



Order Decision

Inquiry held on 22 September 2015

by Heidi Cruickshank BSc (Hons), MSc, MIPROW

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 15 October 2015

Order Ref: FPS/L3245/7/15

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as The Shropshire Council (Bridleway Addition, Parish of Clunbury) Modification Order 2014.
- The Order is dated 26 June 2014 and proposes to record a bridleway from the County Road Coppice Lane, west of the property Ashbeds, running in a generally southerly and south-easterly direction to Purslow Wood, in the Parish of Clunbury. Full details of the route are given in the Order plan and described in the Order Schedule.
- There were two objections outstanding at the commencement of the Inquiry.

Summary of Decision: The Order is confirmed.

Preliminary matters

1. The supporters to the Order had misunderstood one point, believing that the onus was on the objectors to prove that the decision made in relation to the appeal under Schedule 14 of the Wildlife and Countryside Act 1981 ("the 1981 Act") was incorrect. I explained to the Inquiry that the burden of proof to show that the Definitive Map and Statement ("the DMS") should be modified, by confirmation of the Order, remained with the supporters. I have considered the evidence presented with this in mind.

Procedural matters

2. In November 2008 an application was made to Shropshire Council, the order-making authority ("the OMA"), under Section 53(2) of the 1981 Act to add a bridleway to the DMS for the area. The OMA investigated the matter and refused the application. The applicants appealed this decision and, in June 2012 the OMA were directed by the Secretary of State for Environment, Food and Rural Affairs to make this Order.
3. As the OMA were directed to make the Order, they decided not to support it and took a neutral stance at the Inquiry, assisting with organisational matters and technical queries. The case in support of the Order was made by the applicants, who called a number of witnesses.
4. I made an unaccompanied site visit on 21 September 2015 and held a Public Inquiry into the Order on 22 September at Clunbury Village Hall. No-one requested a further accompanied site visit following the close of the Inquiry.

Main issues

5. The Order is made under section 53(2)(b) of the 1981 Act by reference to section 53(3)(c), which states that an Order should be made to modify the

DMS for an area on the discovery of evidence which, when considered with all other relevant evidence available, shows:

"(i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way to which this Part applies."

6. The decision at the appeal stage found that an Order should be made, as a reasonable allegation had arisen that public rights subsisted and the applicants sought to rely on that appeal decision. However, by reference to *Todd & Bradley v Secretary of State for Environment, Food and Rural Affairs, 2004*¹, I must be satisfied, on the balance of probabilities, that the claimed right subsists over the route.

7. Following the appeal decision, the main case in support of the Order relied upon the statute, under section 31 of the Highways Act 1980 ("the 1980 Act"). The sections of particular relevance are set out below:

(1) Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.

(2) The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice such as is mentioned in subsection (3) below or otherwise.

(3) Where the owner of the land over which any such way as aforesaid passes—

(a) has erected in such manner as to be visible to persons using the way a notice inconsistent with the dedication of the way as a highway, and

(b) has maintained the notice after the 1st January 1934, or any later date on which it was erected,

the notice, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway.

8. The parties were in agreement that the date at which the use was called into question was 2006, clarified through the Inquiry as the summer of that year. To give rise to a presumption of dedication, it needs to be shown that the use was 'as of right', that is without force, secrecy or permission, throughout the relevant twenty-year period, as well as without interruption.

9. The main argument in objection was that there had not been use of the type and or frequency claimed and it was inferred that reliance should not be placed on the submitted evidence. I therefore need to consider the reliability of the user evidence in relation to this claimed route.

¹ [2004] EWHC 1450 (Admin)

10. Where a presumption of dedication arises then it can be defeated by the proviso, which is that there is sufficient evidence that there was no intention on the part of the landowner during that twenty-year period to dedicate a right of way.
11. The objector² set out that reliance was placed on the initial findings of the OMA Report, when the decision had been taken not to make an Order.

Reasons

Background

12. The Order route crosses land, A – B³, an access track to an entrance into Purslow Wood (“the woods”). East of the claimed route is the property and garden Ashbeds whilst to the west is an area of land and garage for the property. The land crossed by the route is understood to be in the ownership of Ashbeds and it is accepted that the Forestry Commission have access rights over it. Ashbeds is a rented property, with the owners living abroad, and it was the current tenant who took action in relation to use of the Order route.
13. The Definitive Map records a public bridleway, number 10 (“BR10”), to the east of Ashbeds, which is not shown on the Order map. There appears to be some disagreement as to the legal alignment of BR10 in relation to the property boundary and the OMA are seeking to resolve that issue; there have already been discussions about both a public path order and a definitive map modification order. As I stated at the Inquiry, the line and status of that route, and of another unrecorded route into the woods further to the west of the claimed route, were not matters before me.
14. It seemed that there may have been some misunderstanding of the legal status of the Order route following the issuing of the Schedule 14 appeal decision, such that barriers which had been erected over it were damaged. The way in which individuals acted, or may appear to have acted to those with a different point of view, is unfortunate. I accept that there can be strong feelings in these cases, but I am only dealing with the evidential matters.

Section 31 of the Highways Act 1980 – the statute

Calling into question

15. Section 31(2) of the 1980 Act sets out that the period of twenty years is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice or otherwise. It seems that the tenant of Ashbeds stopped some horse-riders from using the Order route, whilst initially indicating to other local residents that they could continue to use it. However, the evidence given in cross-examination was that within a few weeks all users were being told not to use it by way of a notice erected on the route. This was recalled as occurring in the summer holidays.
16. The notice was reported in user evidence forms (“UEFs”) with varying wording, such as ‘*Private Property - No public right of way*’, ‘*No right of way*’ and ‘*No public access.*’ As the tenant chose not to give oral evidence to the Inquiry I

² The case in objection was made on behalf of the landowner. The other statutory objector, the tenant of Ashbeds, was present at the Inquiry assisting the objector but took no active part in the proceedings

³ As shown on the Order map

was not able to clarify whether the wording had differed due to different signs at different times or whether people were remembering it incorrectly. It is clear that the public recognised that there had then been a challenge to their use, to which they responded by making the application to record the rights.

17. I am satisfied that the notice, or notices, and associated actions turning people away from using the route and obstructing it, were sufficient to call public use into question. Therefore, the relevant twenty-year period is summer 1986 – summer 2006.

Evidence of use

18. The evidence of use within the relevant twenty-year period arises from the UEFs submitted in connection with the application, additional UEFs submitted in connection with the appeal and the Inquiry, written statements to the Inquiry as well as the oral submissions.
19. The reasons for use were generally recreational access to and from the woods, on foot, horse and bicycle. Some referred to use for access to and from different properties, including the school in the past, on foot, horse and with a tractor. The type of use was generally as one might expect in a rural area, with an access to the resource offered by the woods.
20. The frequency of use varied, ranging from once or twice a year to almost daily and there was more frequent use in the summer than in the winter period.
21. The majority of use was on foot, however, there was a high level of use on horseback, some of it in connection with exercising racehorses, sufficient in my view to show presumed dedication of a bridleway, which would encompass the right on foot. I have given careful consideration to the use with tractors and bicycles but am satisfied that it is not supportive of higher rights, with the bicycle use being allowed on a bridleway by law from 1968, therefore throughout the entire twenty-year period.
22. I have discounted evidence from those working for the Forestry Commission, in terms of their use during working times, and former tenants during their own tenancy periods. Such use would appear not to be as of right, as required.
23. The tenant of Ashbeds indicated disbelief as to use, particularly in relation to use on bicycles and with a wheelchair as she felt the route was unsuitable for such use, however, there was no opportunity to clarify this with her. I am satisfied from the evidence I heard that such use did occur within the relevant period and some people indicated that, prior to the closing of the route, they had sometimes conversed with this objector when passing the property.
24. Despite the limitations naturally placed on evidence on paper I am satisfied, on the balance of probabilities, that I am able to place reliance upon the UEFs, due to the correlation with the evidence that I did have the benefit of hearing, which was available for cross-examination.

Use by 'the public'

25. The objector sought to rely on the OMA report with regard to whether the users were representative of the general public. This had suggested that many of those providing user evidence were a confined group of family and friends. I

agree with the reliance of the supporters on the findings of the appeal decision that in such a sparsely populated rural area the use is likely to be by local people. In this case the supporters have provided additional evidence from a wider range of users. Evidence that the route has been included in walks guides within the relevant twenty-year period would be likely to encourage users from further afield and some evidence was provided from such users. Taking account of the evidence as a whole, I am satisfied that there has been use by 'the public'.

Use as of right

26. In order for the reported use to lead to a presumption of dedication it is necessary to look at matters relating to whether or not that use was 'as of right'. To be as of right the use must be without force, without secrecy and without permission. The use must also be without interruption.
27. The objector referred to permissive use for the Forestry Commission, indicating that it had existed when the property was purchased by the current owners in 1978. It was suggested in closing that the tenants, past and present, had 'allowed' local access. There was no indication of permission from the users, with some commenting that it was a public right of way and so no permission was necessary. There is no evidence to show that the use as a bridleway was only by permission.
28. The tenant had suggested that the route could not have been used prior to her tenancy, from 1998, as the drive was overgrown and impassable. Those giving evidence to the Inquiry had not find this a problem, with a comment that the Ashbeds garden and house had been neglected but it did not significantly affect the track itself. I am satisfied that use in the relevant twenty-year period was not interrupted and was as of right, as required.

Whether there is evidence of a lack of intention to dedicate a public right of way within the relevant twenty-year period (the proviso)

29. It seems that the Forestry Commission erected, or locked, a barrier at point B, the access into the woods, at some point during the twenty-year period. The Forestry Commission have not objected to the Order. Whilst it was claimed in closing by the objector that this barrier was to stop use and avoid the track becoming a right of way, no evidence was provided to substantiate this argument. The evidence of users was that the barrier did not stop their use and they believed the gaps at the side had been deliberately left to allow continued access on foot, horse and bicycle; they understood it to be aimed at preventing vehicular use. There is no sufficient evidence to show that this demonstrated a lack of intention to dedicate, or a potential earlier calling into question of use as a bridleway.
30. Whilst the Forestry Commission made a statutory declaration under section 31 (6) of the 1980 Act in 1990, that it within the relevant period, this related to land south of the Order route, in separate ownership. There was no evidence presented to show that the owner of the land crossed by the Order route had taken any action to demonstrate a lack of intention to dedicate a public right of way over that land at any time within the relevant twenty-year period.

Other matters

31. There was reference to documentary evidence showing the existence of the route over a long period and the lack of indication of a public right of way on documents associated with Ashbeds. Neither of these points is relevant to this decision as the statute relies upon evidence of use to show whether or not a presumption of dedication arises.

Route description

32. I noted that the OMA report referred to the route as approximately 30 metres in length but the Order as made referred to the length as 20 metres. The OMA confirmed that they were satisfied that the Order description was correct, having measured it on the ground when making the Order.

Other matters

33. The law does not allow me to consider such matters as the desirability or otherwise of the route in question, health and safety matters, privacy concerns or possible changes to property values. I realise that these are likely to be the matters important to local residents and users, however, I cannot, and have not, taken account of these matters.

Conclusions

34. Considering the evidence as a whole I am satisfied, on the balance of probabilities, that the Order route should be recorded as a public bridleway. The way has been used by the public on foot, horse and bicycle, as of right and without interruption in the twenty-year period 1986 – 2006. There is insufficient evidence of a lack of intention to dedicate a public right of way on the part of the landowner during that period.

35. Having regard to these and all other matters raised at the Inquiry, and in the written representations, I conclude that the Order should be confirmed.

Formal decision

36. I confirm the Order.

Heidi Cruickshank

Inspector

APPEARANCES

For the Order Making Authority (neutral stance):

Lucy MacFarlane Rights of Way Officer, Shropshire Council

In Support of the Order:

Mrs M Sweetman⁴ Applicant

who called:

Mr D Hill

Ms M Humble

Mrs S Manley

Mr B Morgan

Mrs S Morgan

Mr T Owens

Mr R Richards

Mr F Sweetman

Mr B Wood

In Objection to the Order:

Mr L Thomas *McCartneys on behalf of Mrs M North-Lewis*

INQUIRY DOCUMENTS

- 1 The Order
- 2 Opening Statement by the supporters, Mr and Mrs Sweetman
- 3 E-mail from Ruth Stallard, 17 September 2015
- 4 Notes from records held by Shropshire County Archives
- 5 Lake District National Park Authority information sheet
- 6 Forestry Commission letter, 8 December 2008
- 7 Closing Statement by the supporters, Mr and Mrs Sweetman
- 8 Closing submissions *on behalf of Mrs M North-Lewis*

⁴ Mr and Mrs Sweetman worked together on this case, however, Mrs Sweetman made the closing submission in support of the Order, therefore, I consider she led the case at the Inquiry