



Order Decision

Hearing held on 15 January 2013

Site visit made on 15 January 2013

by Mrs Helen Slade MA FIPROW

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

Decision date: 22 January 2013

Order Ref: FPS/M1900/7/71

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 ('the 1981 Act') and is known as the Hertfordshire County Council (Ridge 37, 39 and Shenley 39) Modification Order 2009.
- The Order is dated 30 October 2009 and proposes to modify the Definitive Map and Statement for the area by showing two routes near Crossoaks Farm and Ravenscroft Farm as public bridleways, as shown in the Order plan and described in the Order Schedule.
- There was one objection outstanding when Hertfordshire 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.

Procedural Matters

1. I was appointed to hold a hearing into the above Order due to the outstanding objection from Messrs Bone, the occupiers of Crossoaks Farm, which had also prompted further representations from Dr P Wadey, one of the applicants. However, during the week before the Hearing was due to open, both Messrs Bone and Dr Wadey withdrew their objections and representations, leaving the Order unopposed. I have therefore disregarded the comments made by both parties in the withdrawn submissions. Strictly speaking there was no need to go ahead with the Hearing but, due to the short notice, I nevertheless opened the Hearing as advertised to ensure that no further matters warranted my consideration.
2. Mr A Nelson attended on behalf of Messrs Bone, but Dr Wadey decided that he need not attend. Mr Wachtel, the other applicant, did attend and presented a short statement.
3. Due to the weather at the time of the Hearing, I was prevented from undertaking a site inspection, but I was able to view the route from the adjoining carriageway (Mimms Lane). Owing to the nature of the evidence I am satisfied that it was not necessary for me to actually walk the route, and I was not requested to do so.
4. At the Hearing, Mrs Julia Watson, a local resident, asserted that the incorrect procedures were being used to identify whether or not a highway existed over the order route, and also considered that I had no authority to determine the matter. She was insistent that Hertfordshire County Council ('the County Council') were at fault because they did not have a list of highways or a definitive map and statement. Neither of these matters affected my

determination of the Order but Mrs Watson was persistent in her allegations, constantly interrupting proceedings and preventing other people from speaking. I consequently adjourned the Hearing for 15 minutes to allow the County Council to explain the situation to her but she continued to assert that the whole procedure was incorrect.

5. I am satisfied that I do have the necessary authority to determine this matter, and also that all the required statutory procedures have been complied with by both the County Council and The Planning Inspectorate. I find no basis in Mrs Watson's assertions and have consequently disregarded her comments.

The Main Issues

6. Section 53(3)(c)(i) of the 1981 Act states that an order should be made to modify the Definitive Map and Statement where it is considered that the evidence which has been discovered, together with all other relevant evidence available, shows that a right of way which is not shown on the map and statement subsists, or is reasonably alleged to subsist. At this stage of the matter, the normal civil burden of proof applies and I must be satisfied that a right of way subsists, on the balance of probabilities, to enable the Order to be confirmed¹.
7. Some user evidence was submitted with the applications, but has not been relied upon by the County Council in determining to make the Order as it was considered insufficient on its own. The case in support is therefore principally based on the interpretation of various historical documents as providing evidence allowing an inference of use or dedication to be drawn from them. There is no evidence of express dedication of the route in question, and the decision must therefore be made on the basis of implied dedication at common law.
8. Section 32 of the 1980 Act provides that a court or other tribunal, before determining whether a way has or has not been dedicated as a highway, shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as is justified by the circumstances, including the antiquity of the document, the status of the person by whom, and the purpose for which, it was made or compiled and the custody in which it has been kept and from which it is produced.

Reasons

Description of the Order route

9. The Order route is divided into two sections:
 - i. OR1 is approximately 95 metres long and runs through Crossoaks Farm yard to link Crossoaks Lane to the bridleway recorded as Shenley BR17;
 - ii. OR2 follows a well defined track north from Crossoaks Farm to Bigpursley Woods where it continues along a sunken lane and open fields to join Mimms Lane west of Ravenscroft Farm. It is approximately 1190 metres long.

¹ Todd and Bradley v SSEFRA [2004] EWHC 1450

10. The width of both sections is described in the Schedule to the Order as varying between 4 and 39 metres, as shaded grey on the Order plan. The land crossed by both parts of the Order route is owned by the County Council.
11. Mrs Watson considered that no physical survey of the land had been undertaken to ascertain the width of the highway and thus the land intended to become highway.
12. The purpose of the Order is not to create a highway, as asserted by Mrs Watson, but merely to record it as already existing. I am satisfied that the description of the Order route in Part I and Part II of the Schedule is consistent with the guidance issued by Defra and adequate for the purposes of identifying the land concerned.

User evidence

13. Mr Wachtel provided a statement to the Hearing detailing his own use of OR1 and his knowledge of use by others. He accepted that there had been no use of OR2 in living memory because it has been physically unavailable for many years. He expressed the view that there was a significant need for the Order route to be available for use in terms of the safety of equestrians in the local area. This was a view echoed by others at the Hearing in support of the Order.
14. The County Council considers that, in respect of OR1, the documentary evidence shows that this section of the Order route has been in existence since at least 1766. Its depiction in various documents is consistent with its status as a highway, in common with other routes to which it connects. The County Council considers that the documentary evidence, supported by the evidence of its use by equestrians, provides sufficient proof that it is a right of way of at least bridleway status.
15. In respect of OR2 it also has been depicted in the manner of a highway since at least 1766 and there is no evidence that the northern part of the route, unavailable for many years, has ever been legally stopped up. It is the view of the County Council that OR2 is also, on the balance of probabilities, a right of way of at least bridleway status.
16. The need or otherwise for the Order route is not a matter that affects my decision, which must be made on the evidential facts alone. In the absence of any objections to the interpretation of the documentary evidence set out by the County Council in its statement, I can see no reason for departing from their conclusions.

Conclusions

17. Having regard to all the relevant matters I conclude that, on the balance of probabilities, the dedication of both parts of the Order route as public bridleways can be inferred at common law and the Order should therefore be confirmed.

Formal Decision

18. I confirm the Order.

Helen Slade

Inspector

APPEARANCES

FOR THE LOCAL AUTHORITY:

Mr I England

Mrs J Briscoe

IN SUPPORT OF THE ORDER:

Mr R Wachtel

Mr J Hebditch

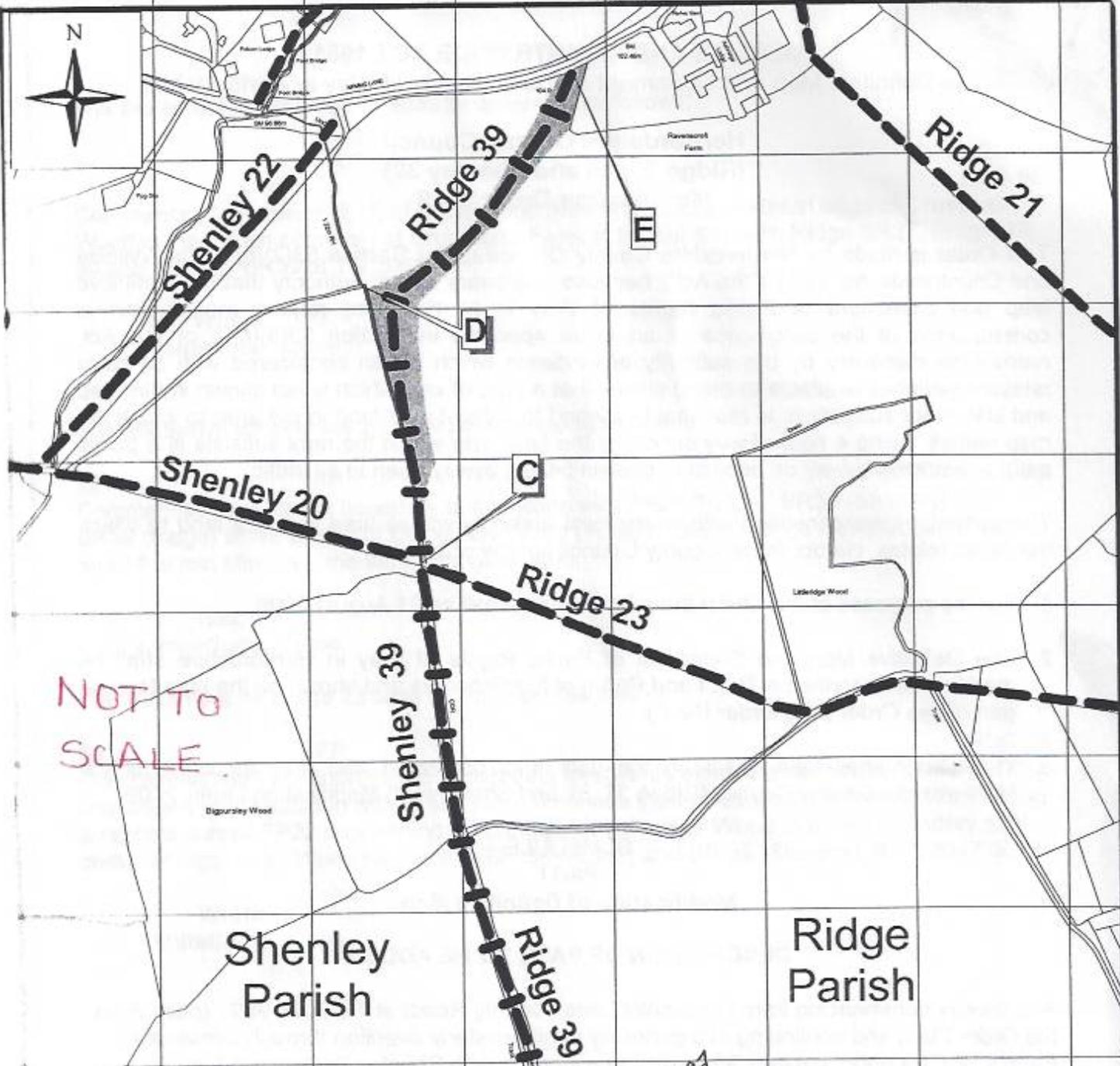
Mrs C Bayliss

FOR THE ORIGINAL OBJECTORS:

Mr A Nelson

INTERESTED PERSONS:

Mrs J Watson (in objection)



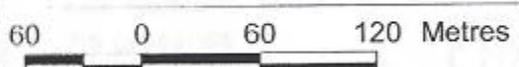
NOT TO SCALE

Shenley Parish

Ridge Parish

THIS PLAN FORMS PART OF THE HERTFORDSHIRE COUNTY COUNCIL (RIDGE 37,39 & SHENLEY 39) MODIFICATION ORDER 2009

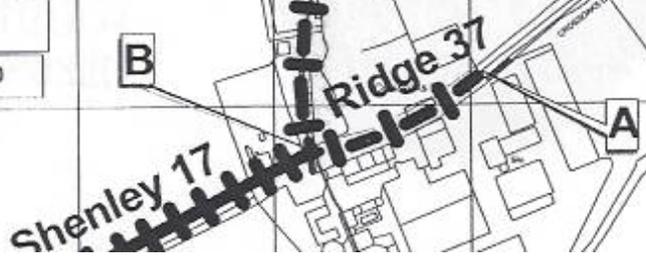
- Existing footpath
 - Existing Bridleway
 - New Bridleway
 - Parish Boundary
- Appears on DM sheet 78 and 86



Scale 1:4000

K Pettitt
Kathryn Pettitt
Chief Legal Officer

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