352.

Introduction

1. I am Sonu Copson, and I am employed by Warwickshire County Council (“the Council”). I hold the post of Rights of Way Definitive Map Officer, a position I have held for over 4 years. I am responsible for processing applications to modify the legal record of public rights of way as well as processing other legal orders.
2. I make this proof of evidence in relation to the Definitive Map Modification Order R352 dated 18 March 2020 (the Order) and the Public Local Inquiry, to consider the Order, which is due to be heard on 12 and 13 September 2023.
3. References in this proof to Appendices are references to Appendices to the Council’s Statement of Case unless I state otherwise.
4. The Order was made under section 53 of the Wildlife and Countryside Act 1981. I reviewed the evidence available including the historical documentary evidence, information provided by local residents and users of the Order route, against the background of current statute and case law and concluded that the evidence supported the making of the Order.
5. The Order route is currently recorded on the Warwickshire County Council ‘List of Streets’ (Appendix 63) but this is purely a list of highways maintainable at public expense and gives no indication of the rights the public enjoy over it (as the disclaimer on the title page makes clear).
6. In determining the public rights on a route all relevant evidence is required to be considered in determining the nature of the rights.
7. The Order route lies within the parish of Wolfhampcote in the district of Rugby. The route can be found to the west of St Peters Church at Wolfhampcote and runs in an approximately north-westerly direction to Sawbridge. It starts from its junction with D2291 Nethercote Road to junction D2289 Wolfhampcote Lane. The route is hedged for the most part to the north side from which the width of 12.192 metres (40 foot) is measured. It runs through agricultural land and new

fencing to the south may impede on the width. The Order route intersects with footpaths R250, R251a and R252.

8. The historical documentary evidence spanning a number of centuries allows a picture of the status of the route to be built up. The documentary evidence dates back to 1757 and includes the Wolfhampcote Inclosure Award and supporting documents. It is the Council's position that the historical documentary evidence taken as a whole, in conjunction with the witness evidence, shows that the Order route has the historic status of a vehicular highway. The historical evidence is described in detail in the Statement of Case.

9. User evidence forms were sent to the members of the public who requested one with 52 user evidence forms being completed and returned. The earliest date of first use from the forms, was 1936. The end date from the majority was the date the form was submitted. The forms show use with mechanically propelled vehicles was from 1936 – the earliest date of first use and the forms show that some users think that the route should be recorded as a Byway Open to all Traffic, or as a Bridleway.

10. In 2008, the owners of Gate Farm submitted a S31(6) Highways Act 1980 deposit. In the 2008 deposit, they confirmed that the route is an unclassified public road and stated "We have provided a permissive width of 5 metres between enclosing fences, between gate 1 and gate 2 on the plan. This is without prejudice to any future investigation that may establish that the public highway has a greater or lesser legal width".

11. In 2019 the owners contacted Warwickshire County Council regarding their intention to submit another S31(6). This form differed from the previous in that they withdrew the permissive width of 5 metres and did not acknowledge the route as a public highway.

Areas of Dispute

12. Statements of case have been provided by a number of third parties in readiness for the inquiry in September. The areas of dispute raised in the statements of case appear to focus upon two issues, firstly the width of the route and, secondly whether the route should be on the List of Streets and/or the Definitive Map and Statement.

13. The Trail Riders Fellowship (TRF) in their statement of case have suggested that the route should be a carriageway, or failing that, it should be a Byway Open to All Traffic (BOAT) with a width of 40 feet.

14. The statement of case from the TRF states that there has not been a discovery of new evidence when making the DMMO in accordance with s53(3)(c)(i) Wildlife and Countryside Act 1981 (WCA 1981). The TRF notes that the parish survey map shows the route as an unclassified road.

15. The Council's response is that there is no evidence to show any document, other than the parish survey record and possibly the Handover Schedule, was examined in the creation of the Definitive Map. A route is shown on the parish survey map between Wolfhampcote and Sawbridge along which the wording "40 ft parish award" is written in pencil. The Handover Schedule shows the route listed under "other roads including bridle roads" under the heading "Waterbound" and under that, the two titles sub headed as "Granite", "Gravel or Flint etc." The mileage is recorded as 1.75 and the Total Mileage box records 1.75 and is ticked.

16. There is no evidence to suggest that the Inclosure Award, or any other evidence, was considered by the Council when the Definitive Map was created in the 1960s. There has since been discovery of further evidence which includes the Inclosure Award together with the other evidence identified in the Statement of Case. The Council therefore disagrees with the TRF's view that there has not been discovery of evidence.

17. A number of the third parties who have submitted statements of case have argued that the legal width of the route should be 14 feet which is its current width.

18. The Council's response is that unless there is evidence to show any part or width of the route has been legally stopped up then the width of 40 feet, as set out in the Inclosure Award, will apply.

19. Another area of dispute is whether the route has vehicular rights. The statement of case from Mr Hards is referring to actions of Ms Marwood restricting the use of the route as vehicular. In her statement of case, Ms Marwood requests for the route status to be confirmed as a restricted byway.

20. The statement of case from Ms Marwood states that she previously made an objection on the basis that the route should be a bridleway. She has since revised this view and now believes it should be a restricted by-way. In her view the route is too narrow for vehicles to pass other users safely. She concludes that if the route is reclassified as a BOAT the width of 40 feet should be enforced.

21. Ms Marwood has indicated that other landowners have no need to pass her property in a vehicle due to access for vehicles being available at the eastern end of the route. This would lead to the perverse situation of the route changing status midway along its route. No evidence has been submitted to show that access has only been taken in one direction.

22. The Council's description of the Order route as an unclassified county road in the past (whether in documents, signage, or elsewhere) could not be taken as conclusive proof of the existence of public vehicular rights over it. A highway authority could not create public vehicular rights over a footpath or bridleway simply by saying that they exist.

23. However, having considered the historical evidence of vehicular status, the Council is satisfied that the Inclosure Award gives the status of the route as a

carriageway with a width of 40 feet. The route meets the definition of a BOAT as set out in section 66 (1) of the Wildlife and Countryside Act 1981, namely “a highway over which the public have a right of way for vehicular and all other kinds of traffic but which is used by the public mainly for the purpose for which footpaths and bridleways are so used”.

24. The route is recorded on the List of Streets which means that vehicular access still exists under Natural Environment and Rural Communities Act 2006 (NERC).

Conclusion

25. The Council is satisfied that it has discovered evidence in the form of the Inclosure Award which, when considered with all other relevant available evidence, is sufficient to meet the test set out in section 53(3)(c)(i) of the Wildlife and Countryside Act 1981. That is to show (on the balance of probabilities) that the Order route should be shown as a Byway Open to All Traffic with a width of 40 feet in its Definitive Map and Statement. The Council confirms that it has complied with all the procedures required by the relevant legislation.

26. The Council would respectfully ask that the Inspector confirms the Order as made.