

Claim RWO207

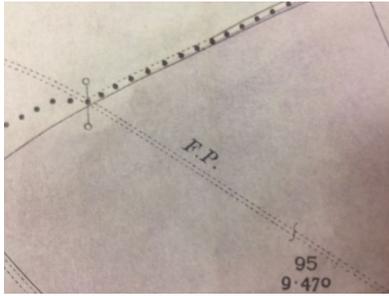
Definitive Map Modification Order Application made by C Smith, Ramblers Association

To upgrade public footpath from the Folkington Road to Wannock (with various spurs in Wannock to connect to vehicular highways).

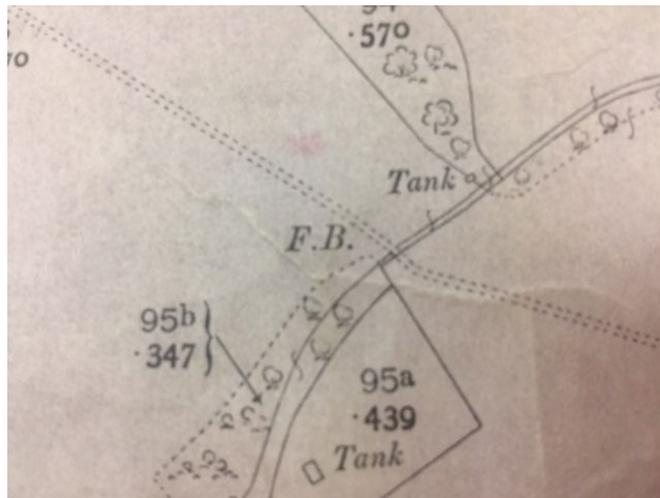
Response on behalf of Stephen Carr and of the Folkington Estate.

1. This is the initial response of the application and is without prejudice to any further comments or observations or evidence which the landowners may be advised to make.
2. The Definitive Map currently records the public footpath commencing at the Folkington Road and proceeding in a generally east southeast direction towards Wannock.
3. The evidence for an upgrade to bridleway must show that it is more likely than not that an error was made when the path was recorded on the Definitive Map but on its face, the Applicant's evidence does not do so.
4. The Applicant produces a series of private maps produced in the Eighteenth and early Nineteenth Century on which he suggests the claimed routes are shown. These maps were commercially produced without public consultation and were frequently plagiarised so carry little evidential weight.
5. The Applicant produces the 1st edition Ordnance Survey extract stating that the depiction of a route "suggests that the route had the status of a highway". However, it is well established that OS mapping merely depicts the features on the ground, and it has never been the role of the surveyors to ascertain the public rights over any track depicted, with maps carrying a specific caveat to that effect.
6. The Tithe Map evidence suggests that a route was not apparent throughout, although the eastern section of the claimed route is apparent. Given its purpose and the depiction on the Maps, this is not persuasive evidence of the existence of a public right of way, let alone one of a higher status than already recorded.

7. Estate Maps are privately produced documents so carry little weight since they entailed no public consultation. Many would never come to the attention of the public. Since Estate Maps were generally based on Ordnance Survey Maps, they can carry the same caveat as to depicting status.
8. The Applicant makes the rather bizarre assertion (in paragraph 36) that the landowner was unlikely to have shown anything on the map “that he would rather keep quiet”. The existence of a track is not an issue given the current recording of a footpath, so this comment carries no weight, and a landowner was not required to publish the Map so as to invite public comment or challenge.
9. Part of the current footpath is shown to have been subject to a private right of way to a water company and the Applicant suggests that this demonstrates that it was suitable for such a use and that it would have been used with carts. Given that the water company required a private right of way for their purposes, this would suggest that the route was not then a public highway over which they would have had a right to go with their equipment.
10. The Applicant produces two records from the 1877 Quarter Sessions (QSR), the second of which appears to set out what is now the current vehicular highway exiting Folkington to the east. The other shows a section which may be roughly interpreted to coincide with the first section of the claimed route from Folkington. This is not admitted.
11. That part of the application route which may be represented by the QSR and which commences at the Folkington Road does not continue to extend for most of the claimed route. The inference drawn is that it must have continued throughout with a similar status but the contemporary OS mapping does not support this (see below). At best this might raise a reasonable allegation for a small section of the route, but it does not meet the legal threshold to upgrade all or part of the route.
12. In respect of the Highway Authority Records 1907, even the applicant acknowledges (in paragraph 83) that the rights were “disputed” which would challenge any designation of a bridleway.
13. The Second Edition of the 25 inch OS mapping shows that the route did not have the characteristic of a bridleway and was shown as a footpath:

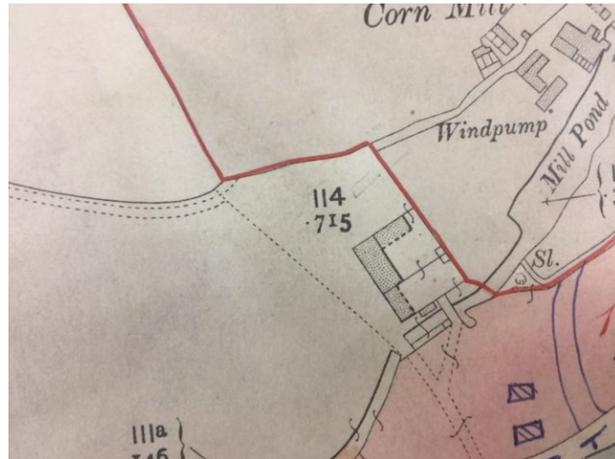


14. And that there was only a footbridge along its way:



15. The survey date of the map is 1873 (reflecting that it was the date of the 1st Edition) and the revision date is 1908 so this is at the time when the most relevant events were occurring (the QSR, and the District Council discussions).

16. The Finance Act 1909/10 Act map also raises the issue of a through route since there is no continuance at the south east end of the route where it enters parcel 114. One would not expect to see a public right of way with no definition when passing through private ground. See below.



17. Comparing this to the position as appears from the 1st Edition produces an interesting point. In the earlier map there is clearly a defined route through parcel 114 heading both east/west and north/south unlike the depiction on the extract above. This would suggest that the Ordnance Survey has revisited and re-surveyed this route so that it accurately reflects the position in 1908, reasonably close in time to the QSR in 1877 (31 years). This adds weight to the suggestion that the route was not a bridleway.

Conclusion

18. There is limited evidence that part of the claimed route may have been considered to have rights higher than footpath rights.
19. However, there is no evidence for the claimed route as a whole to be upgraded. Whilst limited evidence for some of the route might be sufficient to raise a reasonable allegation it does not meet the higher test of demonstrating that the route should be upgraded (i.e., that a bridleway subsists on a balance of probabilities).
20. The application should be refused.

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