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| **Order Decision** |
| Site visit made on 14 September 2021 |
| **by Barney Grimshaw BA DPA MRTPI(Rtd)** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 07 October 2021** |

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| **Order Ref: ROW/3235114** |
| * This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Public Footpath 25.114/9 Back Lane, Wrelton Modification Order 2012. |
| * The Order is dated 10 April 2012 and proposes to modify the Definitive Map and Statement for the area by adding a footpath running between Cropton Lane and Cliff Road, Wrelton, as shown on the Order Map and described in the Order Schedule. |
| * There were 3 objections outstanding when North Yorkshire County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation. |
| **Summary of Decision: I propose to confirm the Order subject to modifications that require advertising.** |
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Procedural Matters

1. I made a site inspection on Tuesday 14 September 2021 accompanied by 3 of the objectors and an officer of North Yorkshire County Council, the Order Making Authority (OMA) and was able to walk the whole of the Order route.
2. In writing this decision I have found it convenient to refer to points marked on the Order Map . I therefore attach a copy of this map.

The Main Issues

1. The requirement of Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 (the 1981 Act) is that the evidence discovered by the surveying authority, when considered with all other relevant evidence available, should show that a right of way that is not shown on the definitive map and statement subsists along the Order route.
2. Some of the evidence in this case relates to usage of the route. In respect of this, the requirements of Section 31 of the Highways Act 1980 (the 1980 Act) are relevant. This states that where it can be shown that a way over land has been enjoyed by the public as of right and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The period of 20 years is to be calculated retrospectively from the date when the right of the public to use the way was brought into question.
3. Common law also requires me to consider whether the use of the path and the actions of the landowners have been of such a nature that the dedication of the path by the landowners can be inferred.
4. As one of the objections to the Order suggests that the Order route is a possible unrecorded vehicular route, it is also necessary to have regard to the provisions of Section 67 of the Natural Environment and Rural Communities Act 2006 (the 2006 Act) which extinguished rights of way for mechanically propelled vehicles (MPVs) subject to certain exceptions.

Reasons

1. Two of the objections are made on the grounds that no public rights exist over the Order route and it should not therefore be recorded as a public right of way of any sort. The other objection is made on the grounds that the route carries higher rights than that of a footpath and it should therefore be recorded as a Restricted Byway.
2. Both documentary and user evidence has been submitted in this case. I consider the different types of evidence separately.

***Documentary Evidence***

1. Early Ordnance Survey (OS) maps published in 1854, 1858 and 1898 show the Order route as a through route running between the roads now known as Cropton Lane and Cliff Road. The northern end of the route appears to be open to Cropton lane but in the south a line across the route separates it from Cliff Road. This possibly indicates the presence of a gate.
2. A larger scale OS map of 1912 shows the route narrowed between Points D and E and crossed by a solid line possibly indicating a gate at D. South of E the route appears possibly closed at one point. A map of 1952 shows the route in a similar manner, but a map of 1954 appears to show the route terminating before reaching Cliff Road.
3. From 1888, OS maps included a disclaimer stating that routes shown were not necessarily public. Subsequent instructions given to OS surveyors are somewhat confusing. They seem to have been told not to investigate the public status of routes but also not to show routes unless they were in obvious use by the public. Accordingly, the depiction of routes on OS maps cannot be taken as conclusive evidence of public rights but they can be helpful, especially when considered with other evidence.
4. It is argued by some objectors that, because the OS showed the route as a through route linking two known public highways and it was not within any known private ownership, it would most likely have been used by the public. In addition, it is argued that the nature of the route, it being generally 3m or more in width and separated from adjoining fields by stone walls or fences/hedges, would suggest use could have been with horses or other livestock and with wheeled vehicles.
5. It is also suggested that the fact that the route is named, Back Lane, is indicative of it being a public route as most private routes tend not to be named.
6. The route has not to date been recorded on the definitive map as a public right of way of any sort and has not been shown as a route available for public use on other maps and leaflets illustrating local walks. As a result, anyone enquiring about the status of the route will have been informed that it was not recorded as a public right of way.
7. On my visit I was able to see stone boundary walls along parts of the route but in other areas it was apparent that boundaries may have been altered over time and new fences and hedges put in place. The route was also partially obstructed by fencing/gates at 2 points but passable on foot by the use of stiles. There was also a significant amount of overgrowth of vegetation towards the southern end of the route.

*Conclusion regarding documentary evidence*

1. The Order route has existed since before 1854 and was a through route linking two known public highways and remained as such until at least 1898. However, by 1912 the route appears to have changed and may not have still been usable as a through route and by 1954 it seems to clearly terminate before linking with Cliff Road in the south.
2. If the route had ceased to be a through route by the early 1950s, this might account for it not being recorded on the definitive map. However, if it had been a public route in earlier times and had not been formally closed, it would still be a public highway. I have seen no evidence of any formal closure of the route.
3. During the second half of the 19th century the route existed on the ground as an enclosed track separated from adjoining land and of a width that would have permitted use by horses and probably horse drawn vehicles. It appears not to have been in any private ownership. It would seem therefore to have been either some sort of private access track used by several adjoining owners none of whom claimed its ownership or a public route for all traffic.
4. In this case, it is my view that the fact that the route linked two known public highways, was not privately owned and was enclosed and separated from adjoining land tends to suggest that it is more likely that it had become a public highway for all traffic as a result of public use before the end of the 19th century.

***Evidence of Use***

Date of calling into question

1. An application for the Order route to be added to the definitive map was made in October 2007 which would suggest that public use of the route had been brought into question in some way by that time.
2. Objectors claim that, since acquiring property adjoining the route in 1999, they have stopped people using the route and erected notices stating that it is not a public footpath. On my visit I saw no notices in place, but I have seen photographs showing them. However, as no owner of the route is registered, it is unclear on what authority the challenges and notices were based. Nevertheless, such actions could have had the effect of calling public use of the route into question, although users of the route predominantly claim never to have been challenged before 2007.
3. It is therefore my view that public use of the Order route was called into question in 2007 and the relevant 20 year period of public use during which a presumption that the route has been dedicated as a public right of way in accordance with the provisions of the 1980 Act runs from 1987 to 2007 in this case. However, in view of the evidence of challenges and signs from 1999 onwards, I have also given consideration to the evidence of public use in the period 1979 to 1999.

*Evidence of Users*

1. Nine User Evidence Forms (UEFs) were submitted with the application for the route to be added to the definitive map and further forms were submitted subsequently. In total, 76 UEFs were received of which some were considered inadmissible by the OMA, leaving 55 to be taken into account.
2. The UEFs describe use of the route from the 1930s or earlier until 2007. Thirty people claim to have used it throughout the period 1987-2007 and a further 23 for at least part of that period. Twenty five people also claim to have used the route throughout the period 1979-1999 and a further 23 for some of that period.
3. All those completing UEFs claimed to have used the route on foot and a significant number also on bicycles and some on horseback or with vehicles. The frequency of use claimed is difficult to quantify with any precision. The forms asked people to indicate whether they used the route more or less than 10 times per year. Most ticked the box claiming use more than 10 times per year and more detailed analysis of the forms suggests that many used the route much more than 10 times per year. Those people who had used the route by more than one mode did not generally indicate the frequency of each type of use but from other information given it seems likely that their predominant use was on foot.
4. Objectors claim that to their knowledge there was in fact little public use of the route, at least after 1999 and before then the route would have been unattractive and difficult to use other than for access purposes.
5. A substantial proportion of those completing UEFs showed the claimed route terminating at Point E, north of Holly Close, on the map attached to the form. However, further examination of the forms suggests that these users did not simply travel from Point A to Point E and then turn and retrace their steps. It seems more likely that they used the whole Order route but considered Holly Close to already be a public highway. I have not therefore discounted these forms.

Evidence of lack of intention to dedicate

1. As there is no registered owner of the Order route, it cannot be said that the landowner has taken any action to indicate a lack of intent to dedicate it as a public right of way, nor can actions of others be regarded as being taken on behalf of the owner.
2. Objectors, who are owners of adjoining land state that the route used to be obstructed towards the southern end by an earth bank and wooden barrier. These can be seen in a photograph said to date from 1987 but it is not clear from this whether the route was blocked completely so as to be impassable. These obstructions were said to have been removed in 2003. It is also claimed that the route was very wet and muddy and so not used except for access to adjoining land prior to 2002 when the County Council carried out drainage works to relieve flooding on nearby roads.
3. On the other hand, the evidence of those claiming to have used the route is that their use was not interrupted or obstructed and continued throughout the relevant periods.

*Conclusion regarding Presumed Dedication*

1. There is some conflict in the evidence regarding frequency of use and possible obstructions. However, the amount of user evidence available is in my view sufficient to raise the presumption that the route has been dedicated as at least a public footpath as a result of public use either in the period 1979-99 or 1987-2007. Also, as there is no known owner who might have indicated a lack of intention to dedicate the route for public use, this presumption has not been rebutted.

**Common Law**

1. An inference that a way has been dedicated for public use may be drawn at common law where the actions of landowners (or lack of action) indicate that they intended a way to be dedicated as a highway and where the public have accepted it.
2. In this case, the evidence suggests that the public has used the Order route over a long period on foot and probably with horses and wheeled vehicles and no owner of the route has taken action to indicate a lack of intention to dedicate it as a public right of way. It is therefore reasonable to infer that public rights over the route have been acquired at common law. However, in the light of my conclusions regarding the documentary evidence and the evidence of users, it is not necessary to pursue this matter further at this stage.

**The 2006 Act**

1. As mentioned before, this act extinguished rights of way for MPVs subject to certain exceptions. In this case it would appear that none of the exceptions is applicable. Accordingly, any right of way for MPVs over the route have now been extinguished.

Other Matters

1. A number of concerns were raised by some objectors. These included:

* The effect on the privacy and security of adjoining properties;
* The safety of children staying at holiday cottages with access to the track;
* Interference with current use of the track for the movement of livestock and the grazing of chickens and ducks;
* The danger to users of the path from falling branches of large overhanging trees;
* The effect on wildlife;
* The likely occurrence of dog fouling and litter.

1. On the other hand, the desirability of the route as a more convenient, safer and attractive route than the footway alongside High Street was referred to by others.
2. I understand all of these concerns but, as they relate to matters outside the criteria set out in the relevant legislation, I am not able to afford them any weight in reaching my decision.
3. Some concern was also expressed regarding the possible effect of recording public rights over the route on existing use of it for access to adjoining properties. However, the addition of the route to the definitive map as a public right of way will have no effect on any current authorised use of it.

Conclusions

1. It is my view that, on the balance of probabilities, the documentary evidence that is available, reinforced to some extent by the evidence of users, indicates that the Order route was a public highway open to all traffic. However, as any right of way for MPVs over the route was extinguished in accordance with the provisions of the 2006 Act, the route should now be recorded as a Restricted Byway.
2. Having regard to these and all other matters raised, I conclude that the Order should be confirmed subject to modification to record the route as a Restricted Byway. Modification of the status of the route in this way will also necessitate some consequential changes to the Order, which proposes that the width of the route should be recorded as it exists on the ground today. In the area where the route appears to have been narrowed at some time between 1898 and 1912 the width currently available is inadequate for a Restricted Byway and should be restored to its previous width. However, the precise width of this section in the latter part of the 19th century is not known and cannot be determined with any precision from the early OS maps. I therefore propose to include a width of 3m in the Order for this section, which I think is adequate for a Restricted Byway in this location and is unlikely to exceed the width once available. It will also be inappropriate to record stiles as limitations on use of the route as these would not formerly have existed.

Formal Decision

1. I propose to confirm the Order subject to the following modifications:

In the Schedule to the Order, Part 1:

* Change a reference to *“Footpath”* to *“Restricted Byway”;*
* Amend the reference to the marked route to add *“and small arrowheads”;*
* Delete the reference to the route to be added to the definitive Map as *“..a footpath, width 0.7-2.4m”*and replace with *“..a Restricted Byway, width 3.0-4.2m”*;
* In the description of the path, delete the words *“..where, having crossed a stile, the path narrows to 2.4 metres and runs south between two dry stone walls for approximately 25 metres to Grid Reference 47651 48604 (Point E), where the path briefly narrows to 0.7 metres wide before..”* and replace with *“..then runs south with a width of 3.0 metres to Grid Reference 47651 48604 (Point E) before..”*

In the Schedule to the Order, Part 2:

* In the description of the path, delete the words *“..where, having crossed a stile, the path runs south between two dry stone walls for approximately 25 metres to Grid Reference 47651 48604, where the path briefly narrows to 0.7 metres before..”* and replace with *“..then runs south with a width of 3.0 metres to Grid Reference 47651 48604 before..”* ;
* Amend the width at Grid Reference 47651 48607 to 47651 to 48604 to 3.0 metres and at 47651 48604 to 3.0 metres;
* Delete the reference to the limitation of a stile.

Amend the Order Map accordingly.

1. The proposed modifications would have the effect of showing as a highway of one description a way which is shown in the Order as a highway of another description. It is therefore required by virtue of Paragraph 8(2) of Schedule 15 to the 1981 Act that notice of the proposal to modify the Order be given and an opportunity for objections and representations to be made regarding the proposed modification.

Barney Grimshaw

Inspector

