



Order Decision

Inquiry held on 9 February 2016

by Sue Arnott FIPROW

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

Decision date: 10 March 2016

Order Ref: FPS/W4705/7/23

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981. It is known as the City of Bradford Metropolitan District Council (Public Footpath No. 282 (Keighley) between Laycock Lane and Chapel Lane, Laycock, Keighley) (Modification) Order 2013.
- The Order is dated 1 August 2013. It proposes to modify the definitive map and statement for the area by adding a footpath alongside No. 64 Laycock Lane, Laycock, as shown on the Order map and described in the Order schedule.
- There were 2 objections outstanding when the City of Bradford Metropolitan District Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.

Summary of Decision: The Order is confirmed.

Procedural Matters

1. I held a public local inquiry into the Order at the Town Hall in Keighley on 9 February 2016, having inspected the route in question the previous afternoon, unaccompanied. After closing the formal proceedings I visited the site again on 10 February. On this occasion I was accompanied by both supporters of and objectors to the Order together with a representative of the order-making authority, the City of Bradford Metropolitan District Council (BMDC).
2. Although one of the objections was submitted by Mrs Hutchinson, at the inquiry she made clear that she wished to remain neutral, neither supporting nor opposing the Order. Therefore, in referring to 'the objectors' in this decision, I include only Mr and Mrs Shepherd, not Mrs Hutchinson.

The Main Issues

3. The Order was made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) on the basis of an event specified in Section 53(3)(c)(i), namely the discovery of evidence which shows a right of way which is not recorded in the definitive map and statement subsists over land in the area to which the map relates.
4. Whilst the evidence need only be sufficient to *reasonable allege* the existence of a public right of way to justify an order being made, the standard of proof required to warrant confirmation of an order is higher. In this case and at this stage, evidence is required which shows, *on the balance of probability*, that a right of way subsists along the Order route.
5. The case in support of the Order is based on the presumed dedication of a public right of way under statute, the requirements for which are set out in Section 31 of the Highways Act 1980 (the 1980 Act). For this to have occurred,

there must have been use of the claimed route by the public on foot, 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 footpath. 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 footpath will be deemed to subsist.

6. In short, the case for the Order as initially submitted requires me to consider whether the evidence shows that in the past the Order route has been used in such a way that a public footpath can be presumed to have been established.
7. Although the matter had not previously been considered on the basis of common law, I explained at the inquiry that, if not satisfied the requirements for dedication under statute have been met, I may consider such an approach in the alternative. In addressing this possibility the issues I would need to examine are whether, during any relevant period, there was express or implied dedication by the owner(s) of the land in question (having the capacity to dedicate a public right of way) and whether there is evidence of acceptance of the claimed right by the public.

Reasons

8. Although the case in support of this footpath rests primarily on the evidence of use by the several claimants, I shall start by considering the historical evidence that has been submitted in support of the claimed right of way so as to put that use into context. It is relevant here to note that Section 32 of the 1980 Act allows "*any map, plan or history of the locality or other relevant document*" to be taken into consideration when deciding whether or not a way has been dedicated as a highway.

Historical documentary evidence

9. I have before me extracts from 3 Ordnance Survey (OS) maps dating back to the early twentieth century, all at a scale of 25": 1 mile or 1:2500.
10. The 1919-1921 edition shows that the Order route would have been open and physically walkable but for a wall in which there may or may not have been a gate approximately in the position of Point C (where an old hinge is still attached to the corner of No 64 Laycock Lane). At this stage the route was not walled on both sides between A and C and there is nothing that can be deduced from this map to suggest it was actually used by the public at that time.
11. The objectors submitted an earlier map¹ dated 1902 that was not substantially different but did show three additional lines across the Order route (which again may or may not have been walls containing gates). In my view this tends to suggest that around the turn of that century this was probably not a public path and thus it is not one with ancient origins.
12. The OS map of 1933-1938 was the first to show the Order route A-C as a walled passage between the garden of No 64 and a triangle of land to west (now part of the Wyngarth garden). It would be reasonable to assume that at

¹ Mrs Shepherd described this as a map of Laycock drawn for the owners of No 64 although no evidence was submitted to support this. The plan key states it was prepared by "Barber Hopkinson & Co Land Agents, Surveyors & Valuers, Craven Bank Chambers, Keighley" in March 1902.

- this time there was a gate at point C since there would be no purpose for the passage otherwise. This is also the first map to show the "TCB" (telephone call box) which still exists adjacent to the path at point A.
13. The objectors also provide a sketch map prepared by "F Day Surveyor, Keighley" and dated October 1942. The purpose of this plan was not established but as far as the Order route is concerned this shows exactly the same information as the OS map from the 1930s.
 14. The same layout is shown on the OS map dated between 1956 and 1975, again with the possibility of a gate at point C but the passageway extends further to D since the barn to the west was rebuilt as present the house, Wyngarth.
 15. It is important to recognise that OS maps of this scale do not purport to show public rights of way. Yet whilst these maps offer little positive evidence to support the existence of a public path along the Order route, those dating back as far as the 1930s are not inconsistent with a route of that status.
 16. To assist the inquiry, BMDC provided extracts from the registered titles of properties surrounding the Order route. This shows the Order route together with the land to the rear of No 64 and 54 as unregistered. It appears that the Land Registry has been attempting to resolve issues here since at least 1995.
 17. No submissions were made in relation to these documents and it is not the purpose of the inquiry to determine ownership. However I note that no private rights of way appear to be recorded over the Order Route which remains in unknown ownership. That raises the possibility that, if the door on the side of No 64 highlighted by Mrs Shepherd was not reliant on a private means of access along the claimed footpath, it could well have been a public route.
 18. The objectors also submitted an indenture dated 1731 between Jeremiah Brigg and his son Thomas Brigg in respect of land and property on the village. No plan was attached and the document is of no direct assistance in resolving the status of the Order route.
 19. In conclusion I find that none of these maps or other documents offer positive support for the route being a public right of way but the character of the southern part as a walled path can be traced back to 1933 at least, and there is nothing apparent from these documents that might prevent a conclusion that a public right of way did exist as a through-route after that time.

The case for statutory dedication

20. The Order was made primarily on the basis of statutory dedication. I will therefore next examine the evidence in relation to Section 31 of the 1980 Act. The first matter to be established is when the public's rights were brought into question.

Bringing into question

21. Although earlier events also need to be considered, it is not disputed that the status of the Order route was brought into question in June 1997 when Mr Shepherd installed a gate across the way at point B as shown on the Order map. A photograph taken at the time shows Mr Shepherd in the process of constructing the doorway.

22. The objectors say that they had been advised to erect a gate by Mr Morse, an officer with the Rights of Way Department at BMDC. However no evidence was available from Mr Morse to explain this advice.
23. The gate was initially challenged by Mr Hardman because the door frame had been attached to his gatepost but the gate was not in place for long. The incident eventually led to the submission of an application to BMDC by Mr Hardman and Mr Ellis in October 1999, their intention being to ensure the path would be retained as a matter of principle because they felt this was an historical path used by the village.
24. On both my visits to the site I observed another gate, this being one positioned across the top of the Order route between points F and G. This white metal gate is installed so as to swing shut across the vehicular entrance to Croft House and the rear of Wyngarth. However when propped open, it is very difficult to proceed along the line of the Order route; indeed it would be virtually impossible if approaching from the south. Consequently there is a possibility that the installation of this gate also challenged the public's rights to use the claimed route and thus also brought into question the status of the way at a date earlier than 1997.
25. However none of the claimants mention this gate at all. According to Mr Ellis, the explanation for this is that people always reached Chapel Lane by walking to the south of the white gatepost which had been in place since 1975 at least. He recalled it being in situ when he first lived at Wyngarth before moving to Croft House and whilst he had replaced it around 2000, it had remained in the same position.
26. In fact a plan prepared by Mr Hardman that was posted on site² in October 1999 showed his claimed route curving as it approached Chapel Lane so as to pass below (and just to the south of) the white gate post. The plan attached to the formal application was not so precise and omitted this important detail³.
27. A photograph taken in 1997 submitted by the objectors shows the white gate in its open position (and thus across the line of the Order route). It also shows that immediately to the south of the gate post (and thus across Mr Hardman's line) are three short wooden posts with chains attached and which continue beyond the edge of the photo. No-one was able to shed any light on the purpose of these posts or who was responsible for them. It would clearly have been possible to step over the chain yet anyone using Mr Hardman's route at that time may rightly have concluded that their right of way was disrupted.
28. However there is no evidence of anyone questioning the status of this route before 1997. Whilst both the white gate and the chains attached to the wooden posts could have challenged the public's rights when first installed, I find there is insufficient evidence to conclude that either actually did so.
29. In summary, I am satisfied that the status of the Order route was brought into question around June 1997 by Mr Shepherd's gate and so will examine the claimed use by the public during the preceding twenty year period, 1977-1997. Whilst other possibilities remain, there is not sufficient evidence available to enable me to attach dates to these events.

² In accordance with the requirements of Paragraph 2(2) of Schedule 14 to the 1981 Act where the owner of the land affected cannot be identified.

³ I note that the Order map does not include this curve; it shows the route E-F-G as a straight line.

Evidence of use by the public 1977-1997

30. If a presumption of dedication is to be raised, qualifying use by the public during the relevant period must be shown to have been enjoyed as of right, without interruption, and to have continued throughout the full twenty years. Use 'as of right' is interpreted as being use by the public that is not by force, does not take place in secret and is not on the basis of 'permission'.
31. In support of the claimed route I have counted evidence of use from a total of 24 people, 4 of whom attended the inquiry to give evidence in person to add to the written information already provided. All those who gave evidence verbally to the inquiry submitted to cross-examination and answered all questions put to them.
32. As I explained at the inquiry, I attach the greatest weight to evidence given in person that has been tested through cross examination. Evidence given only in writing offers no opportunity to elicit greater detail from the claimant and therefore inevitably attracts less weight especially, as here, where aspects of the user evidence are robustly challenged by the objectors.
33. In my analysis of the user evidence, I note that none of the claimants say they had ever sought or otherwise been given express permission⁴ to use the route at any time. None say they were challenged within the relevant period or ever saw notices denying access along the path, and it has not been suggested that their use was somehow conducted in secret.
34. I therefore have no hesitation in concluding that use of the 'snicket' by the claimants has at all times been 'as of right'. Neither is there any evidence that use of the route was deliberately interrupted at any time before Mr Shepherd erected the gate at B in 1997.
35. However, the main issue is whether there is sufficient evidence of use of the route to demonstrate continuous use by the public throughout the relevant twenty year period. This requires close scrutiny of the information provided on the forms in addition to the evidence given verbally by Mr and Mrs Hardman and Mr and Mrs Ellis.
36. The Ellis family lived to the west of the Order route at Wyngarth from 1975 until 1985 when they moved to Croft House (to the north and west of point G). As witnesses, Mr and Mrs Ellis were able to endorse the written evidence of their two sons who completed user evidence forms, one (Mr J Ellis) claiming regular use from 1975 until leaving home in 1992 and the other (Mr M Ellis) use around 5 times a year until 1995. Both have used the route occasionally since then when visiting.
37. Like their neighbours at Croft House, the Hardmans used the path on a regular basis: Mrs Hardman usually once a week and Mr Hardman as often as 2-3 per week. They could see the path from their kitchen window through the hedge and both say the path was well used from 1985 onwards with an estimated 20-30 people being observed each year. Passage was blocked occasionally by overgrowing vegetation, prompting Mr Hardman and others (including Mr Ellis) to cut back the hedges at both sides. Whilst Mr Hardman recalled Mr Bracewell cutting it back completely at one time, Mrs Hardman acknowledged that the path became quite overgrown in the mid-1990s.

⁴ Indeed there is no known owner of the land to grant any such permission.

38. Mr Hardman drew attention to the sewer inspection chamber located in the path around point C. Whilst he himself had resolved drainage problems, he thought the sewer was maintained by the Council.⁵
39. The majority of the written material supporting this case consists of user evidence forms completed by the individual claimants (or in some cases jointly with a spouse). Most were completed in 1997 when the application was made by Messrs Hardman and Ellis; others followed from 2001 onwards after individuals contacted BMDC to request evidence forms.
40. There are two different forms used in this case. Those people who submitted evidence in 1997 with the application used form "PRW1 – (Non-owners/occupiers etc)"; others who sent in evidence at a later date were given the updated "PRW 1 User Evidence Form".
41. There is a significant difference between the level of detail required by these two forms but of most importance is the omission of the question from the earlier version asking when the claimant *last* used the route.
42. Nineteen people completed an old form, 6 of whom supplemented their evidence by also completing a new one, and 3 people gave evidence only using a new form. There are therefore thirteen people who gave evidence only on the old style of form and for whom there is no record of when their use ceased.
43. This point was acknowledged by BMDC but Ms Benson drew attention to question 4(c) which, after asking when the claimant *first* used the way, enquires "How often since then have you used it?". In her submission, use of the word 'since' refers to ongoing use. She further pointed out that the forms ask claimants to "answer each question as fully as possible". The Council had taken all the evidence given on the forms at face value and had assumed the claimants to have been stating the truth. No interviews with any claimants had taken place although BMDC had tried to contact all those submitting forms in 1997 with a view to eliciting more information. It was accepted that there are some discordant notes amongst the user evidence but no signs of collusion.
44. The periods of use claimed vary greatly, in some cases dating back to the 1920s and 30s. However, for the purposes of this analysis it is important to focus on the relevant period, 1977-1997.
45. Whilst it is easy to establish that certain claimants started using the snicket around the beginning of that period (four members of the Ellis family in 1975/6, the two Lister children in the 'late 1970s/early 1980s' and three members of the Harrison family in 1978), there is no certainty that any of the other claimants were doing so in 1977.
46. I have counted 9 people⁶ whose use began before the late 1970s. One of these (Mr Browes) completed one of the new forms and his evidence clearly shows his use began in 1955 and ended in 1965 when he moved from Laycock. Another (Mr Bell) completed two forms, old and new, so that it is clear that he began to use the path in 1953 and (according to his second form) last used it in the mid-1990s. However, after describing his childhood use he adds: "Since

⁵ When consulted by BMDC, Yorkshire Water confirmed that the private waste water pipe crosses the footpath at this point and joins the public network in Chapel Lane. In addition, CE Electric UK advised that an electricity supply runs along the length of the Order route.

⁶ I found the forms completed by Mr Baxendale difficult to decipher and consequently am unable to rely on the information they contain.

- I returned to Laycock in 1985, I only used the path rarely.*" This suggests that Mr Bell was not using the path for a period before he returned to the village, thus casting doubt on his use between 1977 and 1985.
47. Mr Grimley stated that he first used the footpath in 1963 and describes using it occasionally when he lived at 44 Chapel Lane "*as an alternative way into Main Street*". Since he stated he had been at his (then) present address since 1972, I deduce he ceased his use of the snicket at that time and was probably not still using the way in 1977.
 48. Mrs Lansdall was 80 years old when she completed her form in 1997. Her use began over 40 years previously. Whilst she may still have been perfectly capable of using the footpath at that time, there is nothing on the (old-style) form to confirm that she was doing so.
 49. Mr and Mrs Bracewell completed forms in 1997 and 2004 whilst aged 77 and 85 respectively but neither gave any clue as to when they last used the path. The same is true for Mr Shackleton who, aged 76 in 1997, had used the route since he was a boy.
 50. Similarly, Mrs Browes was 75 when she stated she had known of the claimed path all her life and first used it as a child. In a letter Mr Browes (her son) explained that the family moved from Laycock in 1965 and that his mother had no memory of using the path since then, clearing casting doubt on any presumption that her use continued until the date of her statement.
 51. Mr Hawksworth lived in the village from 1936 until 1960. Completing an old-style form in 2003 he stated he had first used the path in the late 1930s but had known of the way "*from 1936 to present day*". Yet living at an address two miles or so from the route, it is not at all clear whether he was still using the footpath during the relevant period.
 52. Had any of these people been able to be present at the inquiry to give clearer details of their use, then I could have placed a great deal more weight on their evidence than is now possible from the few details that can be established from their forms. As far as use at the beginning of the relevant period is concerned, I can rely only on the evidence of use by three families, only one of which was represented at the inquiry.
 53. Mr and Mrs Lister completed a form in 1997. They stated they had known of the path for 22 years and acknowledged it had been overgrown on occasions. In answer to the question "*Have you ever used the way?*" they say "*No*". However their children did so occasionally in the late 1970s and into the 1980s.
 54. The Harrison family moved to Laycock in 1978. On her old-style form completed in 1997 Mrs Y Harrison said she used the path occasionally, especially when her children were young. Her son, Mr K Harrison, was 5 or 6 in 1978 and states he used the path "*frequently in my childhood, decreasing as both I became older and the path became more overgrown*". However there is no indication when he last used the route. Mr S Harrison completed a new-style form in 2011, explaining that the family had moved from the village in 2002 and that he last used the route at that time. He had used it twice a month and was aware of others using it too. He recalled villagers cutting back the hedge "*to safeguard long time owner Miss Baldwin from muggers*" and also that "*Bradford Drainage had access to sewer*". He further writes that after Mr Shepherd's gate was taken down, "*villagers continued to use the path*".

55. In the mid-1980s the Hardmans began to use the path, as did Ms Donovan, Ms McPhail and Mr Bell but Mr K Harrison began to use it less and the Lister children ceased their use. By 1990, the former owner of Pear Tree Cottage (54 Chapel Lane) Ms Marshall moved in and started to use the path.
56. Thus in the middle years of the relevant period I find reliable evidence of 4 individuals beginning to use the path in addition to the Harrisons, the Hardmans and the Ellis family.
57. When examining use during the latter years, I am mindful of the photograph taken in 1995 submitted by the objectors which shows the entrance to the footpath at point A clearly overgrown with the adjacent hedge, bushes and ivy. I have also noted the comments of Mr K Harrison⁷ and similarly those of Mr Bell who wrote of the path: *"It became very rough and overgrown which eventually put me off from using it years ago"*.
58. In evaluating the evidence from claimants for this period in the mid-1990s I take note that these two people acknowledged their use declined. Of those remaining, 4 describe their use as occasional or when visiting and one as 'seldom'. Other than the Mr and Mrs Ellis and Mr and Mrs Hardman, there is only the untested evidence of Ms Donovan (weekly) and Mr S Harrison (twice monthly) who claim to have been still using the route throughout the 1990s with any regularity.
59. In summary, my examination of the user evidence presents a rather different picture to that suggested by BMDC's graph or Mr Winter's analysis
60. I must also take into account the evidence of Mr and Mrs Hutchinson. In a letter to BDMC in 2013 Mrs Hutchinson offered the opinion that *"no one used it at all for at least 30 years because it was unusable (as) it was overgrown"*. At the inquiry she questioned the extent of the use claimed⁸ but accepted that after the snicket had been cleared in the late 1990s some did use it as a short cut. She herself had only used the passageway to go half way so as to call for her children during the 1970s and early 1980s, being prevented from going further by brambles and boulders.
61. Also relevant are the photographs of the space to the rear of No 64 taken in 1995 showing the area to be covered in ivy with a tree located close to the rear wall of the outbuilding forming part of No 54. I have already noted the presence of a post and chain barrier adjacent to the white gate post together with the difficulty presented by the white gate between points F and G.
62. Lastly I need to consider the evidence of Mr Place, one of the trustees of the Baldwin Estate who sold No 64 to the Shepherds in 1996. In 2001 Mr Place completed a form (PRW 3) provided by BMDC for former owners and occupiers although he confirmed he had neither owned nor occupied the property. He stated that he was not familiar with the property during the period of ownership, Mr J E Baldwin having purchased the house in 1951 and it being sold following the death of his daughter, Annie, in 1994.
63. BMDC highlighted a comment made on the form by Mr Place: *"Prior to being overgrown this little path was used as a short cut by family, friends and other villagers and thought to be a public right of way."* The Council argues that this

⁷ At paragraph 54 above

⁸ Mr Hardman pointed out that Mrs Hutchinson does not have a clear view of the path from her property.

is a clear acknowledgement of the use that was known to Mr Place. However this contradicts a letter written by him in September 2000 in which he wrote that "*the path by the side of the house was used by family and friends until the 1970s when it became blocked due to lack of use.*"

64. Mrs Shepherd submitted that Mr Place had misunderstood the purpose of the 'landowner evidence form' and mistakenly thought it to be from the Land Registry which was trying to resolve an ownership issue. Earlier, in a statutory declaration made by him in 1996 in connection with the registration matter, he had acknowledged that there had been "a footpath" to the side and rear of No 64 but that this had not been used by any persons for more than twenty years as it had been overgrown.
65. I understand that Mr Place was, through marriage, related to the Baldwin family yet there is no indication in his written evidence any clue as to his familiarity with the claimed footpath. In his letter of 2000 he said he relied on his own knowledge "*and that of members of the Baldwin family*" but the extent of neither is explained further. In the absence of further evidence to elucidate, I am not inclined to place a great deal of weight on Mr Place's comments one way or the other.
66. On balance, weighing the obvious physical difficulties apparent from photographs against the evidence of use (which is largely untested) and which at best amounts to only 6 regular users, I have to conclude that there is relatively little to support the continued use of the route by the public over the last 2 years of the relevant period at least. It appears to me likely that once Annie Baldwin left No 64 in 1990/91⁹, the incentive to keep the vegetation cut to ensure her safety had gone and the way fell into disuse as a consequence. That conclusion is in accord with the objectors' submission that the use claimed between 1995 and 1997 is simply not credible since the path was blocked by overgrown vegetation, garden rubbish, rough stone and rubble when they first went to the property and could not have been in regular use.
67. Having heard the evidence of witnesses at the inquiry, and considered all the relevant written submissions, I am not satisfied that this demonstrates regular use of the Order route by the public on foot, as of right and without interruption, throughout the twenty years between June 1977 and June 1997.
68. Although I find no evidence that during that same period the owner of the path (whoever that may be) or any nominated agent on his or her behalf, took any action to inform the public that the Order route was *not* being dedicated as a right of way, I find the evidence to demonstrate use by the public continuously throughout the relevant twenty years is not sufficient to raise a presumption of dedication as a public path, it falling short, especially over the latter years.

Implied dedication at common law

69. I have also considered whether dedication of a public right of way might have been established under the common law. In addressing this possibility the issues I am required to examine are whether, during any relevant period, there was express or implied dedication by the owner(s) of the land in question (having the capacity to dedicate a public right of way), and whether there is

⁹ Mrs Hutchinson reported that Miss Baldwin had moved into a care home in 1990/91; some time before this she had been mugged whilst returning home by assailants who hid in the overgrown passage. Thereafter several local people helped to cut the vegetation along the path to make the path more secure. Miss Baldwin died in 1994.

evidence of acceptance of the claimed right by the public. In this case the burden of proof lies with those that assert the existence of a public right of way.

Actions of the land owner(s)

70. It is not my role to adjudicate on land ownership matters but, since the actions of the owner of the land comprise a significant factor in this analysis, I need to establish any relevant land interests as far as I reasonably can.
71. Ownership of the land to the side and rear of No 64 is unregistered. Whilst I accept it is entirely possible that the land formed part of a farm owned by the Brigg family in the eighteenth century (as submitted by Mrs Shepherd) and thus that ownership might be traced back to one of the surrounding properties forming a part of that original land holding, none of the evidence before me enables me to reach any firm conclusion on this. However nothing has been produced that shows the (presently unknown) owner did not have the capacity to dedicate a public right of way over the Order route if he or she so wished.
72. There is no evidence of express dedication of the route as a public right of way. The next step is therefore to consider whether dedication as a public path is implied, either by the actions or inaction of the landowner(s) at any time in the past.
73. Having examined the documentary evidence presented to me, I have concluded that it is likely a path was physically available for use from 1933 (at least), and that at some stage there would have been a gate located in the wall at point C. The hinges still visible on the house endorse this, though none of the claimants mention a gate¹⁰ or any other obstruction until Mr Shepherd's gate in 1997. Some refer to the upper section of the path becoming rough and stoney in the late 1990s and the whole length was overgrown at times. Yet before the 1990s, there is nothing to indicate that the path was unusable at any stage.
74. The physical character of the majority of the route as a walled path leading from Laycock Road is strongly suggestive of a public way and, in the absence of any notices to deter people walking through, I consider it entirely understandable that members of the public may have regarded the path as available for their use and that the owner of the land, whoever that was (or is), was content to dedicate the way for that purpose.
75. Had the path been on land within the ownership of No 64, I may have been swayed by Mrs Shepherd's argument that this was simply a private path to the side door of the house and no further. However that is not the case, and OS maps support the conclusion that from 1933 onwards the way was open all the way through to Chapel Lane.
76. In addition to the weight I attach to the intrinsic nature of the way, at least pre-1990, I find it significant that at least three witnesses independently refer to maintenance of the path at the public expense.
77. Mr Bracewell (formerly of Croft House) wrote that it was "maintained by Keighley Borough Council", Mrs Lansdall mentions maintenance by a "Linesman"¹¹ employed by "Keighley" who cleared overhanging branches, and Mr Bell wrote that it was maintained by a "Council Roadman in the 1950's".

¹⁰ If the gate disappeared in the 1950s for example, it may not be surprising to find no-one recalled it in 1997.

¹¹ I presume she was referring to a lengthsman.

78. No highway records have been produced to verify the implied public responsibility for maintenance of the Order route. Indeed it is relevant to ask why, if this was a recognised village path in the 1950s, it was not recorded on the first definitive map and statement prepared under the National Parks and Access to the Countryside Act of 1949. Nevertheless, the clear recollections of these three people deserve an element of weight although I recognise this is evidence that has not been tested.
79. In summary, it appears there is no action that might be attributable to the landowner other than the continued provision of a physical way which, until the 1990s, had the appearance of being a public one. I therefore find that during the period 1933 to 1990, on balance it would be reasonable to conclude that dedication of the way as a public footpath could be implied.

Use of the footpath by the public

80. The question that remains is whether the evidence before me is sufficient to demonstrate that the public did in fact accept the implied dedication, even though the frequency of that use was not great.
81. I have noted five people who began using the path in the 1920s and 1930s. Of these, I cannot establish precisely when Mr and Mrs Bracewell ceased walking it, or Messrs Hawksworth or Shackleton, though I understand Mrs Browes left the village in 1965. Nevertheless, I consider it reasonable to deduce these people were all using the way in this early period.
82. By the 1950s, I can rely not only on Mrs Browes and her son using the way until 1965, but also on Mr Bell and Mrs Landsdall who both started to use the path at that time. Mr Grimley began his use in 1963 and I can rely on his continuing until 1972 at least.
83. None of these people used the way frequently, other than those who did so as children, for example Mr Bell and Mr Browes in the 1950s and 60s. Indeed Mr Bell recalled that when he was a child (in the 1950s) "*the path in question called 'the snicket' was used daily by children and adults.*" Mr Browes used it regularly all through his childhood and early youth (late-50s to early 60s) as did "*the gang of kids*" he played with.
84. By the 1970s the Harrisons, the Lister children and the Ellis family were all users of the path and as other claimants began to use it in the 1980s and I shall assume other more elderly claimants perhaps did so less.
85. I have already concluded that overall use dwindled in the 1990s but the evidence shows that over the 50-60 years or so before this path became overgrown and fell out of use, there had been uninterrupted use by members of the public.
86. I note the very clear recollection of Mr Hawksworth who in 2003 wrote: "*This path was used by people from Chapel Lane for access to the telephone box and (by) farm workers. It also served in the last war as a quick way to warn the Chapel Lane residents of impending danger as the A.R.P. Box was by the phone box. The point is that it has always been a part of the village and for everyone to use. It has been said that it was once a part of the old barn land that "Wyngarth" now stands (on) and (that) a path was made for the family of "Shackletons" who lived at "Wyngarth" and "Croft House" for a short cut to the Wood Mill () which they owned, but if it had been so it would not have been*

deemed as public by the village people all these years. This path has never been questioned as to its status in my time as a public way." Whilst I am not convinced that Mr Hawksworth was still a regular user of the way in 2003, I consider his recollections of the path from previous decades to be sound.

87. Overall, I find the evidence is sufficient to show that between the 1930s through to the 1970s at least, there was regular use of this route as a link between Chapel Lane and Laycock Lane to demonstrate acceptance of the route as a right of way by public.
88. The objectors submitted that many of the claimants were confused over the exact route they used. Although only four supporters were available at the inquiry to clarify their evidence, I am in no doubt that the people who completed user evidence forms were referring to the Order route. I have examined the plans each person marked with the path they walked and am satisfied that there is no confusion.
89. However, there remains a question over the precise route of this footpath at its northern end, where it joins Chapel Lane. As I noted earlier at paragraph 25, according to Mr Ellis' evidence, the white post and gate have been in situ since 1975 at least so that any subsequent user must have passed to the south of it to join Chapel Lane, on the line shown on Mr Hardman's plan drawn in 1999.
90. Being unable to question any of the claimants who used the path pre-1975 to establish the exact line they took leaves the point reliant on their plans. Most though not all drew a straight line, whilst some post-1978 users (such as Ms Donovan and Mr and Mrs Harrison) drew a path with a slight curve at the top.
91. In reaching a conclusion on alignment, I note that the OS 1:2500 map which was surveyed sometime between 1956 and 1975 does not show a gate (or any other barrier) across the line of the Order route between F and G. Although I cannot be certain, on balance I consider it most likely that the white gate was installed in the early 1970s and that thereafter people deviated around it as described by Mr Hardman. However, I conclude that the route shown on the Order map A-B-C-D-E-F-G is probably the one used by the majority of people throughout the 1930s, 40s, 50s and 60s when the right of way was established.
92. As a result, I conclude the evidence before me is sufficient to show the required elements for implied dedication of a public right of way at common law have been satisfied, that is both dedication and acceptance.

Summary

93. To summarise, I reiterate my conclusions in paragraph 68 that the evidence is not sufficient to demonstrate use by the public continuously throughout all the relevant period, 1977-1997, it falling short particularly over the latter years. The presumption of dedication as a public path does not therefore arise, despite there being no evidence that during the same period the owner of the path (whoever that may be) took any action to inform the public that the Order route was *not* dedicated as a right of way.
94. However, when considering the totality of the evidence under the common law approach, I have concluded the evidence *is* sufficient to show that dedication of the way as a public path was implied and that the way was accepted through continuous use by the public from the 1930s to the mid-1970s without challenge. Consequently I conclude the Order should be confirmed.

Other matters

95. I made clear at the inquiry that neither the benefits nor the disadvantages of public access along the Order route are at issue here. Neither have I given weight to arguments about the need for this route as an alternative to Chapel Lane because the bus turns here and there is no footway, or because it is (or is not) a short cut, or steep and slippery in winter. Although I understand the concerns expressed by objectors over the potential impact of the footpath on their use of land to the rear of their property, these issues are not matters I can take into account when determining an order of this nature.
96. I have noted comments made by Mr S Harrison on his evidence form, where he expresses the view that "*this dispute has taken an inordinate length of time to resolve*". That is undoubtedly true and is a situation that is hugely regrettable for all parties concerned. Whilst the law operates on the premise 'Once a highway, always a highway', there is no doubt that assessing relevant evidence almost twenty years after the application was made presents many challenges. Whilst these difficulties could have been lessened had potential witnesses been interviewed to establish more details, or better still been present at the inquiry, I am satisfied that elements of the claimants' written evidence can be relied upon sufficiently to support the existence of a low-key village footpath used by the public over a great many years.

Conclusion

97. Having regard to the above and all other matters raised at the inquiry and in the written representations, I conclude that the Order should be confirmed.

Formal Decision

98. I confirm the Order.

Sue Arnott

Inspector

APPEARANCES

In support of the Order

Mr R Winter Solicitor, representing Bradford MBC

Who called

Ms J Benson Bradford MBC; Strategic Routes Officer

Mr A Hardman Applicant

Mrs S Hardman

Mr N Ellis Applicant

Mrs R F Ellis

Opposing the Order

Mr R Shepherd Statutory objector

Mrs R Shepherd Statutory objector

Mrs H Thompson

Mrs S Hutchinson Statutory objector

DOCUMENTS

1. Copies of statutory notices and certification
2. Copy of the statutory objections and letters of support
3. Statement of grounds on which it is considered the Order should be confirmed and comments on the objections submitted by Bradford MBC including bundle of relevant case documents
4. Statement of case of Bradford MBC including bundle of relevant case documents and comments on the objections
5. Proof of Evidence of Ms J Benson, Bradford MBC
6. Summary Proof of Evidence of Ms J Benson, Bradford MBC
7. Statement of Mr R Shepherd attaching appendix (Evidence of Mr R Shepherd)
8. Proof of Evidence of Mr R Shepherd
9. Statement of Mrs R Shepherd attaching appendix (Evidence of Mrs R Shepherd)
10. Statement of Mrs H Thompson attaching appendix (Evidence of Mrs H Thompson)
11. Statement and proof of evidence of Mrs S Hutchinson
12. Letter to the Planning Inspectorate dated 4 December 2015 from Mrs S Hardman
13. Statement (undated) of Mr A Hardman
14. Letter to the Planning Inspectorate dated 5 December 2015 from Mr N Ellis & Mrs F Ellis
15. Email sent to the Planning Inspectorate on 22 December 2015 from Ms B Archer of BANDAG Keighley

Submitted at the inquiry

16. Set of 7 photographs taken on 22 January 2016 and submitted by Ms J Benson
17. Copies of title registration documents from Land Registry for properties in the vicinity of the Order route together with composite plan
18. Ordnance Survey map 1:2500 dated 1956-1975
19. Two photographs dated 1999/2000 provided by Mr Ellis
20. Two photographs dated October 1999 provided by Mr Hardman