
Appeal Decision

by Barney Grimshaw BA DPA MRTPI (Rtd)

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

Decision date: 08 February 2017

Appeal Ref: FPS/Q2371/14A/15

- This Appeal is made under Section 53(5) and Paragraph 4(1) of Schedule 14 of the Wildlife and Countryside Act 1981 against the decision of Lancashire County Council not to make an Order under section 53(2) of that Act.
- The Application dated 8 December 2015 was refused by Lancashire County Council on 28 June 2016.
- The Appellant claims that a route known as Culbeck Lane (Euxton Footpaths 37, 38 & 39) running between Dawbers Lane and Runshaw Lane, Euxton, Lancashire should be upgraded from footpath to Restricted Byway.

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 this appeal under Section 53(5) and Paragraph 4(1) of Schedule 14 of the Wildlife and Countryside Act 1981 (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. I attach copies of two maps prepared by Lancashire County Council showing the claimed route for reference purposes.

Main issues

4. Section 53(3)(c)(ii) of the 1981 Act provides that an Order should be made to modify the Definitive Map and Statement if evidence is discovered which, when considered with all other relevant evidence available shows that 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.
5. Some of the evidence in this case relates to usage of the claimed route. In respect of this, the requirements of Section 31 of the Highways Act 1980 (the 1980 Act) are relevant. This states that 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 deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The period of 20 years is to be calculated retrospectively from the date when the right of the public to use the way was brought into question.

6. Common law also requires me to consider whether the use of the route and the actions of the landowner have been of such a nature that the dedication of the route by the landowners as a Restricted Byway can be inferred.
7. As this Appeal is concerned with a possible unrecorded vehicular route, it is also necessary to have regard to the provisions of Section 67 of the Natural Environment and Rural Communities Act 2006 (the 2006 Act) which extinguished rights of way for mechanically propelled vehicles (MPVs) subject to certain exceptions.

Reasons

Documentary Evidence

Commercial Maps

8. The earliest commercial maps available do not show the claimed route. Cary's map (1789) does not show it at all but Yates (1786) and Greenwood (1818) show short sections close to Points A and F but not the remainder of the route.
9. Baines' Map (1824) does not match modern mapping but shows a route which might correspond to the claimed route. Hennet's Map (1830) and most subsequent maps consistently show the whole route as a significant feature. On one map (Cassini, 1840-43) the claimed route appears to be more important than Dawbers Lane and the Culbeck Brook is shown running under the claimed route but straight across Dawbers Lane.
10. These maps would appear to show that the claimed route existed from at least 1830 and was regarded as a route of some significance, otherwise it would probably not have been shown on such small scale maps. However, the maps do not provide a reliable indication of the status of the routes shown.

Tithe Records

11. Under the Tithe Commutation Act 1836, tithes were converted to a fixed money rent. In most areas this required detailed surveys to be carried out in order to apportion the amount of tithe payable among the landowners of a parish. Tithe documents that were prepared had the sole purpose of identifying titheable or productive land. They are statutory documents which were in the public domain but were not produced to record public rights of way, although they can sometimes be helpful in determining the existence and status of routes.
12. The Tithe Map of Euxton (1847) shows the claimed route coloured in sienna in the same manner as public roads and most other roads. On the base map used, the route is crossed by solid lines close to Points A, E and F presumably indicating the presence of gates and the Culbeck Brook is shown running across the route and then under Dawbers Lane (unlike the depiction on the Cassini map referred to above).
13. In the Award itself the route is referred to as a 'road' and not subject to payment of tithe. However, it is also described as being in private ownership and is not grouped with other roads which are specifically described as public without reference to any private owners.
14. In my view, although the tithe records confirm the existence of the route as a road of some sort in 1847, they do not indicate whether there were any public rights over it.

Ordnance Survey (OS) Maps

15. The earliest OS map available, a 1" to the mile map published in 1842 and used as a base for showing Estates in Lancashire, shows the whole of the claimed route in the same manner as the Cassini Map previously referred to which appears to have been based on the OS map.
16. A 6" to the mile map of 1849 shows the claimed route named as Culbeck Lane. The 25" map of 1894 also shows it named and with a separate parcel number. Lines, probably indicating gates are shown at Points A, E and F. Later large scale maps show similar information although a 1910 map does not appear to show a gate at E.
17. An OS Object Names Book of 1907 lists Culbeck Lane and in one column underneath the name is written the word 'private' but this is then crossed out. The route is described as a 'lane' whereas Runshaw Lane is described as a 'road' which is maintainable by the Rural District Council. The purpose of the Names Book was not to define the status of routes shown on maps but to record the correct names and spelling of features.
18. OS maps provide an accurate record of features which existed on the ground at the time they were surveyed but they do not purport to indicate the status of routes shown and from 1888 onwards the maps included a specific note to the effect that routes shown were not necessarily public rights of way.

The 1910 Finance Act Records

19. The 1910 Finance Act imposed a tax on the incremental value of land which was payable each time it changed hands. In order to levy the tax a comprehensive survey of all land in the UK was undertaken between 1910 and 1920. This survey was carried out by the Board of Inland Revenue under statutory powers and it was a criminal offence for any false statement to be made for the purpose of reducing liability. The existence of public rights of way over land had the effect of reducing the value of the land and hence liability for the tax; they were therefore recorded in the survey.
20. In this case the Finance Act base map shows the claimed route between Points A and E as being excluded from adjacent hereditaments and not liable for tax. However, the section from E to F is included within plot 608 for which a deduction of £5 is recorded in the Field Book in respect of a public footpath across the land. A further £5 deduction is recorded in respect of a right of road to the adjoining farm. The Field Book for plot 608 appears to have been completed by a different surveyor than those for other plots adjacent to the claimed route between Points A and E and includes a comment in respect of the route reading "*public & private? right of way*". The applicant suggests that this might indicate some doubt about the true status of the route.
21. The exclusion of the claimed route between Points A and E could be indicative of it having been regarded as a public road. However, it could also indicate that it was a shared access road that none of the adjoining landowners claimed to own and which may or may not have also carried public rights of some sort. It seems unlikely that a public vehicular road would have terminated as a cul de sac at Point E and then only continued to Runshaw Lane as a private road and public footpath.
22. On balance, it is my view that the Finance Act records are consistent with the whole of Culbeck Lane having been regarded as a private access road and a

public footpath. However, they do not preclude the possibility that some or all of the route might have been considered to carry public vehicular rights.

The Definitive Map

23. In the parish survey carried out in 1951 in connection with the preparation of the first Definitive Map, the claimed route was marked 'CRF' on the survey map. This term was an abbreviation for 'Carriage Road Footpath', meaning a route which the public were entitled to use with vehicles but which was mainly used as a footpath. Although this term had originally been proposed in connection with the 1949 National Parks and Access to the Countryside Act it was subsequently withdrawn and it was suggested that such routes should be described as RUPPs (Roads used as Public Paths). On the accompanying survey card the route is described as 'Accommodation Road', a term normally taken to mean a private access road which may or may not also carry public rights of some sort.
24. When the Draft Definitive Map was placed on deposit in 1955 the claimed route was included as a public footpath and not as a RUPP. The Draft Map was placed on public deposit to allow objections and representations to be made and any consequent amendments were put on the Provisional Map which was published in 1960. This also included the claimed route as a public footpath and was itself subject to objections from landowners and occupiers. No representations were made regarding the claimed route and it was shown on the first Definitive Map as a public footpath.
25. When the Definitive Map was reviewed in 1975 no change was made in respect of the claimed route.
26. There is no evidence of any express dedication of the claimed route as a public right of way of any sort.
27. In 1991, an application was made to upgrade the route now claimed as a Restricted Byway to the status of Byway Open to all Traffic (BOAT) but this was rejected in 1995.

Other documents

28. In 1929 responsibility for district highways passed to county councils, however, the claimed route was not shown as a publicly maintainable highway of any sort on the handover map prepared for the area. Later highway records include reference to the fact that the route is a public footpath.
29. An article in the London Gazette in 1883 relating to the designation of areas infected by foot and mouth disease refers to part of Culbeck Lane as the boundary of one of the areas. This further confirms the existence of the route at the time but not the existence of public vehicular rights over it.
30. A copy of a hand drawn plan dated 1899 relating to a mortgage from Major Anderton to the Queen Anne's Bounty submitted by the applicant shows an area shaded red on either side of part of the claimed route but the route itself is uncoloured. There is no key to the plan but, if ownership of the land shaded red was to be transferred and the route was excluded from the transfer, this might suggest that it was thought to be a public route of some sort or simply that it was not in the same ownership as the adjoining land.

31. Various legal title documents referred to on behalf of objectors indicate that people acquiring properties adjacent to the claimed route had private rights to use it and were required to share the cost of maintaining it. This could suggest that the route was private or simply that it had not been adopted for maintenance purposes and that public rights, other than footpath, had not been recorded.
32. An aerial photograph taken in the 1960s shows that most of the route existed at that time and was probably wide enough to carry vehicular traffic.

Conclusions regarding Documentary Evidence

33. It would appear from early commercial and OS maps that the claimed route has existed since 1830 and possibly earlier. It also appears from the manner in which the route was shown, particularly on small scale maps, that it was a route of some significance and formed part of the local network linking at both ends to other routes. The early maps do not however indicate what, if any, public rights existed over the route.
34. Tithe records and 1910 Finance Act records are in my view generally consistent with the route having been regarded as either a public vehicular route or a private vehicular route with lesser public rights over it. However, the manner in which the northernmost section of the route is dealt with in the Finance Act records clearly suggests that this section was not regarded as a public vehicular route. It seems unlikely that the status of the route would in fact not have been the same throughout its length.
35. Although there appears to have been some doubt at the time of the 1951 parish survey regarding the status of the route, it was made clear in subsequent versions of the definitive map that the route was a public footpath and no objection seems to have been raised to this. Highway records would also seem to confirm that the route was regarded as being a public footpath.
36. Other documentary evidence does not assist in determining the status of the route.
37. Overall, it is my view that on the balance of probability the documentary evidence that is available does not indicate the existence of public rights other than as a footpath over the claimed route.

Statutory Dedication

Evidence of public use

38. A limited amount of evidence has been submitted relating to use of the claimed route by the public. This consists of evidence forms and statements made by people familiar with the route from the 1940s to the present. Much of the evidence in support of the claim is provided by people who have owned or occupied properties along the route and may have had private rights to use some or all of it. Generally people stated that they had used the route and had seen others using it but first hand evidence of regular use as of right by members of the public other than as a footpath is very limited.
39. On the other hand a number of statutory declarations submitted by other people who also claim to have been familiar with the route over a long period state that it never carried public rights other than as a footpath.

40. There is also some evidence that the route has been blocked or obstructed at different times in so far as vehicular use was concerned by gates, fencing, concrete slabs, ditches and a trailer. It appears that such obstructions may have been present intermittently at least since around 1970.

Conclusions regarding statutory dedication

41. Overall, it is my view that the available evidence of public use of the claimed route other than on foot is insufficient to raise a presumption, in accordance with the provisions of the 1980 Act, that it has been dedicated as a public right of way of any higher status than footpath. In addition, there is evidence that landowners have taken action over a considerable period of time that indicates their lack of intention to dedicate the route as a public right of way of a higher status than footpath.

Common Law

42. An inference that a way has been dedicated for public use may be drawn at common law where the actions of landowners (or lack of action) indicate that they intended a way to be dedicated as a highway and where the public have accepted it.

43. In this case, although there is some evidence of public use of the claimed route there is no substantive evidence of action by landowners to indicate an intention to dedicate it as a public right of way other than a footpath and indeed some evidence to suggest that they had no such intention. It would therefore not be reasonable to infer that the route has been dedicated as a higher status public right of way.

The 2006 Act

44. As mentioned before, this act extinguished rights of way for MPVs subject to certain exceptions. In this case none of the exceptions apply so, if any rights for MPVs had been established along the claimed route they would have been extinguished as a result of the 2006 Act.

Conclusion

45. Having regard to these and all other matters raised in the written representations I conclude that the evidence that is available does not show that on the balance of probability the claimed route is a public right of way of a status higher than footpath. The appeal should therefore be dismissed.

Formal Decision

46. I dismiss the appeal.

Barney Grimshaw

Inspector



