
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: 13 November 2017

Appeal Ref: FPS/A0665/14A/2

- 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 Cheshire West and Chester Council not to make an Order under section 53(2) of that Act.
- The Applications dated 10 April 2004 were refused by Cheshire West and Chester Council on 9 March 2017.
- The Appellant claims that Footpath 8 Frodsham, running from Ellis Lane to Bradley Lane, Frodsham and Footpaths 33 and 19 Kingsley, running from Bradley Lane to Pike Lane, Kingsley should be upgraded from footpath to Byway Open to All Traffic (BOAT) or bridleway status .

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 a copy of a map 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 public right of way can be inferred.

Reasons

7. This appeal relates to applications made in 2004 to the former Cheshire County Council which had not been determined when that council ceased to exist in 2009. The applications then passed to the successor authority, Cheshire West and Chester Council (CWACC) for consideration.
8. There have been a number of previous applications concerning the same routes in 1977, 1990 and 1999, none of which were approved. The current applicants request that evidence submitted in support of the previous applications should be reconsidered along with new evidence submitted in support of the latest applications. I have therefore taken into account all the evidence that is now available.

Documentary Evidence

Early Commercial Maps

9. Maps produced by Burdett (1777), Greenwood (1819), Swire and Hutchings (1829) and Bryant (1831) show parts of the application route. Taken together these maps provide evidence that the route has existed since at least the early 19th century but do not provide a reliable indication of its status.
10. Copies of maps described by the applicants as Hill Sketches and said to date from the 1860s and 70s show the application route but I have seen no notation accompanying the maps and it is not possible to draw any conclusion from these maps regarding the status of the route.

Ordnance Survey (OS) Maps

11. OS maps published since 1842 show the application route but again do not indicate its status.

Enclosure Award

12. The Frodsham Townfields Inclosure Award of 1784 includes, in the section relating to the setting out of public and private ways, reference to a lane which the council accepts is Ellis Lane. This is described as an 'occupation road' 8 yards wide. The term 'occupation road' is (and was) normally used to describe a road laid out for the benefit of the occupiers of adjoining properties and not a public highway.
13. A transcript of the award submitted by the appellant reveals numerous references to 'lanes' including "...a lane ... leading from the Bridge Lane to Bradley Orchard...". This reference seems to relate to part of the application route. However, Bradley Orchard was a farm rather than a larger settlement and, in the light of the route having previously been described as an 'occupation road', I do not think that the reference to it as a 'lane' necessarily implies the existence of public rights over the route.
14. I have not seen a copy of the Inclosure Act under which the award was made and therefore do not know what powers the commissioners had with regard to the setting out of public and private highways. Also, I have only seen extracts from the award and transcripts of sections of it not the full award. In these

circumstances, it is necessary to exercise some caution in drawing conclusions concerning the status of the application route on the basis of the references to a small section of it which is referred to.

Tithe Map

15. 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.
16. The map prepared for Frodsham Township (c.1846) shows Ellis Lane coloured sepia in the same way as other public roads up to the boundary with Frodsham Lordship but the map for that area does not show the application route. The map for Kingsley Township (c.1845) shows the route of Footpaths 19 and 33 excluded from adjoining agricultural parcels but unnumbered.
17. It is argued that this evidence suggests that part of the application route was regarded as being a public route of more than footpath status in 1846. However, most of the route does not appear to have been regarded as such and, as previously stated, the tithe documents were not produced to record public rights of way but to identify productive land.

The Finance Act 1910

18. 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.
19. In this case, the working maps show part of Footpath 8 (Ellis Lane) excluded from surrounding hereditaments. The remainder forms part of the hereditament for Bradley Orchard where the Field Book records a deduction of £20 in respect of public rights of way or user. The extent of this hereditament is said to be over 225 acres and it is not specified which right(s) of way are referred to or what sort of right(s) of way they were. Footpaths 19 and 33 are also contained within hereditaments. The Field Book entry for the Cattenhall Estate records a deduction of £200 but this is described as being in respect of footpaths across fields.
20. It is arguable that the way in which Ellis Lane is dealt with in these records is consistent with it being regarded as a public road. However, it is also consistent with it being a private road for the use of a number of people and with no individual owner and, in the light of the manner in which the remainder of the application route is dealt with, this seems a more likely explanation.

Railway documents

21. Part of the application route was included in plans deposited in 1845 relating to the Chester Branch of the proposed Birkenhead, Lancashire and Cheshire Junction Railway. The documents describe the track which is now Footpath 19 as 'occupation road' and 'occupation road and field', the track now Footpath 33 as 'public footpath and occupation road' and, although not within the limits of deviation, the track now Footpath 8 is also described as 'occupation road'.
22. Railway deposited documents like those referred to were prepared as part of a public process and were usually based on a specific survey. Public rights of way which crossed the possible route of the railway had to be retained and accommodated according to their status. Therefore, although it was not their primary purpose to record public rights of way they can often provide good evidence relating to them. In this case the railway was not built and the documents were not subject to detailed scrutiny, nevertheless, they provide an indication that there were no recognised public rights higher than footpath over the application route at the time of the survey.

The Definitive Map

23. Before the first definitive map of public rights of way was prepared under the National Parks and Access to the Countryside Act 1949, surveys were carried out in every parish. The survey plan for Frodsham is not available but the schedule describes Footpath 8 as a 'Cart Road' with an additional hand written annotation 'footpath'. Later, in the general description of the path it is stated "*There is a public right of way as a footpath over this road.*"
24. In the survey of Kingsley, path 19 is described as a footpath running along a cindered cart road and path 33 is described as a footpath running along the drive to Catton Hall.
25. The paths were subsequently included in the draft and provisional maps as footpaths and there is no record of any objection having been made to this designation.

Other Documentary Evidence

26. A lease of Cattenhall Farm dated 1774 includes references that are interpreted by the applicant as being supportive of the claim that the application route carries higher public rights than footpath. The lease includes the right of access with "*servants, horse carts and carriages*" but this seems to me to refer to a private right rather than a public one. The lease also refers to a 'common road' which may have been a public road but it is not clear which road this reference relates to and it is not necessarily a reference to the application route. On behalf of CWACC it is pointed out that this lease pre-dates the inclosure award which describes Ellis Lane as an occupation road. A requirement to carry out 'watching and warding' work is also contained in the lease but this may not have been a specific duty related to highways and does not in my view indicate the status of the application route.
27. A Sale Map dated 1871 indicates the existence of the application route from Frodsham to Bradley Orchard but does not in my view assist in determining the status of the route.
28. A map said to be a Daresbury Highways Board Map of 1873 shows the application route but does not indicate its status. Subsequent correspondence

and other records from parish councils, Runcorn Rural District Council and the County Council show that the relevant highway authority has consistently declined to accept that the application route carries any public rights other than as a footpath.

29. Copies of Court Leet (Manorial Court) records dated 1856 indicate that people appear to have made unauthorised use of various highways and occupation roads for grazing livestock. These records do not in my view help to determine the current status of the application route.
30. Other evidence referred to suggests that the Cattenhall Estate was involved in the salt trade in the 17th century and that salt was transported from Northwich to Frodsham Bridge by way of Bradley but does not indicate that the application route was used for this trade. Various other documents referred to by the applicants describe historic patterns of life and trade in the area and the manner in which highways evolved and were used but, in my view, do not contain specific information which can be applied to the application route.

Conclusions regarding Documentary Evidence

31. Some of the documentary evidence that is available is consistent with all or part of the application route having been regarded as carrying public rights higher than footpath but is also in my view consistent with the route being a private occupation road which the public have a right to use on foot. Other records including the railway documents, Finance Act records, highway authority records and those associated with the definitive map suggest strongly that the route carries no other public rights than footpath.
32. Overall, it is my view that when the documentary evidence is considered in total it does not on the balance of probability indicate the existence of public bridleway or byway rights over the application route.

Statutory Dedication

33. It seems to have been accepted in relation to a previous appeal that public use of Footpaths 19 and 33 on horseback was brought into question in 1977 by the erection of a sign and the locking of a gate and that public bridleway use of Footpath 8 was brought into question in 1986.
34. Evidence of use of the relevant sections of the route on horseback or with vehicles in the 20 year periods preceding 1977 and 1986 is very limited and to some extent unclear. CWACC reports that efforts made to contact users to clarify evidence have been unsuccessful.

Conclusions regarding statutory dedication

35. Although the available evidence seems to indicate some use having been made of the application route on horseback, this is not sufficient to raise a presumption that the route has been dedicated as a public bridleway or byway in accordance with the provisions of the 1980 Act.

Common Law

36. 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.

37. In this case, there is some evidence of public use of the claimed route on horseback before such public use was brought into question but this is limited. Also, there is no specific evidence which would indicate an intention to dedicate the route as a public bridleway or byway. In these circumstances, it would not be reasonable to infer that the route has been so dedicated at common law.

Conclusion

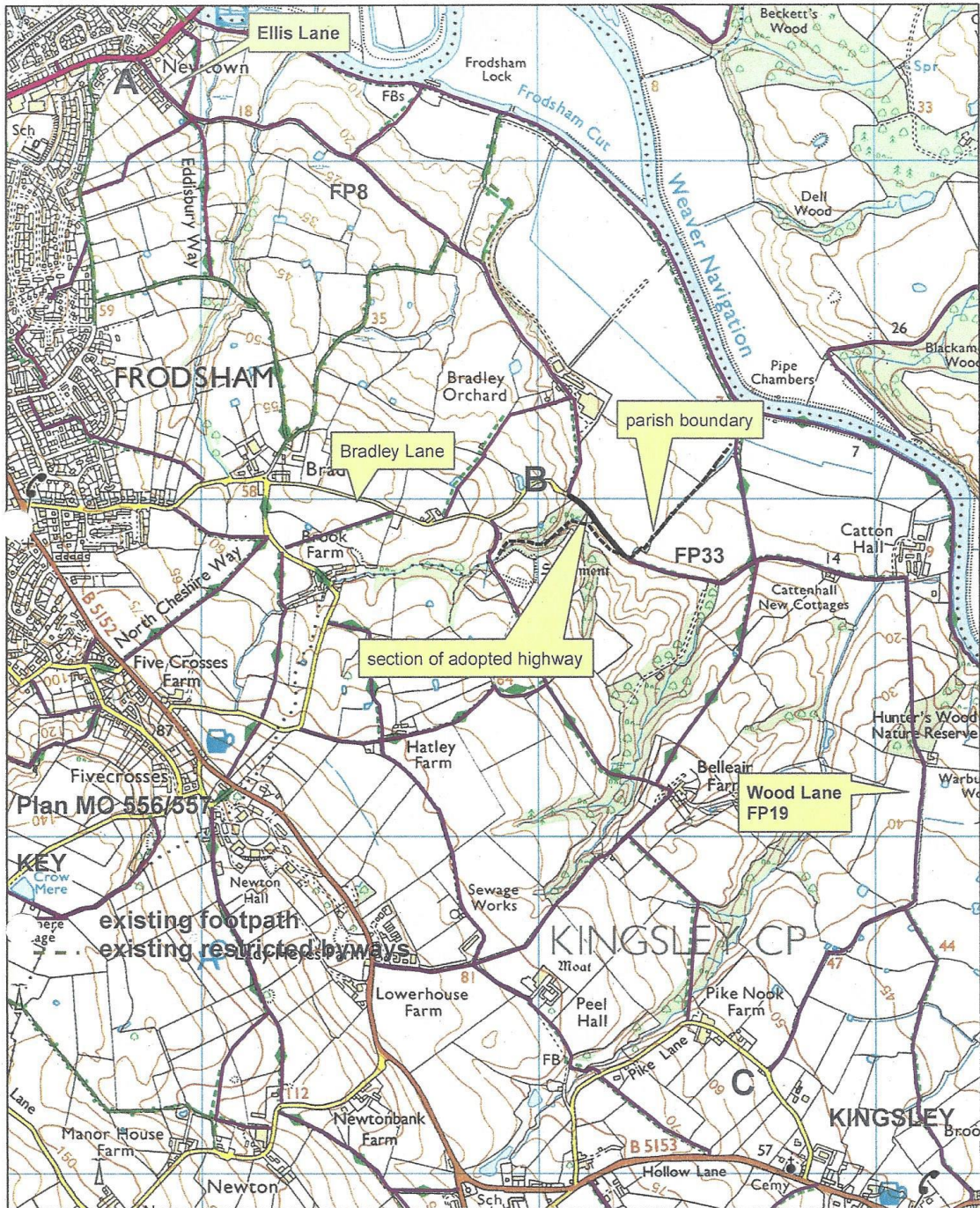
38. Having regard to these and all other matters raised in the written representations I conclude that the evidence that is available shows that on the balance of probabilities it is reasonable to allege that the claimed route is a public footpath. The appeal should therefore be allowed.

Formal Decision

39. I dismiss the appeal.

Barney Grimshaw

Inspector



Wildlife and Countryside Act 1981
Applications to claim an upgrade of Footpath 8 in the Parish of Frodsham and FP 19 and FP 33 in the Parish of Kingsley to a Bridleway or Byway Open to All Traffic

 Cheshire West

