Planning Inspectorate

Appeal Decision

by James Blackwell LLB (Hons) PGDip, Solicitor

An Inspector on the direction of the Secretary of State for Environment, Food and Rural Affairs

Decision date: 15 January 2026

Order Ref: ROW/3358589

- This appeal is made under section 53(5) and paragraph 4(1) of Schedule 14 of the Wildlife and Countryside Act 1981 (1981 Act) against the decision of Central Bedfordshire Council (Council) not to make an Order under Section 53(2) of that Act.
- The application dated 4 September 2023 was refused by the Council on 17 December 2024.
- The appellant claims that a route from the rear of George Street in Maulden to Maulden Woods should be added to the Council's Definitive Map and Statement as a public bridleway.

Summary of Decision: The appeal is allowed.

Preliminary Matters

1. I have been directed by the Secretary of State for Environment, Food and Rural Affairs to determine an appeal under section 53(5) and paragraph 4(1) of Schedule 14 of the Wildlife and Countryside Act 1981 (1981 Act). I have not visited the site, but I am satisfied I can make my decision without the need to do so.

2. The appeal concerns an application to add a public bridleway to the Council's Definitive Map and Statement (DMS). The claimed route runs from a point just off George Street in Maulden, and continues towards Maulden Woods where it connects to Bridleway 18. The route is shown between points A-B-C-D on the attached plan.

3. Part of the route runs through the graveyard of St Mary the Virgin Church in Maulden. It is understood that this graveyard was extended during the 20th century, on account of gifts given to the church in 1938 and 1946. The claimed route also runs through a Site of Special Scientific Interest (SSSI).

4. The application which is the subject of this appeal follows a similar application made by the British Horse Society in 2022. The principal difference between the two is that the earlier application connected directly to George Street, whereas the route in this instance commences at a point just to the rear of the houses along George Street. Whilst the Council made a Definitive Map Modification Order (DMMO) pursuant to the 2022 application, this was solely to add a small section of footpath to the DMS - the same part which is now excluded from the present application. The 2022 application was otherwise refused, as the Council did not consider the evidence was sufficient to demonstrate that a bridleway subsisted along the claimed route.

5. Nonetheless, the Council now accepts that it may have erred in its consideration of the 2022 application, and suggests evidence may have been sufficient to reasonably allege that a bridleway subsists along the claimed route. Whilst the Council still refused the present application, this was because they did not consider the application introduced any new evidence, which is a pre-requisite for a DMMO to be made. However, notwithstanding its refusal of the application, the Council says it does not oppose the applicant's appeal.

6. Part of the claimed route runs along an existing footpath (Footpath No. 7). For the remainder of the route, there is no recorded public right of way. The evidential burden on the applicant will therefore differ between these two sections of the route, which is explained further below.

Main Issues

7. The application was made under section 53(2) of the 1981 Act, which requires the Council to keep their DMS under continuous review, and to modify these documents upon the occurrence of specific events cited in section 53(3).

8. Section 53(3)(c)(i) says that an Order should be made on the discovery of evidence which shows that a right of way which is not shown on the DMS subsists or is reasonably alleged to subsist. As made clear in *R v Secretary of State for Environment, Food and Rural Affairs ex parte Mrs J Norton and Mr R Bagshaw [1994]*, this involves the application of two tests:

   Test A: does a right of way subsist on the balance of probability? or

   Test B: is it reasonable to allege that a right of way subsists?

9. As later confirmed in *Todd and Bradley v Secretary of State for Environment, Food and Rural Affairs [2004],* the evidence need only be sufficient to satisfy Test B for a Schedule 14 appeal to succeed. Accordingly, for the section of the claimed route which is not already recorded on the DMS as a public footpath, an Order should be made if a bridleway can be reasonably alleged to subsist.

10. Section 53(3)(c)(ii) of the 1981 Act says that an Order should also be made on the discovery of evidence which, when considered with all other relevant evidence available, "*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"*. This is the test applicable to the part of the claimed route which is already recorded as a public footpath (Footpath No. 7), and the standard of proof is the balance of probability.

New Evidence

11. As mentioned, the Council refused the present application as they did not consider it introduced any new evidence which had not already been considered as part of the 2022 application. In turn, the Council says the present application did not result in "*the discovery of evidence*", as required by the provisions of s53 of the 1981 Act. However, whilst much of the evidence submitted as part of the present application was the same as submitted for the 2022 application, there were some additions. These included Land Registry title documents and further editions of the Ordnance Survey maps.

12. As held in *R v Secretary of State for the Environment ex parte Riley (1990) 59 P&CR 1* (Riley), "*if evidence is discovered which is different from evidence originally relied upon […] it does not matter that such evidence does not really add to the weight of the original evidence […] the new evidence was sufficient to trigger off the right to apply for modification of the highway*". In accordance with *Riley*, the Land Registry documents and further editions of the OS maps would therefore constitute the discovery of new evidence, irrespective of the weight they add to the overall body of evidence in support of the order.

13. This approach is not inconsistent with *Burrows v Secretary of State for Environment, Food and Rural Affairs [20024] EWHC 132 (admin)* (Burrows). In this case, it was held that evidence considered at the time the DMS was first drawn up cannot simply be re-examined. Instead, "*there must be some new evidence, which when considered with all the other evidence available, justifies the modification*". In accordance with *Burrows*, if I consider that the totality of evidence submitted with the application (including the documents not previously submitted) supports the existence of a bridleway over the claimed route, then a modification order would be justified.

Reasons

14. The appellant relies on documentary evidence to support their case in respect of the whole of the route. The provisions of s32 of the Highways Act 1980 are therefore relevant. When considering whether dedication of a public right of way has occurred, these provisions require me to take into consideration any map, plan or history of the locality tendered in evidence, or any other relevant document provided, and give these documents such weight as appropriate in the circumstances.

Finance Act Records

15. The Finance Act 1910 introduced a new land tax which was levied on the basis of incremental land value. As part of its implementation, a detailed survey of land was undertaken across the country to establish the baseline value of individual plots (or hereditaments). When determining value, deductions were made for any public rights of way which crossed the respective hereditament.

16. An Ordnance Survey base map was used as part of this process which shows the whole of the claimed route marked as a double dotted/pecked line and labelled "*B.R*". The whole route is shown to fall within hereditament no. 218. In the associated field book, a deduction of £25 was made for public rights of way within this hereditament. Whilst there are other public rights of way also shown within the same hereditament, there is nothing to suggest that the deduction does not relate, at least in part, to the claimed route. In turn, these documents provide good evidence of bridleway rights subsisting over the route at that time.

Ordnance Survey Maps

17. Between the early 1900s and 1950, the Order route is consistently shown on Ordnance Survey maps as a bridleway. In most editions, it is labelled "*B.R*" and appears as a continuation of Bridleway 18. Whilst these maps are not necessarily demonstrative of public rights, they are helpful in demonstrating the physical existence of the route, and it being suitable for use on horseback. They also give a good indication of the route's likely reputation as a bridleway throughout this period.

Land Registry Documents

18. Various Land Registry title documents relating to land encompassed in and around the claimed route also depict the route. These include title no. BD234, which relates to land within the northern part of the extended churchyard. On the associated title plan for this plot, the route is shown as a double dotted/pecked line. Whilst footpaths on the plan are labelled "*F.P*", the claimed route is not labelled. Similarly, the title plan associated with BD175675, which relates to Council owned land

around the churchyard, also shows part of the claimed route as an unlabelled double dashed line. Whilst these plans are not necessarily clear in terms of the route's status, they are again indicative of the route's physical existence.

19. Additional depictions of the route are included in the title plans to title no. BD574, which relate to the southern part of the extended churchyard: the first of these shows the route as a double dashed line; and the second shows the route as a double dotted line with the annotation "*B.R*". Once again, these plans support the contention that the route was considered a bridleway, and it having physical attributes of the same.

20. Nonetheless, the title plans appear to be based on OS maps which covered the relevant parcels of land, and are not referred to in the corresponding title registers. In turn, these documents are not demonstrative of public rights. However, much like the OS maps, they are still consistent with the route having been considered as a bridleway, and it having had the physical characteristics of the same.

Other Documents

21. A valuation map drawn up pursuant to the Valuation Act 1925 also denotes the claimed route as a "*B.R*". Whilst no corresponding deductions were made in the accompanying field books, both the applicant and the Council highlight that none were made against public rights of way anywhere in the books. Although this map does not confirm public rights over the route, it does add weight to the route's perceived status around this time.

22. A further map associated with the sale particulars for the Maulden Estate in the early 1900s also shows the claimed route labelled "*B.R*". Whilst the route was not mentioned in the written sale particulars, the applicant notes that none were referred to. This map could therefore provide further evidence of the route's reputation as a bridleway around this time.

23. The route is not shown on the Parish Survey map in 1952 nor on the Draft Map of Public Rights of Way in 1953. However, if the Church graveyard was extended prior to these dates, it would have likely encroached on the claimed route prior to these maps being drawn up (as is now the case). This could go some way to explaining why the route was not included. In turn, these documents are not necessarily inconsistent with the route having previously been used and considered as a bridleway.

24. Various other documents are referred to in the Council's determination report in respect of the 2022 Order application and the applicant's corresponding appeal statement. These include a Tithe Map, Inclosure Award documents, historic commercial maps, Parish Council minutes, Church Terrier and Inventory, Handover Map and Provisional Maps. However, none of these documents are overly helpful in demonstrating the existence or non-existence of bridleway rights over the claimed route, particularly during the first half of the 20th century (when the evidence already discussed is of more relevance). As the parties do not appear overly reliant on these documents to support their respective cases, I have not addressed them further.

Conclusion

25. In nearly all of the available documentary evidence between 1900 and 1950, the route is consistently denoted as a bridleway. This evidence includes the Finance Act records, Ordnance Survey mapping, Land Registry title documents, sales particulars of the Maulden Estate and the Valuation Map in 1925. If a bridleway did once exist, then reflecting the legal maxim "*once a highway, always a highway*", it would continue to subsist unless formally stopped up or extinguished. This would be the case, even if the route is no longer used or recorded in this way.

26. Overall, the evidence is therefore sufficient to support a reasonable allegation that a bridleway subsists over the claimed route. Insofar as the Order route encompasses land not currently designated as a footpath, an Order should therefore be made.

27. In terms of the section of route already recorded as a public footpath, the evidence must show, on the balance of probability, that the route ought to be recorded as a bridleway. On the evidence before me, I consider this evidential burden has also been met, as it seems more likely than not that the claimed route did carry bridleway rights during the first half of the 20th century. If that were the case, it would continue to subsist in the absence of any formal extinguishment.

28. Therefore, having regard to these and all other matters raised in the written representations, I conclude that the appeal should be allowed, and an Order should be made in respect of the whole of the claimed route.

Other Matters

29. As mentioned, the claimed route crosses through a graveyard associated with St Mary the Virgin Church, and a SSSI. There are legitimate concerns in respect of the bridleway route and its potential impact on these features if confirmed. Whilst I fully acknowledge these concerns, the Wildlife and Countryside Act 1981 is limited to ascertaining the existence of rights, but not the respective merits of those rights. In turn, whilst the objections are understandable, they are not relevant to the making of an Order. Nonetheless, it is worth highlighting the applicant's intention to seek a diversion of the claimed route to avoid the churchyard, in the event that an Order is made and confirmed.

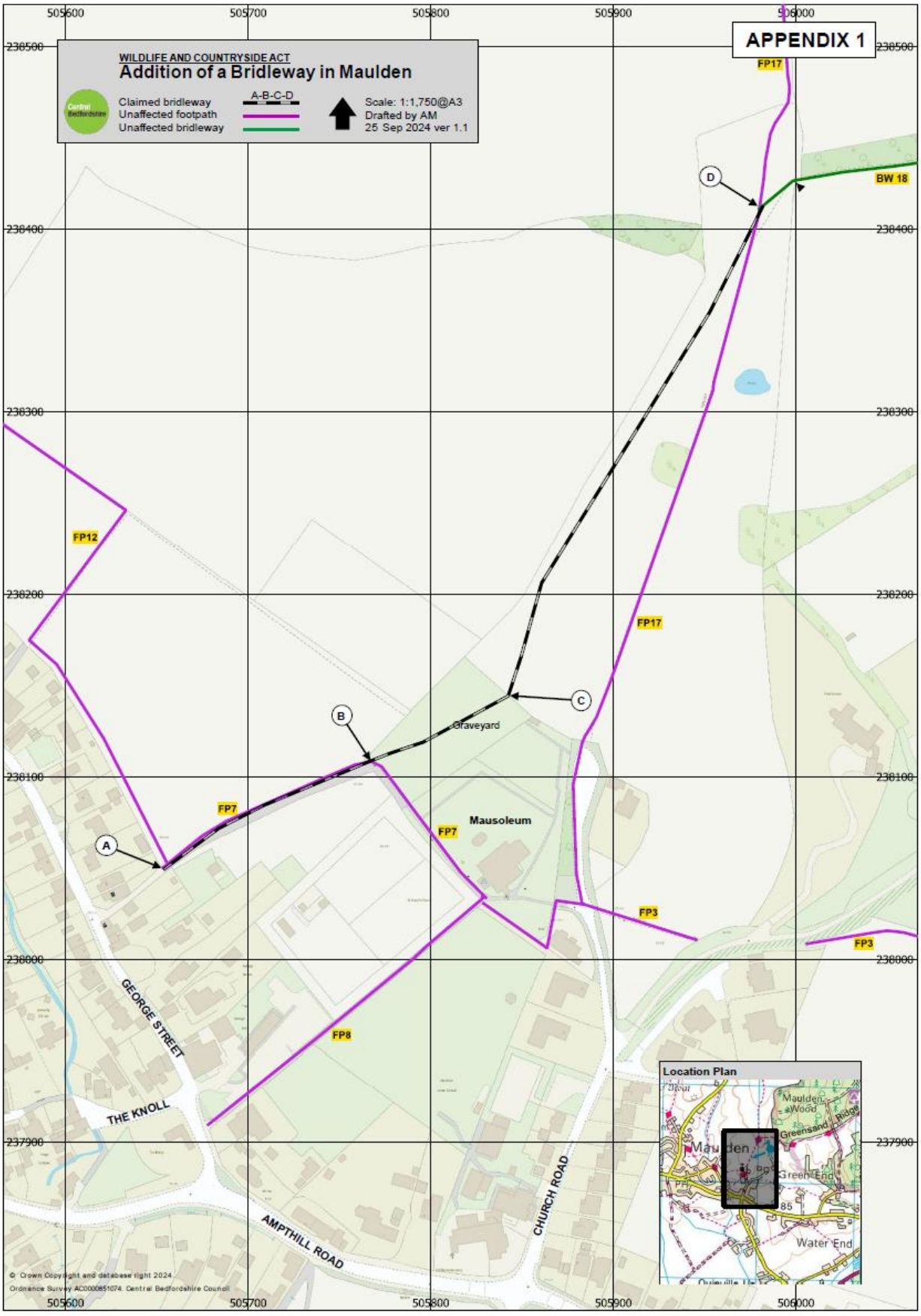
30. Whilst I also acknowledge the obstructions along the claimed route which would preclude it from being used as a bridleway, such matters do not impact on pre-existing public rights. I also note the Parish Council's comments regarding older local Council members who do not recall the route being used a bridleway. Whilst there is limited detail of these residents' recollections, this is an issue that could be explored further during confirmation stage.

Formal Decision

31. In accordance with paragraph 4(2) of Schedule 14 of the 1981 Act, within three months of the date of this decision, Central Bedfordshire Council is directed to make an Order under section 53(2) and Schedule 15 of the Act to modify its Definitive Map and Statement by adding a public bridleway as proposed in the application dated 4 September 2023. This decision is made without prejudice to any decisions that may be given by the Secretary of State in accordance with their powers under Schedule 15 of the 1981 Act.

James Blackwell

Inspector


APPENDIX 1
WILDLIFE AND COUNTRYSIDE ACT
Addition of a Bridleway in Maulden
Claimed bridleway
Unaffected footpath
Unaffected bridleway
A-B-C-D
Scale: 1:1,750@A3
Drafted by AM
25 Sep 2024 ver 1.1
505600
505700
505800
505900
506000
238500
238400
238300
238200
238100
238000
237900
FP17
BW 18
FP12
FP7
FP8
FP3
A
B
C
D
Graveyard
Mausoleum
GEORGE STREET
THE KNOLL
AMPTHILL ROAD
CHURCH ROAD
Location Plan
Maulden Wood
Greensand Ridge
Green End
Water End
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