



Appeal Decision

by Mark Yates BA(Hons) MIPROW

an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs

Decision date: 21 October 2016

Appeal Ref: FPS/Q2500/14A/2

- This appeal is made under Section 53(5) and Paragraph 4(1) of Schedule 14 of the Wildlife and Countryside Act 1981 ("the 1981 Act") against the decision of Lincolnshire County Council ("the Council") not to make an order under Section 53(2) of that Act.
- The application dated 30 July 2014 was refused by the Council on 25 January 2016.
- The appellant claims that a route within the parishes of Marshchapel, Grainthorpe and North Somercotes should be recorded in the definitive map and statement for the area as a bridleway. It is claimed that a bridleway proceeds in the locality of the existing Footpath No. 18, between Stonebridge Cottages (North Somercotes) and Keyholme Lane (Marshchapel).

Summary of Decision: The appeal is dismissed.

Preliminary Matters

1. I have been directed by the Secretary of State for Environment, Food and Rural Affairs to determine an appeal under Section 53(5) and Paragraph 4(1) of Schedule 14 of the 1981 Act.
2. I have not visited the site but I am satisfied I can make my decision without the need to do so.
3. The application map shows a yellow line corresponding to a proportion of Footpath 18, which proceeds on the whole over a sea defence bank. There are also yellow lines continuing on either side of the footpath. An additional yellow line is shown curving away from Footpath 18 near to Grainthorpe Haven. It is apparent that the appellant is claiming that a proportion of Footpath 18 ought to be upgraded to bridleway status and additional unrecorded sections should be designated as a bridleway. The appellant says that a growth in vegetation and damage by animals has led to people deviating away from Footpath 18 in places. There are existing tracks shown on the application base map to the north and south of the bank.
4. A more recent map shows a single route claimed with a potential diversion in relation to Footpath 18. However, I consider that regard should be given to the map tendered with the application.
5. In the circumstances, I believe that it is appropriate for me to consider the evidence supplied and determine whether an order should be made to record a bridleway over any of the routes shown on the application map. This evidence includes the submissions of North Somercotes Parish Council and the Environment Agency ("EA"). The latter acquired ownership of land included in the application in 2006.

6. I note the Council's concerns regarding the amount of additional evidence provided by the appellant following its determination of the application. However, I do not consider that it is appropriate for me to now disregard the additional evidence provided.

Main Issues

7. In respect of the upgrading of any part of Footpath 18, Section 53(3)(c)(ii) of the 1981 Act specifies that it needs to be determined whether a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description. The burden of proof in such circumstances is the balance of probabilities.
8. Where no right of way presently exists, Section 53(3)(c)(i) of the 1981 Act specifies that an order should be made following the discovery of evidence which, when considered with all other relevant evidence, shows that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist. If there is a conflict of credible evidence but no incontrovertible evidence that a way cannot be reasonably alleged to subsist then I should find that a public right of way has been reasonably alleged to subsist.
9. The relevant statutory provision, in relation to the dedication of a public right of way, is found in Section 31 of the Highways Act 1980 ("the 1980 Act"). This requires consideration of whether there has been actual use of a way by the public, as of right and without interruption, for a period of twenty years prior to its status being brought into question and, if so, whether there is evidence that any landowner demonstrated a lack of intention during this period to dedicate a public right of way.
10. An implication of dedication may be shown at common law if there is evidence from which it can be inferred that a landowner has dedicated a right of way and that the public has accepted the dedication. In relation to the documentary evidence provided, Section 32 of the 1980 Act requires a court or tribunal to take into consideration any map, plan or history of the locality, or other relevant document which is tendered in evidence, giving it such weight as appropriate, before determining whether or not a way has been dedicated as a highway.

Reasons

Documentary evidence

11. Reference is made in support of the appeal to a 1630 Decree of Endemion Porter and a 1635 Decree of the Exchequer. The Council states that these were concerned with the dividing and allotting of the North and South Somercotes Marsh and the appellant adds that the latter related to the resolution of land disputes that had arisen.
12. There is no map to identify the location of a 40 feet wide way mentioned in the above documentation. Nonetheless, I accept that there is a strong possibility that this way corresponds to the public carriage and drift road included in the 1842 North Somercotes Inclosure Award (called '*Forty Foot Marsh Lane*'). This is now the highway known as Marsh Lane which links with Footpath 18. However, the evidence does not provide support for the existence of an ancient highway continuing over any of the claimed routes. It cannot be presumed

- that access to locations mentioned by the appellant was obtained by a particular route in the absence of evidence that such a route existed. Nor can it be determined that the pack horse trail mentioned by a local historian (Mrs Larking) continued over the present sea bank.
13. Whilst the tithe maps for North Somercotes (1840), Grainthorpe (1845) and Marshchapel (1839) show the land within the application, there is nothing to support the existence of a highway over it. Nor is there anything of note in the accompanying tithe apportionments for these parishes. The 1858 Outmarsh of Marsh Chapel and Grainthorpe Inclosure Award set out a sea embankment over the same line as the present sea defence in the relevant parishes. It is apparent from the map evidence that the original sea bank lies some distance away from the present one.
 14. The plan with the 1868 sales particulars for Porter's Marsh Farm shows a feature called '*New Sea Bank*' which follows the line of the present bank and Footpath 18. This plan also shows the old sea bank. Marsh Lane is coloured brown as are other routes, including one proceeding adjacent to the new bank. It is apparent that the route shown adjacent to the new flood bank was a continuation of the route annotated "*Carriage Road*" on the plan. However, the carriage roads referred to in the special conditions within the sales particulars are stated to be for the benefit of particular lots. Whilst it is possible that public use preceded the construction of the new flood bank on which Footpath 18 is sited, there is no documentary evidence in support of such use.
 15. The 1888 Ordnance Survey map shows a route over the new flood bank which is annotated "*FP*". This is replicated on the subsequent Ordnance Survey maps of 1905/06 and 1953. These maps provide no confirmation of the status of the particular tracks or paths shown. However, in this case, the surveyor clearly considered that the feature on site corresponded more closely to a route used by pedestrians. In terms of the photograph of the horse rider stated to have been taken in 1934 at the Beacon, the EA states that this landmark was located at Donna Nook. It is apparent that the photograph was taken a fair distance to the south-east of the point Footpath 18 meets Marsh Lane. Therefore, it cannot be supportive of use of any of the routes claimed. The 1900s photographs supplied by a Mr West also do not relate to the land within the application.
 16. Having regard to my conclusions above, I do not consider that the dedication of a highway can be inferred from the documentary evidence in relation to any of the routes shown on the application map.

User evidence

17. I have taken the date of the application as being the event which initially brought the status of the claimed routes into question. This means that the relevant period in relation to Section 31 of the 1980 Act ("the relevant period") is 1994-2014.
18. Eleven user evidence forms ("UEFs") were submitted in support of the application. However, I have discounted the evidence of Mrs Carter and her daughter as it is apparent that their use generally related to land to the west of the routes claimed with the permission of the landowner at the time (Mr Dawson). The remaining nine people provide evidence of equestrian and cycling use dating back in one case to 1958. There is evidence of use from six

- people between 1994 and 1998. For the remainder of the relevant period there is evidence of use from seven to nine people.
19. A photograph supplied by the appellant shows a stile and gate on the sea bank. The gate does not necessarily indicate an acceptance of public bridleway rights but it suggests that equestrian and cycle access would have been possible. However, the annotation on the photograph indicates that the land is some distance to the north-west of the section of the bank within the application. Another photograph showing the presence of a horse rider in the distance was taken following the end of the relevant period.
 20. Whilst I note the references by the appellant to other Inspectors Decisions, each case should be determined on its own merits. There needs to be sufficient evidence of use to raise a presumption of dedication. The number of users is low even allowing for the rural setting of the route. Further, the frequency of the use is in most cases stated to have occurred on a monthly basis.
 21. In particular, the various routes shown on the maps with the UEFs are not generally consistent in terms of the route or routes used. Where more than one route is shown on a UEF map, it cannot be determined to what degree each route was used. Although Mr Dawson accepts that the bank has been used, he also refers to use of other tracks in the locality. On this issue, I note the concerns of the appellant regarding the lack of interview or discussion with Mr Dawson when the Council investigated the application. However, I can only reach my decision on the basis of the information supplied by the parties.
 22. I note the appellant's comment that the application should not be prejudiced by the lack of a single properly maintained route. This would have to relate to the route of Footpath 18 recorded on the definitive map. However, it is apparent that a variety of routes have been used by the people who completed a UEF. If an error is believed to have occurred in relation to the completion of these maps, this should have been clarified with the people concerned. The use of the different routes is supported by the photographic evidence provided. Overall, it cannot be determined from the evidence that a particular route or routes was used to such a degree to raise a presumption of dedication under statute during the relevant period.
 23. The issue in relation to the use of apparently different routes by the people who have completed a UEF will also impact upon any earlier period for the purpose of statutory dedication and common law dedication.
 24. There are some references to historical cycling use in the statements of Mr Worthington and Mr Stones. They have seen people in the past cycling on the section to the north-west of Pye's Hall in order to travel to the former North Cotes air base. Mr Stones has also seen use by horse riders. A statement by Mr Hasthorpe reveals that he cycled on the bank as a child. He also mentions other people cycling in this locality. In addition, I note that Mrs Larking recorded the recollections of Mr Humberstone in an interview before he passed away in 1996. He recalled his time cockling at Donna Nook and travelling with a horse and cart via the sea bank to Grimsby in order to transport produce. In this extract, reference is made to there being up to 30 carts on the beach. However, this statement does not necessarily point to use of the bank by these vehicles. North Somercotes Parish Council states that it is aware of use by horse riders and cyclists.

25. The personal statements outlined above provide some evidence in support of the potential dedication of higher rights over the sea bank. However, I am not satisfied on balance that the evidence is sufficient by itself to raise an implication of the dedication of a bridleway which broadly corresponds to the alignment of Footpath 18. Nor in my view does the evidence indicate that a bridleway can be reasonably alleged to subsist over any other route. In light of my conclusions regarding the evidence of use provided, it is not necessary for me to consider the actions of the landowners in the context of common law or statutory dedication. This includes the submissions made by the parties in relation to the EA bylaws and the issue of statutory incompatibility.

Conclusions

26. In light of my conclusions regarding the documentary and user evidence, I do not find that a public right of way can be reasonably alleged to subsist or that a section of footpath ought to be shown as a bridleway.

Other Matters

27. I concur with the appellant that the issues arising out of the realignment project being undertaken by the EA are distinct from the matter that I need to determine.

Overall Conclusion

28. Having regard to these and all other matters raised in the written representations I conclude that the appeal should be dismissed.

Formal Decision

29. The appeal is dismissed.

Mark Yates

Inspector