



Order Decision

Site Visit on 22 February 2016

by Sue Arnott FIPROW

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

Decision date: 3 March 2016

Order Ref: FPS/P2935/7/45

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981. It is known as the Northumberland County Council Definitive Map Modification Order (No 18) 2012.
- The Order is dated 16 December 2012. It proposes to modify the definitive map and statement for the area by recording a bridleway from the end of public road U15 at Cockley Burn, south east and south westwards to join public road U19 east of Cheswick Farm Cottages in the Parish of Ancroft, as shown on the Order map and described in the Order schedule.
- There were two objections outstanding when Northumberland County Council submitted the Order for confirmation to the Secretary of State for Environment, Food & Rural Affairs.

Summary of Decision: Confirmation of the Order is proposed, subject to the modifications set out in the Formal Decision below.

Preliminary Matters

1. One of the objections to the Order raises a procedural point: that the notice printed in the local press advertising the making of the Order failed to state the cost to the public of being provided with a copy. In response, the order-making authority, Northumberland County Council (NCC), acknowledges the error but does not consider this makes the Order itself defective. It is an obvious omission but I consider the likelihood of anyone being disadvantaged in any way as a result of the error to be negligible.

The Main Issues

2. The Order was made under the Wildlife and Countryside Act 1981 on the basis of events specified in sub-section 53(3)(c)(i). The main issue here is whether, on a balance of probability, the evidence shows that a public right of way has been established along the Order route and, if so, whether this was a public bridleway or, as asserted by one of the objectors, a right of way with vehicles.
3. If the way is shown to have once been a public carriageway, the evidence suggests that the right of the public to use it with mechanically propelled vehicles (MPVs) will have been extinguished as a result of Section 67 of the Natural Environment and Rural Communities Act 2006 (the 2006 Act) so that the appropriate categorisation for the road would now be 'restricted byway'.

Reasons

4. The evidence in this case is in two main parts. The first is the historical documentary evidence which consists of maps, awards, plans and railway records
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dating from the mid-eighteenth to the mid-twentieth centuries. NCC's case rests primarily on this evidence and I propose to analyse this first.

5. The second bundle of supporting material consists of evidence collected by Ancroft Parish Council and submitted to NCC to accompany an application for a definitive map modification order in February 2011. This takes the form of user evidence forms from 27 individuals who claim to have used the Order route for varying periods, mostly on foot but some on a bicycle, a few on a motor bike and one with a tractor.

Historical evidence

6. There is evidence of a coastal road that could have included the Order route on a map produced by Armstrong in 1769. This road branched off the main north-south highway (later the A1) north of Scremerston near a place called Hill Head and turned southwards, following the coast to Goswick and beyond. The same road is depicted on John Cary's map of the area in 1794. Although the settlement of Cheswick appears on both maps, neither shows any east-west connection with the coastal road.
7. Following an Act of Parliament in 1798, the Tweedmouth and Spittal Common Inclosure Award of 1800 set out a route to be known as "The Goswick Road". This public highway, "forty foot in breadth", extended south eastwards from Spittal as far as the junction with "the Scremerston Estate road to a certain place called Hill's House" (or Head). That is around a mile or more north of point A on the Order map.
8. Objector, Mr Kind, makes two points in relation to this record: firstly he points out that the Award set out "The Goswick Road", not just 'Goswick Road', implying "a significant degree of antiquity and importance", and secondly that the name itself suggests a public thoroughfare, it leading to Goswick which is some four miles distant.
9. I accept these inferences add to the case that this eighteenth century coastal route was one of some significance and most probably a highway for all types of traffic. Commercial maps produced by Fryer (in 1820), by Greenwood (in 1828) and by Carey (1820-32) are all consistent with a route of that status, each showing a continuous road from Tweedmouth down to Goswick (and beyond) as well as the east-west link to Cheswick.
10. The East Coast Main Line railway runs parallel to, and to the west of, the north-south section of the Order route and is crossed by the east-west section via a vehicular-width stone bridge. NCC highlighted the "Deposited Plans for the Great Northern British Railway 1839" which set out the intended route of this line. These plans identified the east-west section of the Order route as parcel 4, annotated "From Cheswick" and "To Goswick" with the accompanying Book of Reference identifying this as "Public Road from Cheswick to Goswick". In fact the map shows the Order route continuing northwards as well as the Goswick Road turning to the south.
11. Mr Kind argues that these railway records deserve more weight than NCC attributes to it. He also adds that the railway was built from mid-1845 onwards following a second statutory deposit of plans and books of reference in 1844. Although the two records are broadly similar, Mr Kind highlights certain important differences. In the later Book of Reference the Order route (parcel 20) is again listed as "Public Highway" (as opposed to an occupation road, bridleway or

- footpath, all of which are noted elsewhere in the schedule), but the "Owner(s) or Reputed Owner(s)" is listed as "Surveyor of Highways, George Tuurnbull"¹
12. It was these 1844 deposited plans which formed the basis of the subsequent Act of Parliament of 31 July 1845 which brought about the Newcastle to Berwick Railway. This Act engaged the provisions of the Railway Clauses Consolidation Act 1845, which required turnpike roads and public highways to be bridged under or over the railway unless an alternative at-level crossing was specifically provided for in the accompanying Special Act. The width of a road-over bridge was to be 25 feet wide (7.62m) for a public carriage road and 12 feet (3.66m) for a private road.
 13. Mr Kind has carried out a comparison of road-over-railway bridges shown in the 1844 plans, with 6" to one mile Ordnance Survey maps (surveyed in 1860 and published in 1866) and present-day satellite images overlaid with a 10m grid. He calculates that the bridge over the railway on the Order route measures in the region of 7.14m (23'5")² and submits the logical conclusion is that this was constructed to accommodate a pre-existing public carriageway, not a bridleway.
 14. NCC accepts the documentary evidence but submits that it is not known whether the present width of the bridge is the same as its original width when built. It notes that, discounting the footways on both sides of the bridge, the carriageway is nearer to the 12 feet (3.66m) required by the 1845 Act for private roads.
 15. However, as Mr Kind points out, both the 1839 and 1844 Books of Reference recorded the status of this route not as a private road but as a public highway and particularly one that can be deduced to have been more than a bridleway.
 16. I consider this to be convincing evidence of the status of the east-west section of the Order route and to offer strong support for the existence of a vehicular highway on the connecting Goswick Road.
 17. The map attached to the Cheswick Tithe Award of 1850 does not show the railway suggesting that work had not yet begun at the date of survey. The map is ambivalent as far as the north-south coastal road is concerned; it is not shown at all although the east-west road from Cheswick towards the coast is clear, it being enclosed on both sides. Whilst this offers no evidence in support of "The Goswick Road" that was clearly apparent 20-30 years previously, the purpose of tithe maps was not to define highways but to identify titheable land.
 18. I give little weight to the absence of the road from this plan, especially when the Ordnance Survey (OS) map of 1866 confirms it was still in existence. By this date the new railway was constructed with a bridge over the line on the Order route. This same arrangement is shown on successive revisions of the OS maps in 1899, 1925, 1957, 1968 and 1992. Recording over a century or more of change, I note relatively minor alterations over the years, including the opening and closing of a small quarry beside the route, and cottages apparently linked to the nearby Scremeston Limeworks being demolished between 1957 and 1968. Nevertheless, it is clear to me that whilst the importance of The Goswick Road may have declined over the last 100 years or more, the route survived as a physical track until the end of the twentieth century.

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² During my site visit I measured the width as approximately 7.25m (almost 24 feet) including 1.45 wide footways (just under 5 feet) at both sides.

19. Correspondence submitted by NCC indicates that in 2004 the national cycling organisation 'Sustrans' negotiated agreements with landowners along this stretch of coastline to upgrade the surface of this track (now the Order route). However no details of that agreement have been submitted and I am therefore unable to establish the extent to which any pre-existing public rights of way may or may not be acknowledged.
20. Looking at the totality of the evidence, NCC concludes that it would be reasonable to deduce from the historical map evidence that the route carries higher rights for the public than on foot and therefore through this Order it has proposed to record a bridleway. In my view, the evidence goes one step further; I consider it reasonable to deduce that the north-south section of the Order route did once form part of the coastal route known as "The Goswick Road" with an east-west link to Cheswick via a section acknowledged to be a publicly maintainable carriageway in the mid-1800s.

Conclusions from the historical documentary evidence

21. On balance I consider the evidence points towards the Order route having been a full vehicular highway dating back to the eighteenth century at least. The strong implication that in 1800 an inclosure road in an adjoining parish continued to Goswick along a line beside the coast that is highly likely to have been the Order route, together with the clear recognition of public highway status in the deposited railway plans in 1844, points to the existence of a public carriageway of some antiquity.
22. Nothing within the evidence provided here suggests that any of the exemptions to the statutory extinguishment of rights for mechanically propelled vehicles instigated by sub-section 67(1) of the 2006 Act are applicable in this case.
23. It follows from this that the route should now be recorded as a restricted byway³ and I therefore propose to modify the Order accordingly.

Evidence of recent user

24. Having reached the conclusion that the Order route does carry a public right of way, it is not necessary for me to examine in detail the evidence from users in relatively recent times submitted with the application by Ancroft Parish Council. However for completeness I will set out in brief my main findings.
25. The requirements for the presumed dedication of a public right of way under statute are set out in Section 31 of the Highways Act 1980 (the 1980 Act). This requires use of the claimed route by the public, as of right and without interruption, over the period of 20 years immediately prior to its status being brought into question so as to raise a presumption that the route had been dedicated as a public path. This may be rebutted if there is sufficient evidence that there was no intention on the part of the relevant landowner(s) during this period to dedicate the way for use by the public; if not, a public right of way will be deemed to subsist.
26. NCC considers that the application itself brought into question the status of the way, thus establishing a relevant period of February 1991 to February 2011. I do not disagree with that conclusion although it seems to me likely there may have

³ A restricted byway is a highway over which the public has a right of way on foot, on horseback or leading a horse, and a right of way in or on vehicles other than those which are mechanically propelled.

been other occasions when this occurred, for example when notices were erected along the route including those attached to gates (stating "Private Land Keep Gate Shut" or similar) and those at either side of the railway bridge⁴. The latter were confirmed by Network Rail to have been affixed before 1993 – and probably in 1985 – stating that the way was not dedicated for public use. There is also the possibility that the Sustrans agreement may have raised questions over the rights of the public to use the route but without sight of the details it would be impossible to judge.

27. The 27 claimants have clearly used the Order route, some for a great many years. During the relevant 20 year period, not only might the 2004 Sustrans agreement have altered the basis upon which people used the route (from 'as of right' to permissive) but the introduction of a Countryside Stewardship Scheme in 2002 (noted by the tenant of Inland Pasture and Cheswick Farms) could similarly have provided 'permission' for use by the public. Insufficient detail is available amongst the written material provided to enable me to be confident the use demonstrated by the evidence forms was 'as of right' and without interruption.
28. Even if satisfied that all the claimed use qualified such as to raise a presumption of dedication of the route as a public path, I would have to take into account the effect of the notices reported along the way. Of most significance are those erected by Network Rail which, if confirmed to have been in place during the relevant period (which seems likely), would in my view rebut any conclusion that any public right of way could be presumed.
29. However, despite finding the case put forward in support of dedication of the route as a bridleway between 1991 and 2011 to be shaky, I have already concluded that the route had been established as a full vehicular highway at least a century earlier. Consequently this recent use can be attributed to the much earlier dedication to the public.

Other matters

30. One of the objectors raises concerns about the effects of motor cycles using the Order route. Safety and nuisance issues, potential for accidents and the likely effect on the ecology of important coastal habitats are all understandable fears. However these are not matters I can take into account in determining the legal status of the Order route.

Conclusion

31. Having regard to the above and all other matters raised in the written representations, I propose to confirm the Order with modifications to amend the status of the Order route as referred to in paragraph 23 above.

Formal Decision

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

- On the Order title page, delete "Bridleway No 28 (Parish of Ancroft)" and substitute "Restricted Byway No 28 (Parish of Ancroft)";

⁴ It is true that none of the user evidence forms mention these notices but neither does it seem that claimants have been asked specifically about them, for example through follow-up questionnaires or via interview.

- In the Order Index, delete "Bridleway 28" and substitute "Restricted Byway 28";
 - In the Order Schedule, in the 'Description of Modification to Definitive Map and Statement', delete the words "bridleway" wherever it occurs and substitute "restricted byway" in each case;
 - On the Order map, change the notation used for section A-B from that used to depict a 'Bridleway to that used to depict a 'Restricted Byway'.
33. Since the confirmed Order would show as a highway of one description a way which is shown as a highway of another description in the Order as submitted, I am required by virtue of Paragraph 8(2) of Schedule 15 to the Wildlife and Countryside Act 1981 to give notice of the proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modifications. A letter will be sent to interested persons about the advertisement procedure.

Sue Arnott

Inspector