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| **Order Decision** |
| Hearing Held on 26 April 2022  Site visit made on 26 April 2022 |
| **by Elizabeth C Ord LLB(Hons) LLM MA DipTUS** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 23 May 2022** |

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| **Order Ref: ROW/3258617** |
| * This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the East Riding of Yorkshire Council (Howden Bridleway No. 17) Definitive Map and Statement Modification Order 2019. |
| * The Order is dated 3 October 2019 and proposes to modify the Definitive Map and Statement for the area by adding a bridleway running from Eastrington Bridleway No.17 in a west-south-westerly direction to Wood Lane (B1228) as shown in the Order Plan and described in the Order Schedule. |
| * There was one objection outstanding when the East Riding of Yorkshire Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation and it remained outstanding at the commencement of the hearing. |
| **Summary of Decision: The Order is confirmed** |
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Background

1. The Order route is part of a country lane and connects Wood Road (part of the B1228) with Eastrington Bridleway No. 17. There is a ditch running along one side and it is flanked by fields. There is no known owner of the route.  The lane is prone to waterlogging and, when wet, vehicular use causes damage to the surface. A few years ago the Council resurfaced the lane, grassed it over and put a locked gate across it near to where it joins Wood Lane, thereby preventing vehicles from using it, but leaving gaps on each side, wide enough for people and horses to pass through.
2. An application was made on behalf of the East Yorkshire and Derwent Ramblers, which was originally for a restricted byway. The Order Making Authority (OMA) concluded that there was insufficient evidence to demonstrate that a restricted byway could reasonably be alleged to subsist, but that a public bridleway could be reasonably alleged to subsist.
3. The applicant is content with this conclusion and supports the Order. The single objector submits that the Order Route should be shown as a Byway Open to All Traffic (BOAT).
4. After the time for making objections closed, three adjacent landowners made representations objecting to a bridleway and requesting a BOAT. I have taken these representations into account.

The Main Issues

1. The Order has been made under Section 53(3)(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) in consequence of the occurrence of an event specified in Section 53(3)(c)(i), namely the discovery of evidence that shows that a bridleway is reasonably alleged to subsist.
2. The main issue is whether the discovery by the OMA of evidence which, when considered with all other evidence available, is sufficient to show, on a balance of probabilities, that a bridleway subsists between points A and B of the Order Map and ought to be shown as a bridleway on the Definitive Map and Statement (DMS).
3. The burden of proof lies with those who claim the existence of the proposed public bridleway. The Order has been made on the basis of documentary evidence.

Reasons

*1771 Jeffreys Map*

1. The map is difficult to interpret but there is some feature following the approximate line of the claimed route. The Council’s interpretation is that it is the environs boundary and it does not appear to be a through lane of any status. It is not possible to deduce a way of any status from this map.

*1767 Bishopsoil Inclosure Act*

1. The Act empowered commissioners to set out public and private roads. Public roads had to be not less than 60 feet wide and were to be maintained in the same manner as other public highways in the townships; private roads had no specified width and were to be maintained by the respective proprietors of the allotments.

*1777 Bishopsoil Inclosure Award*

1. The Order route was part of a road called Hare Rudding Lane. The Award was for use by the owners and occupiers of lands in the Bishopsoil for Cattle Carts and Carriages forty feet in width and was maintainable by those owners and proprietors. The restricted class of persons allowed to use the lane and the obligation for them to maintain it is suggestive of a private road.
2. Furthermore, the commissioners were not empowered to create a public highway other than within the powers granted by statute. The Act set out a width of not less than 60 feet and Hare Rudding Lane was only 40 feet.
3. Consequently, at this time, it appears that the route was private, although this does not prevent the acquisition of public rights at a later stage.

*1842 Tithe Award and Apportionment*

1. This Tithe Map shows the route as coloured sienna, as it does with public roads and other roads. Consequently, it is only confirmation of the existence of the route as a road and does not assist further.

*Ordnance Survey (OS) Maps*

1. The OS maps of 1856 and 1910 clearly show the lane, now called Featherbed Lane. However, they simply demonstrate that it physically existed at the time of the survey and do not help in terms of its status.

*1910 Finance Act*

1. The 1910 Act provided for a tax to be levied on the value of the land. Public vehicular roads were usually excluded, and discounts could be claimed for land crossed by public footpaths and bridleways.
2. The Council’s unchallenged evidence is that there was a small section of Gilberdyke Bridleway No. 17 which was excluded from adjoining parcels, but that the remainder of the route formed part of the hereditaments. This suggests that the route was not a public vehicular road. They go on to say that the Valuer’s Field book does not show any deductions for any other public rights of way either along the route. This also suggests that there were no other public rights of way at this time.

*1953 Parish Survey*

1. In preparation for the first Definitive Maps of Public Rights of Way, parish councils were required to carry out a survey of all rights of way in their areas. In 1937 there was a boundary change, which split Bishopsoil and Featherbed Lane into the two parishes of Howden and Eastrington.
2. The Eastrington Parish Survey registered a public bridleway commencing at Yokegate and terminating on Wood Lane, intending it to be a through route. However, the Howden Parish Survey did not register any public right of way along the route.
3. The fact that Howden did not register a public bridleway does not mean that it did not exist. It can sometimes happen that one parish records a public right of way stretching over more than one parish, whilst another does not.
4. There is no evidence that the Eastrington Bridleway No 17, which passes along Featherbed Lane, was intended to be a cul-de-sac terminating at the Howden/Eastrington boundary, as the boundary cannot be said to be a “place of popular resort”. It is far more likely that it was intended to be a through bridleway to Wood Lane.
5. This is cogent evidence of the subsistence of the Order route as public bridleway.

*Evidence of Named Highway*

1. Whilst the lane was given a name, and it was a requirement of the Highways Act 1773 to name “common highways” before any indictment for obstruction or disrepair could take place, this does not mean that the Order route must be public. Private roads were also often given names. Therefore, the fact that the lane was named does not assist.

*Evidence of Use*

1. The lane forms part of the “Howden 20”, which is a 20 mile circular walk shown on the Council’s “Walking and Riding” website. Therefore, it can be demonstrated that there is at least some use by walkers, although it does not prove that the use is of right.

*Other Matters*

1. The objector argued that on maps prior to enclosure, the route was dedicated to carts and carriageways. However, he did not produce any maps or other evidence to demonstrate this. He also seemed to be suggesting that Featherbed Lane was of the same status as a C1 road and there was no reason why it could not be a restricted byway. The evidence, as set out above, does not support his submission that the route subsists with public rights of vehicular use.
2. Representors raised concerns about their fields being virtually landlocked if they were not allowed to use the lane with agricultural vehicles to work their fields, and they gave evidence of tenant usage going back to the 1940s. One adjacent landowner claimed an easement of necessity. These matters concern private rights, which I have no remit over.
3. Nonetheless, I note that the Council says that the representors may have private rights based on the Bishopsoil Inclosure Award 1777. Therefore, it would not object to them making an application to register such rights with the Land Registry.
4. Comments were also made about the Council using a tractor to maintain/mow the lane and the drainage board using vehicles/machinery to maintain the ditch.  There is an argument that public money should not be spent without there having been public use, but this does not help with the status of any public rights.
5. There were complaints about the Council putting the locked metal gate across the lane. This again, is not within my remit and does not impact on the public bridleway status under consideration.

Conclusion

1. Whilst the older documentary evidence is unsupportive of a public right of way at that time, the 1953 Eastrington Parish Survey and the current existence of Eastrington Bridleway No. 17, demonstrate that the Order route is likely to be a bridleway. There is no evidence to the contrary and consequently, I am satisfied on the balance of probabilities that a bridleway subsists along the Order route and that the DMS should be modified accordingly.

**Formal Decision**

1. I confirm the Order.

Elizabeth C Ord

Inspector

**APPEARANCES**

**Order Making Authority:**

Stephen Parker Senior Legal Officer, East Riding of Yorkshire Council

**Objector:**

Councillor Charlie Bayram

**Others who spoke in support:**

Mr Tony Corrigan (applicant)

Mrs Armstrong (member of the public)

Mr Terry Holmes (member of the public)

**DOCUMENTS RECEIVED AT THE HEARING**

1. Victoria County History Map from Councillor Charlie Bayram

