



Order Decision

Site visit made on 28 February 2016

by Mark Yates BA(Hons) MIPROW

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

Decision date: 22 March 2016

Order Ref: FPS/U1050/7/95

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the 1981 Act") and is known as the Derbyshire County Council (Bridleway from Wood End Lane to Ingleby Road – Parish of Stanton by Bridge) Modification Order 2014.
 - The Order was made by the Derbyshire County Council ("the Council") on 13 February 2014 and proposes to add a bridleway ("the claimed route") to the definitive map and statement, as detailed in the Order Map and Schedule.
 - There was one objection and one representation¹ outstanding when the Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.
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Procedural Matters

1. In light of the representation from Ms Barnett, I accept that Part II of the Order Schedule should be modified to provide greater clarity in relation to the gates and gaps recorded. I noted during my visit the two points where there is a field gate and adjacent gap. The widths for the different sections of the claimed route are specified in the Order and the Council has clarified the widths of the gates.

Decision

2. I confirm the Order subject to the modification detailed in paragraph 13 below.

Main Issues

3. The Order relies on the occurrence of an event specified in Section 53(3)(c)(i) of the 1981 Act. Therefore, if I am to confirm the Order, I must be satisfied that the evidence shows that a public right of way subsists. The burden of proof to be applied is the balance of probabilities.

Reasons

4. The claimed route is shown on the 1881 and 1901 Ordnance Survey maps. These maps indicate that the route is a longstanding feature but they provide no clarification regarding its status.
5. The '*handover map*' of 1930, which was produced in relation to the transfer of maintenance responsibility for highways from Shardlow Rural District Council to the Council², includes the claimed route. The route is described in the accompanying schedule as proceeding from "*Stanton via Robin Wood to B5007*" and includes the remarks "*Satisfactory, No traffic*".

¹ I have taken the correspondence from Ms Barnett to constitute a representation to the Order.

² Under the Local Government Act 1929

6. The handover documents provide conclusive evidence of the highway authority's acceptance of maintenance responsibility, which would not have been taken lightly. They are supportive of an acknowledgment of the existence of public rights but they do not specify the extent of any such rights. However, the explanatory notes to the handover schedule indicate that the maintenance of field footpaths in this area was administered at a parish level. This suggests that the route was considered to have a higher status than a footpath. The claimed route is currently recorded as a non-classified highway on the Council's record of publicly maintained highways and this provides further support for it having public status.
7. A survey form of 1950, compiled in connection with the production of the original definitive map for the area, reveals that the route was claimed by Stanton by Bridge Parish Meeting as a bridleway. The reason given being public use for a period of 100 years or more. No evidence has been provided to explain the subsequent omission of the claimed route from the definitive map. It could have been due to the route's inclusion in the Council's highway maintenance records. This evidence is nonetheless supportive of a belief by the parish meeting at the time that the claimed route was a public bridleway.
8. The parish meeting submitted an application in 2007 to record the claimed route as a public bridleway. Eight user evidence forms have been submitted in support of use of the route and additional evidence was provided in response to the consultation exercise undertaken by the Council. The majority of the personal use detailed in the evidence forms was on foot but there is also evidence of equestrian and cycle use. This use is stated to have generally occurred on a frequent basis. In addition, there is evidence of use of the route by horse riders and cyclists being observed and two people have provided evidence of use by equestrian groups. The user evidence provided could be supportive of the existence of a public bridleway.
9. The objector (Mr Cleary) refers to use of the claimed route by motor cyclists but he has provided no evidence to substantiate this assertion. Whilst there is some evidence of observed use by motor vehicles, the extent of this use cannot be determined from the evidence of the people concerned. It is apparent that some of this use was by farm vehicles.
10. There is some evidence of permission being granted for certain people to use the claimed route. However, the documentary evidence suggests that any such permission was not necessary. Whilst a clause in a tenancy agreement of 2002 requires the tenant to prevent the acquisition of additional rights over the land, it would not relate to any public rights that already existed. Further, the only apparent attempt to deny access appears to relate to use by motor vehicles.
11. The documentary evidence is supportive of the claimed route being recognised by the relevant local authorities as a highway with the parish meeting considering it to be a bridleway. This is generally supported by the user evidence provided. Whilst it is apparent that there has been some use by mechanically propelled vehicles, I am not satisfied it can be determined from the evidence that this use was sufficient to infer that a vehicular highway exists. For these reasons, I conclude on balance that a public bridleway subsists and the Order should be confirmed with a modification.

Other Matters

12. The existence of other rights of way in the area and the potential loss of routes for mechanically propelled vehicles are matters that are not material to the determination of whether particular public rights subsist in this case.

Modification

13. The modification to the Order is as follows:

- Delete "*2 field gates with gaps: GR SK3636 2636; GR SK3651 2696*" underneath the column headed "*Remarks*" in Part II of the Order Schedule and insert "*5 metres wide field gate and adjacent gap at GR SK3636 2636 and 4.9 metres wide field gate and adjacent gap at GR SK3651 2696*".

Mark Yates

Inspector