

DELEGATED REPORT

PARISH OF BISHOP'S CASTLE WILDLIFE AND COUNTRYSIDE ACT 1981 DEFINITIVE MAP MODIFICATION ORDER RESTRICTED BYWAY ADDITION

Background

On 4th May 2004 an application was made to Shropshire Council to add a bridleway from Bankshead towards Pentre Cwm in the Parish of Bishop's Castle. The route runs into the Community of Churchstoke in the County of Powys. User evidence statements and references to historic documents were submitted with the application.

On 14 September 2004 the matter was put before the Rights of Way Committee who agreed with the officer's recommendation to put the application on file to be investigated under the next review of the Parish of Bishop's Castle.

In 2008 the case was forwarded to Natural England to be investigated under the Discovering Lost Ways Project. Shropshire was a 'pathfinder' authority' and applications were to be investigated as a pilot of that scheme. However, the project was terminated and the application was returned to the authority.

In 2015 the matter was raised again by the applicants, and other individuals. The fact that the route was not recorded restricted the use and maintenance of it as a promoted route. In addition the surface of the route had been undermined by badger setts which created a hazard for horseriders in particular. Officers felt that the matter fulfilled the criteria for priority investigation. Powys County Council was consulted and agreed that Shropshire Council undertake the investigation on their behalf.

On Thursday 25 January 2018 Powys County Council held a meeting at Llandrindod Wells. The Council considered Item 13 which requested authority to delegate the investigation, and subsequent making of any legal order, to Shropshire Council. The proposal was passed' in the interests of efficiency and need for the application to be determined as soon as is reasonable practicable'.

Summary

Bishop's Castle Town Council did not claim the route under the National Parks and Access to the Countryside Act 1949. The original parish claim map did not identify the routes recorded as County Roads at that time. The statement of a public footpath which commences on the Powys section of the claimed route describes it as a council road.

There appears to be no registered owner of the affected land. Adjacent landowners have been consulted. Four individuals responded and reported that they used the route to access their own land by vehicle. They all acknowledged that the route was used frequently by the public on foot, horseback and bicycle.

The applicant, Bishop's Castle Town Council continues to support the claim. Churchstoke Community Council has not responded. The Ramblers have no information on the matter. The British Horse Society and British Driving Society believe the route to be an old road which should be recorded as a restricted byway. The Welsh Trailriders Association state that the route has been used by motorcyclists but no evidence has been submitted to

support this. The Cycle Touring Club, Byways and Bridleways Trust and Local Elected Members have not responded.

Twenty nine evidence statements have been submitted claiming use of the route. The period of use claimed runs from 1965 to 2015. Twenty one witnesses have used the route on foot, thirteen on horseback, six on bicycle and three in vehicles. The frequency of use ranges from occasionally to daily. Nearly all users have witnessed use by others on foot, horseback and bicycle.

The route has physically existed since at least 1827 when it is shown on Baugh's Map of Shropshire and throughout the Ordnance Survey Series from 1827. It appears as a bordered lane, as other county roads, on Bishop's Castle Tithe Map 1843. Sales documents show the route as under separate ownership from adjacent landholdings and in one case annotated 'To Bishop's Castle'. The whole of the claimed route is shown excluded from valuation under the Finance Act 1910.

Recommendation

It is recommended that an order is published under the provisions of the Wildlife and Countryside Act 1981 to add a restricted byway. It is considered that the user evidence fulfils the requirements of Section 31 Highways Act 1981. In the alternative a case can be argued at common law.

Reason

It is likely that Bishop's Castle Town Council Council considered the route to be part of the highway network. The route would therefore not fall into the classifications of routes that could be claimed under the 1949 National Parks and Access to the Countryside Act. The fact that roads were not identified on the Original Parish Claim Map increased the possibility of routes being omitted. The statement of a footpath in Montgomeryshire describes the claimed route as a Council Road in 1957 so it is unlikely that Churchstoke Community would have felt it necessary to claim the route under the 1949 Act. However, the route does not appear to be recorded on the List of Streets of either authority.

The user evidence is considered to be sufficient to fulfil the requirements of Section 31 Highways Act and indicates statutory dedication of the route as a public right of way. The date when the public use was brought into question is 2004, the relevant period being 1984-2004. In isolation, the user evidence would indicate a status of bridleway but the supporting evidence appears to show the route as a part of the historic road network. The appropriate status is therefore considered to be restricted byway.

The route has physically existed since at least 1827 when it was shown as a cross road on Baugh's Map of Shropshire. It is shown throughout the Ordnance Survey Series since 1827. Sales documents show the route separate from the adjoining land parcels and there is currently no registered landowner. It is clearly a significant route and the fact that it is excluded from valuation under the Finance Act 1910 indicates that it is of at least bridleway status. Historic highway documents relating to Montgomeryshire indicate the route has been recorded as being publicly maintainable in the past.

The documentary evidence and the prolonged and frequent use of the route provides a basis for a case at common law.

The evidence is considered sufficient to indicate that, on the balance of probabilities, a public right of way can reasonably be alleged to subsist.

Research and Consultations

Site Description

The claimed route commences at the termination of a surfaced County Road (Class L2) at Bankshead which is described as a No Through Road (NTR). The route runs, as a hedged lane, in a north westerly direction along a hedged lane which curves south-westerly where it passes through woodland and crosses into the County of Powys. It then continues in a north-westerly direction to meet the road. The route has a total ^{length} width of 1313 metres. 848 metres runs in the County of Shropshire and 465 metres in the County of Powys. The route has a width of varying between 4-8 metres.

Consultation Correspondence

Bishop's Town Council made the application in 2004. In a letter dated 22nd June 2015 the Council reported that they had resolved that the route should be a bridleway.

Churchstoke Community Council, in a meeting on 29 July 2015, resolved to support the claim for the creation of a bridleway at Aston Hill near Bankshead and Sheperdswhim.

County Councillors Mrs C Barnes (Shropshire) and Mr S M Hayes (Powys) have been consulted but no response has been received.

British Horse Society The representative in an email of 2 November 2016 reported that she did not have information on the matter.

An independent member of the BHS contributed photographs and had surveyed the route and commented on 23 July 2015.

These are photos I took today when I found that I was near to the area of the claimed route at Bishops Castle, and the route parallel to the north. Unfortunately I did not have time to walk a lot of the two parallel routes, just the first section at each end, but I went a bit further on the claimed route, but they look like old roads to me, and not a lot different to the tarmac ones. They are wide hedged lanes, with trees in the hedge line, grass down the centre and currently the surface of the sections I walked were in good condition with evidence of hoof prints, and some fantastic views. I understand that they have a steep poor section by the woods, and that the southern claimed route section by the wood has been rendered dangerous due to badgers digging, but maybe these sections could be resolved with maintenance.

Even the west end of the section of the claim to the road to the west in Powys, which is shown on the map with a single dark dashed line, is a wide double hedged lane. I am told that the through route of the northern route is in current use by horse riders with no problems. A rider said she had to turn back on the claimed route last year as the badger holes were too dangerous. From seeing them on the ground I feel that they should both be at least Restricted Byways.

On 29 July 2015 a further email continued;

'This is shown on all the old maps as a through road from Bankshead to Pentre-Cwm and on. It is a public road at the start in Shropshire, as far as a property, and is marked with a Highways sign. The continuation across the main road in Powys has vehicle tracks along it, and is marked as an ORPA. I measured it at the west end as at least 20 foot wide between the hedges. It originally gave access to a number of fields, woodland, two quarries and a public footpath. A large number of the fields to the south, Aston Hill side, in Shropshire have been made into one big field, so no longer require access from this lane.'

The additional route referred to is a hedged lane which runs to the north, and parallel, to the claimed route. It is also not currently recorded on the definitive map.

British Driving Society has not responded directly but agreed the route should be recorded as a restricted byway after discussing the matter with the member of the BHS.

Welsh Trailriders Association Mr David Holt, Powys, responded by telephone on 29 July 2015 and said that he would pass the matter on to the local representative in Shropshire. David Rodenhurst, Shropshire representative, contacted the Council and said that he and other motorcyclists had used the route regularly and agreed to forward evidence but this has not been forthcoming.

Byways and Bridleways Trust: no response has been received

The Ramblers (Shropshire): The Ramblers representative, in a telephone call on 9th June 2015, commented that the western end of the route is used frequently by walkers and is indicated by a public footpath fingerpost. The Powys representative has not responded.

Open Spaces Society: In an email of 6th June 2015 the Open Spaces Society representative commented that he had no information on the route.

Powys County Council In a telephone conversation of 6 May 2015 Andrew Collins of the Highways Department stated that he did not have any information regarding the route. He is aware of the track but has not received any complaints about it. If there had been any queries they would not have taken any interest as it is not adopted.

Powys Council Highways Department provided photographs of historic highways documents.

Landowner Consultation

Land Registry documentation indicates the land is not registered. The following owners of land adjacent to the route have been consulted:

Mr A Bloor, Shepherdswhim, Pentre, Churchstoke in a telephone conversation on 15th June 2015 agreed that it was a public route but reported problems with people parking at the end of it and leaving litter in adjacent fields.

Mr Simon Bedell, The Linch House, Welsh Street, Bishop's Castle SY9 5BS: has been consulted but no response has been received.

Mr Martyn Hall, Beech-O-Cwmago, Banks Head, Bishop's Castle SY9 5JJ In a telephone conversation on 8 June 2015 re: Bankshead Claim. He owns land adjacent to the route and is currently in process of buying some more from Ms Swanson, Aston Farms. Mr Hall is aware that the public use the route on foot and horseback. He said he had no problem with 4 x 4 vehicles and enduro motorcyclists who use it. He uses the route with vehicles so didn't want it restricted to non motorised vehicles. I explained that he must have private rights to access his land and the proposal to add a restricted byway would not affect that. The Council would not do anything to physically prevent private vehicular use. I told him that we did not have evidence that the route had been used by motorised vehicles, other than in a private capacity. I also explained that it would be unlikely that we could add a Byway Open to All Traffic and if I thought the route did have such rights then I would pass the matter to Shropshire Council's Highways Development Control Department.

Mr Neil Hird, Seven Wells, Bishop's Castle, SY9 5JJ In a letter dated 20 September 2004 reported that he and his wife walked the lane over the last 40 years and own land adjacent to it. There are obvious signs of at least 2 quarries on the left hand side going westwards. Therefore, apart from today's farm traffic there must have been horses and carts up and down this lane in earlier times.

Ms Charlotte Swanson, Aston Hall Farms, Pentre, Churchstoke, Montgomery SY15 6SX

In an email of 9th June 2015 Ms Swanson commented:

'I feel that the route should be able to be used by all members of the public which it has been for many years but to restrict it to unmotorised vehicles would be wrong. I regularly in the spring when I let my cattle out to my fields at Bankshead I take them up to my land in a tractor and trailer and drive a small distance along the roadway to let them out and, once they are out I drive up to check them with a four wheel drive vehicle or a quad bike. If the route was restricted to unmotorised vehicles I may not be able to take my cattle to the land or check on their welfare. Many of the farmers in the area check their cattle with quad bikes.

Before it is pointed out to you that I can access my land from the lower track please be aware that this lower lane is not big enough for stock box and during wet periods the lower lane track can become too wet to get up. The route that you are referring to can be accessed from tarmac roads so during wet periods it is an easier route to access my land.

The new owners of my land would also be using motorised vehicles to check on the welfare of their stock.'

User Evidence

Twenty nine evidence statements have been submitted claiming use of the route. The period of use claimed runs from 1965 to 2015. The witnesses record use of the route for periods of up to 40 years with eleven witnesses claiming over twenty years. The frequency of use ranges from daily to a few times a year.

Twenty one witnesses have used the route on foot, thirteen on horseback, six on bicycle and three in vehicles. Twenty five users have seen people on foot using the route, fourteen have seen horseriders and five have seen cyclists.

None of the witnesses have asked for or been granted permission to use the route. No one has ever been challenged when using the route.

Lucy McFarlane

To apply Section 31 of the Highways Act there has to be a date when the status of the route was brought into question. In this case there has been no challenge to use so the date when the right of the public to use the way was brought into question is the application under Section 53 (5) of the Wildlife and Countryside Act. The date is treated as being the date on which the application is made in accordance with paragraph 1 of Schedule 14 to the 1981 Act.

The date of the application is 4th May 2004. Twenty one witnesses have used the route before this date. Seven for the whole period, with others using it for periods ranging from 1-18 years. Some of these are people who own or have owned land adjacent to the route but they have also used the whole route for recreational walking in the belief it was public. They also acknowledge that the route is used frequently by the public.

Several users describe the route as being dangerous due to the existence of badger setts. The 'No through road' sign is also mentioned by a number of witnesses.

None of the users have ever asked for, or been granted permission. No one has ever been challenged therefore the use is considered 'as of right'.

Historical Evidence

Baugh's Map of Shropshire 1808

The claimed route is shown as a bordered cross road.

Greenwood's Map of Shropshire 1827

The claimed route is shown as a bordered lane running to the England /Wales boundary.

Ordnance Survey Drawings 1827 2" to 1 mile

The claimed route is shown as a bordered lane.

Lewis's Map of Montgomeryshire 1833 (drawn by Creighton)

The claimed route is not shown.

Ordnance Survey 1" to 1 mile 1833

The claimed route is shown as a bordered lane.

Tithe Map of the Borough and Township of Bishop's Castle 1843

The route is shown as a bordered lane. All routes are uncoloured.

Creighton's Map of Montgomeryshire 1848

The claimed route is not shown.

Dugdale's Map of Montgomeryshire 1850 (drawn by Archer)

The claimed route is not shown

Aston Farm in township of Aston and Parish of Lydham 1861

The claimed route is shown as an open ended bordered land in the same manner as the county roads in the vicinity.

Sales Particulars of Aston Farm, Lydham 1874

Claimed route shown as an uncoloured bordered lane running between coloured sale lots. It is shown in the same manner as county roads in the vicinity.

Mackenzie's Map of Montgomeryshire 1880

The claimed route is not shown.

Ordnance Survey 1st edition. 1:2500 map 1883

The claimed route is shown as a bordered lane.

Sales Particulars and plan of desirable Freehold Farms known as Pentrecwm and Upper Aston in the Parish of Lydham 1886.

The claimed route is shown annotated 'To Bishop's Castle'.

Plan of the Sale of the Garnett Botfield Estate Lots 8-15 date

The western end of the claimed route is shown as an open ended lane coloured the same as other County Roads.

Bacon's County Map of Shropshire 1896

The route is not shown.

Ordnance Survey 2nd edition. 1:2500 map 1901

The route shown in the same way as First Edition.

Finance Act 1910

The claimed route is shown excluded from valuation.

Bartholomew's Map of Shropshire 1927

The claimed route is shown as an uncoloured lane described as 'inferior and not to be recommended' (for cyclists).

Original Parish Claim

Bishop's Castle Town Council did not claim the route under the National Parks and Access to the Countryside Act 1949. The Parish Claim map had not been annotated with the existing County Roads as was the case with the majority of Parish Claim Maps.

Montgomeryshire County Council Schedule for Footpath 93 in the Parish of Churchstoke describes the path as starting at '*Council road West of Upper Beech*'.

The description is as follows '*From Council road at a F.G, path leads across Aston Hill passing Criggion Bank Farm and joining old lane leading onto road West of Banks head*'.

The Council road described is the claimed route and the survey was carried out on 5 January 1957.

Powys County Council Highways Records

Powys County Council provided photographic extracts of documents relating to county highways.

Alistair Knox, Network Manager, Highways Transport and Recycling, Powys County Council commented in an email of 5 April 2016.

'There may be records in the County Archives but I do not have a definitive list or guide. A previous colleague did some work in the 1990's / early 2000's looking at archive records

and pulled back some plans that were of interest. We now hold electronic copies of these but the originals will be in archive.

Having been through the one we hold here I have attached extracts of the area concerned. Unfortunately I can provide no real insight as to the markings on them as we have never found a key or document referencing them. At face value it appears that the routes marked were considered to have some right or maintenance liability.

The early Montgomeryshire documents we hold are predominantly map based. Of the text lists that we have I cannot find anything for this area.'

Three photographs were attached to the email.

Ref: Mont Brown Book The extract includes the area in the vicinity of the Powys/Shropshire boundary and is annotated 5. Major A roads are coloured red, B roads are coloured green and what appears to be minor roads are coloured brown. Some of these are recorded on the Powys Councils Lists of Streets whereas the claimed route, although coloured brown is not. Groups of roads are annotated with a circled number.

Ref: Green 1941 The extract is annotated GROUP 5. Minor roads and some currently unrecorded roads are coloured purple.

Ref: Green Undated 18A

This map appears to show A Roads (red), B Roads (green) and some minor roads (yellow). The claimed route is not coloured. Several existing county roads on the extract are not coloured.

Powys County Council are unable to identify the provenance of these documents but they do appear to be Divisional Surveyor's maps as they are similar to such documents kept by Shropshire Council which record routes maintainable at public expense. One explanation of the annotations on the Mont Brown Book photograph could be that they showed groups of roads maintained by individual lengthsmen.

Other evidence

A walk promoted by the AA titled 'Life and Death in Bishop's Castle' describes a route *'then left onto a lane which soon becomes a track. It descends into woodland, crosses the border into Wales and eventually meets a lane'*. The route is shown on an accompanying map and relates to the claimed route.

In the Council's series 'Walking for Pleasure' Around Bishop's Castle Walk 1 *'Take.....the left hand lane shortly after (this soon becomes a track). Continue along the track through the trees for one mile until you meet the road.'* This describes the claimed route.

Geograph

Featured on this website are two photographs of the claimed route taken in 2013. One annotated 'Green lane and footpath-Probably used over the centuries for moving stock to market' and 'Byway, path and road interchange nears Shepherdswhim-a bridleway, footpath and back road all cross here'.

Human Rights Act 1998

The Rights of Way Officers have applied proportionality by weighing up the evidence both for and against this proposal and assert that this proposal is the most expedient method of complying with our statutory duty whilst at the same time complying with our duties under the Human Rights legislation by acting in the interests of the public generally without restricting individuals disproportionately or unnecessarily.

This report requests the authority to add this route to the Definitive Map because it is alleged to subsist after careful consideration of the historic and user evidence available. By suggesting publishing a modification order the County Council is balancing its statutory duty under Section 53 Wildlife and Countryside Act 1981 to keep the Definitive Map and statement up to date whilst considering the Human Rights implications for doing so.

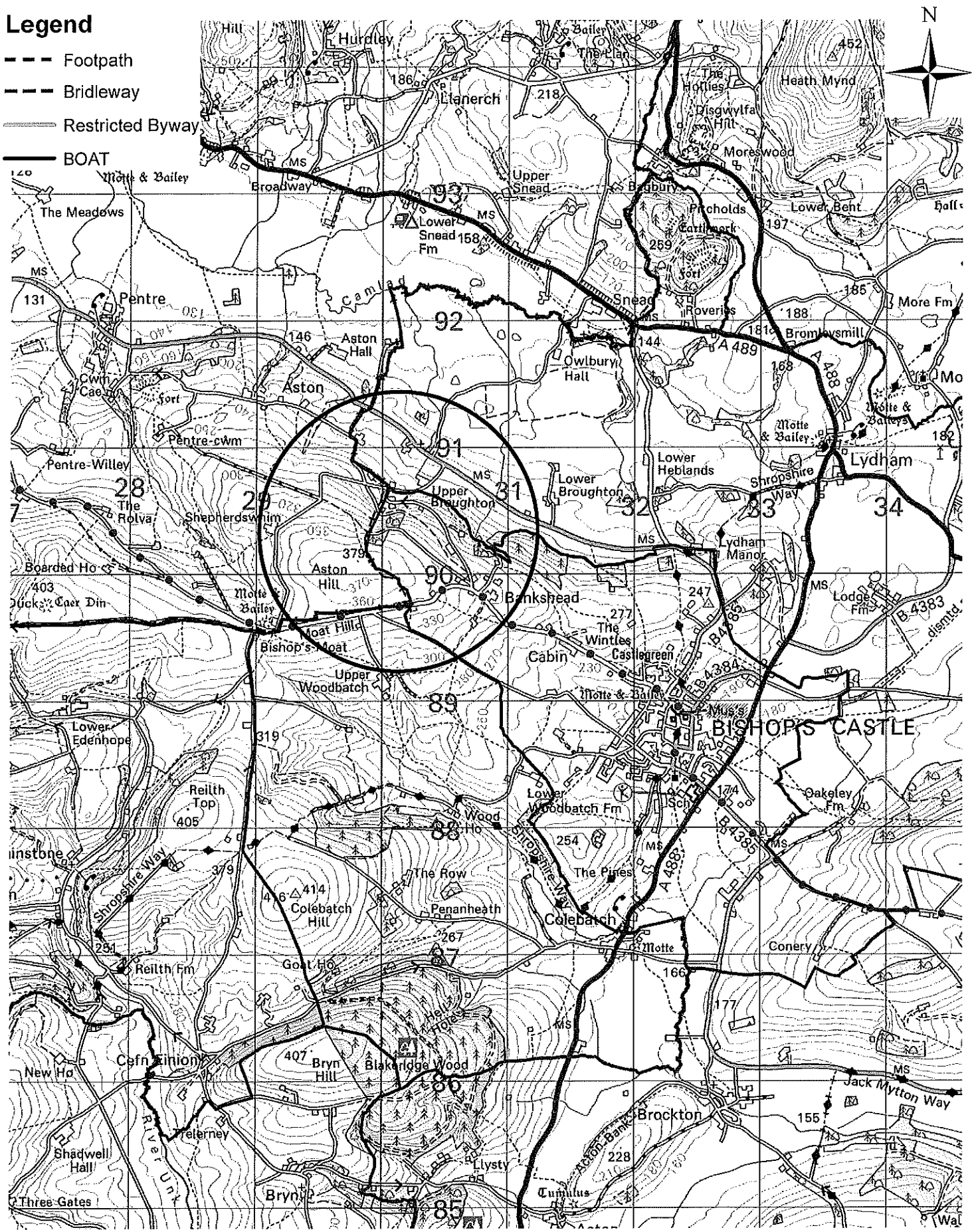
Part 8 of the constitution, section 5.11 no.15 (WLCA Orders)

Authority.....*S-F-Butter*..... Date...*23.5.18*.....

Chris Edwards, Infrastructure and Communities

Legend

- Footpath
- Bridleway
- Restricted Byway
- BOAT



This is not the legal definitive map. It is a working copy only. For information purposes only.



The Shirehall, Abbey Foregate
Shrewsbury, Shropshire, SY2 6ND

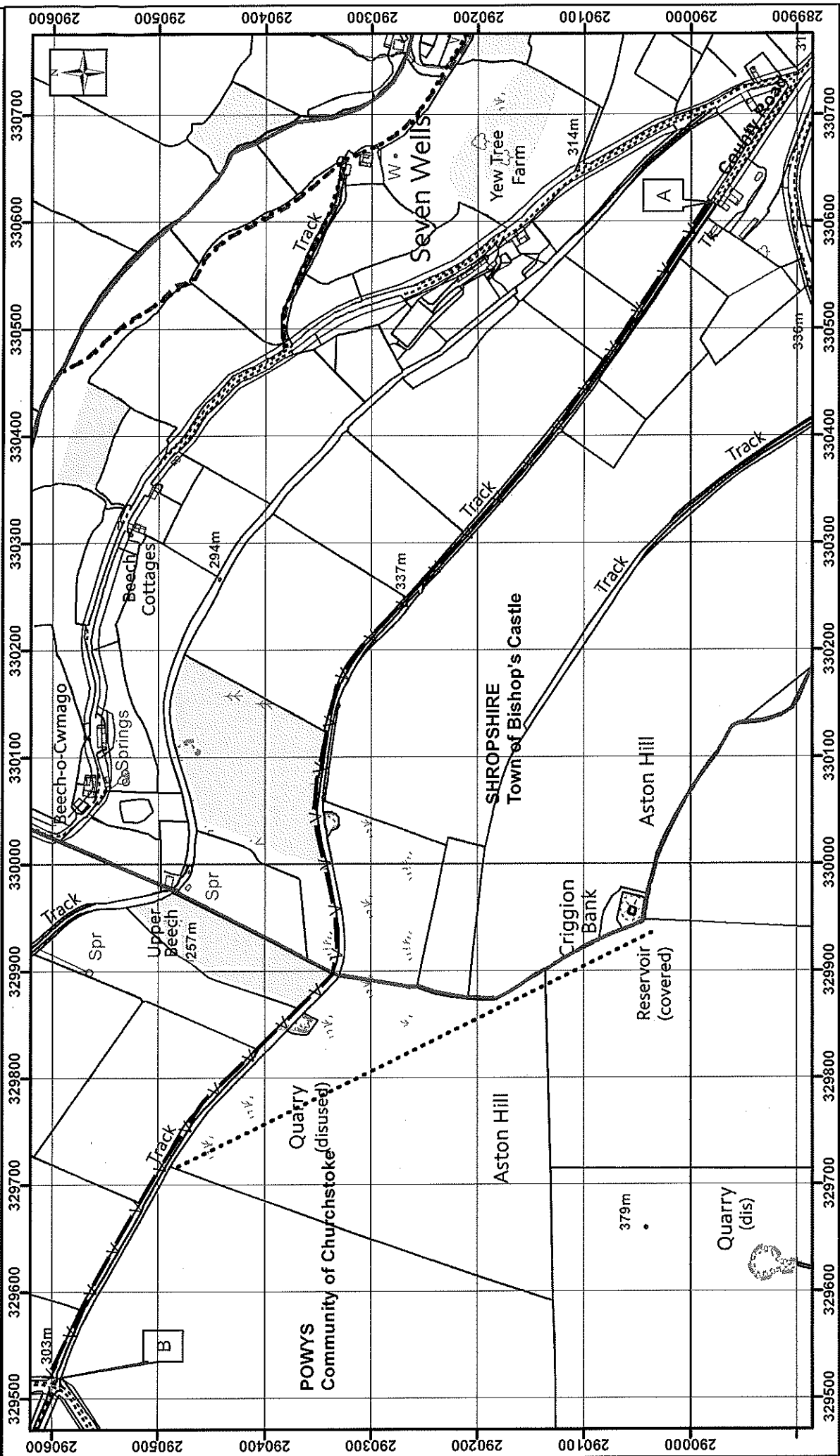
Location of Bridleway Claim

Scale: 1:39,724

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**SHROPSHIRE COUNCIL
WILDLIFE AND COUNTRYSIDE ACT 1981
Definitive Map Modification Order 2018**

**Community of Churchstoke (Powys) and Town of Bishop's castle (Shropshire)
Restricted Byway Addition
OS Sheet No: SO 29 90**



Shropshire Council
The Shirehall, Abbey Foregate
Shrewsbury, Shropshire, SY2 6ND

Key

Route to be added:

Existing to remain:

Scale: 1:5,000

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