
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: 20 December 2018

Appeal Ref: FPS/G3300/14A/16

- 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 Somerset County Council not to make an Order under section 53(2) of that Act.
- The Application dated 20 June 2008 was refused by Somerset County Council on 5 March 2018.
- The Application claims that a route running along public footpath AX 13/25 and part of public footpath AX 13/102 should be upgraded to bridleway status.

Summary of Decision: The appeal is not allowed.

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 prepared by Somerset County Council showing the claimed route, to which I have added an additional annotated point (Point W), for reference purposes.

Main issues

4. Section 53(3)(c)(i) of the 1981 Act states that an order should be made on the discovery by the authority of evidence which, when considered with all other relevant evidence available, shows that a right of way which is not shown on the map and statement subsists or is reasonably alleged to subsist over land to which the map relates. In considering this issue there are two tests to be applied, as identified in the case of R v Secretary of State for the Environment ex parte Mrs J Norton and Mr R Bagshaw [1994] 68 P & CR 402.
 - Test A: Does a right of way subsist on the balance of probabilities?
 - Test B: Is it reasonable to allege that a right of way subsists? For this possibility to be shown it will be necessary to show that a reasonable person, having considered all the relevant evidence available, could reasonably allege a right of way to subsist.For the purposes of this appeal, I need only be satisfied that the evidence meets test B.
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. The original application was made in 2008 for a route running from Point W by way of Point B to Point A. In 2016 the applicant made a representation to the Secretary of State seeking a direction to be given to Somerset County Council to determine the application and, in 2017, such a direction was made. This direction referred to the upgrading of Footpaths AX 13/102 & AX 13/25 suggesting that it applied to the whole route A-B-C and this is the route subsequently investigated by the authority.
8. There have been previous attempts to have the application route upgraded to bridleway status and consequently much of the available evidence has been considered before. Accordingly, although I have considered the current application in the light of all the available evidence, in order to avoid unnecessary duplication and repetition I deal briefly in this decision with evidence that was taken into account in previous decisions and more fully with evidence not previously considered.

Documentary Evidence

9. The Cheddar Inclosure Award (1801) has been considered previously and it was specifically concluded that the route now being claimed was not awarded as a public bridleway. I have seen no new evidence to cause me to disagree with this conclusion.
10. The Cheddar Tithe Map (1839) depicts a short section of the route under consideration coloured in the same manner as surrounding land. This map gives no indication of the status of the route.
11. A map of Charterhouse and Mendip (1761) shows a route similar to section A-B now being considered annotated as "*Road from Axbridge to Wells*" which suggests that this section may have been regarded as a public road at the time. Another map of 1842 also shows the route A-B and part of the route B-C but does not indicate their status.
12. Documents prepared in connection with the valuation process under the Finance Act 1910 can provide good evidence of public rights of way. However, in this case the route is included within hereditaments for which no reference is made to the existence of any public rights of way.
13. Ordnance Survey (OS) maps from 1883 onwards show the route but do not indicate its status.
14. Definitive Map records indicate that section B-C was claimed as a footpath by the parish council and section A-B was not initially claimed as a right of way of any sort. Subsequently, it appears that consideration was given to recording A-

B as a bridleway but when the map was produced the whole route A-B-C was recorded as footpath.

15. Highway records indicate that the route is not recorded as being maintainable at public expense.
16. In 1967, the Bristol Waterworks Company offered land, including that crossed by the claimed bridleway for sale by public auction. The Sales Particulars specified that the purchaser of the land should covenant "...to allow the route between points marked 'W' 'X' and 'Y' on the plan parallel to the existing public footpath to be used as a bridle way...". This route corresponds to the application route. The subsequent Conveyance of the land in January 1968 then included a covenant with similar wording. This covenant appears to me to indicate that, although the landowner recognised the existing recorded public footpath, he wished also to permit bridleway use of a parallel route. However, this is not in my view the same as being prepared to dedicate the route as a public bridleway, which he could have chosen to do if he so wished. Unlike dedication of a public right a covenant is capable of being removed by agreement but, unless and until that occurs, bridleway use of the route should still be permitted.

Conclusions regarding the Documentary Evidence

17. Much of the available documentary evidence is not helpful in determining whether bridleway rights exist over the route although some is not inconsistent with the possibility of parts of it having been regarded as a bridleway. However, most of this has been considered previously in some detail and it has been concluded that the route is correctly recorded as a footpath. In these circumstances it is not now reasonable to allege that the route is a bridleway on the basis of this evidence.
18. With regard to the evidence of the 1968 Conveyance, this tends in my view to confirm that the route was not regarded as a public bridleway and that, whilst the landowner wished to permit bridleway use, he chose not to dedicate the route as a public bridleway.

User evidence

19. Five statutory declarations, two user evidence forms and one letter all dated from 1994 or 1995 were submitted in support of the application. These provide evidence of some people's belief that part of the claimed route (Points B-C) is a bridleway but very limited evidence of actual use of the route.
20. In my view, this evidence is insufficient to raise a presumption that any part of the application route has been dedicated as a public bridleway in accordance with the provisions of the 1980 Act.

Common Law

21. 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.
22. In this case, there is insufficient evidence of public use or landowners' actions to support a case for dedication of the application route as a public bridleway to be inferred at common law.

Conclusion

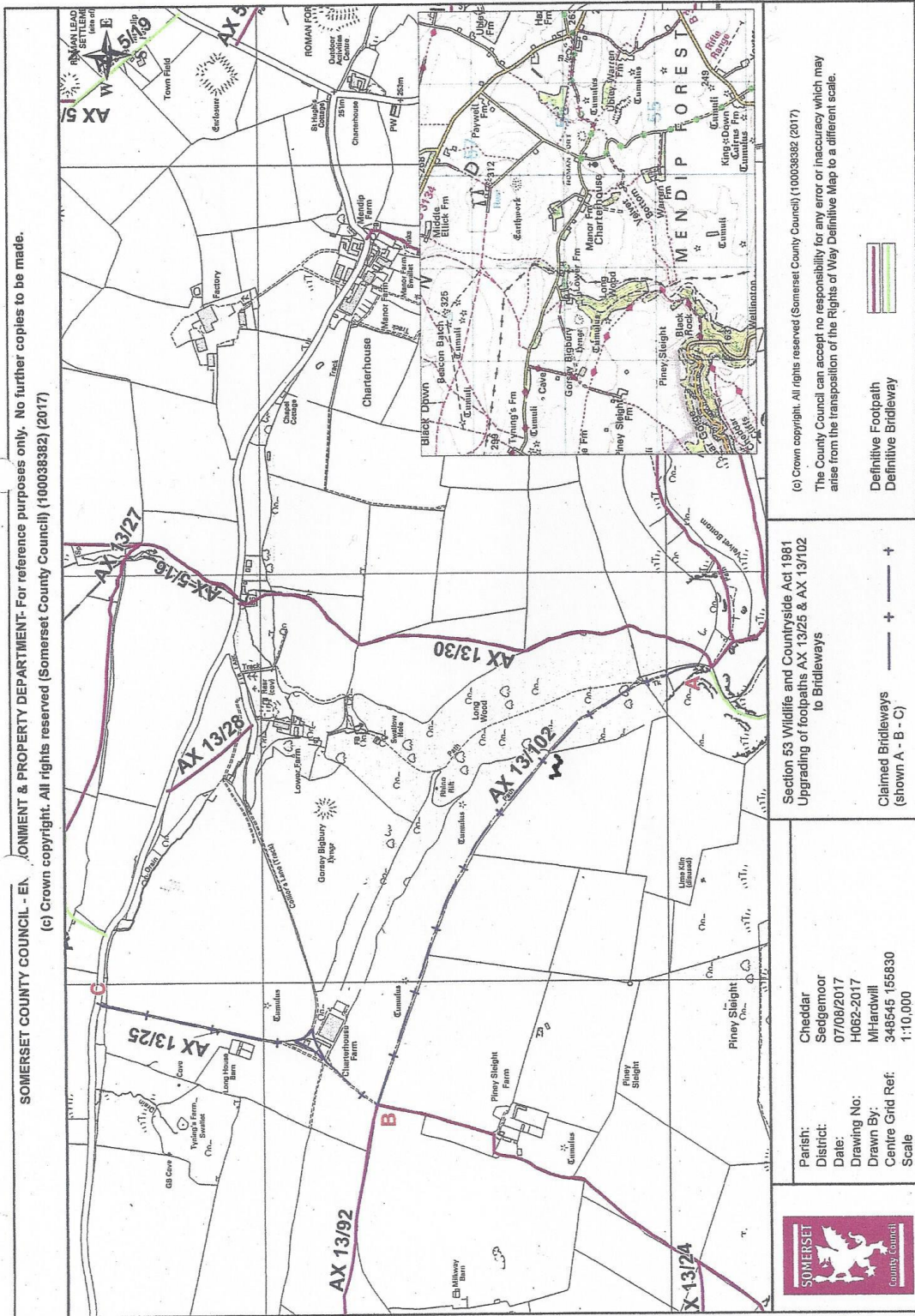
23. Having regard to these and all other matters raised in the written representations I conclude that the evidence that is available shows that on the balance of probabilities it is not reasonable to allege that the claimed route is a public bridleway. The appeal should therefore not be allowed.

Formal Decision

24. The appeal is not allowed.

Barney Grimshaw

Inspector



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Section 53 Wildlife and Countryside Act 1981
 Upgrading of footpaths AX 13/25 & AX 13/102
 to Bridleways

Claimed Bridleways
 (shown A - B - C)

Parish: Cheddar
 District: Sedgemoor
 Date: 07/08/2017
 Drawing No: H082-2017
 Drawn By: MHardwill
 Centre Grid Ref: 348545 155830
 Scale: 1:10,000

