
Order Decision

Site visit made on 25 April 2017

by Susan Doran BA Hons MIPROW

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

Decision date: 18 May 2017

Order Ref: FPS/D0840/7/23

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as The Cornwall Council (Addition of Bridleway together with the Upgrade of Footpath to Bridleway at Cardeast, Cardinham) Modification Order 2015.
- The Order is dated 20 April 2015 and proposes to modify the Definitive Map and Statement for the area by adding a length of bridleway and upgrading a length of footpath to bridleway as shown in the Order plan and described in the Order Schedule.
- There was one objection outstanding when Cornwall Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed

Procedural matters

1. This case concerns the proposed addition of a length of bridleway between points A and B on the plan attached to the Order, and the upgrading of a length of footpath (Footpath 1 Cardinham) between points B and C to bridleway, so as to connect Bridleway 2 Cardinham with the public road at Lower Cardeast. The matter is being dealt with by way of written representations. I made an unaccompanied visit to the area when I walked the Order route.
2. In addition to the objection submitted by the landowners ('the Objectors') against the Order, a representation in support was made by the Cornwall Ramblers.

Main Issues

3. The Order has been made by Cornwall Council ('the Council') under Sections 53(3)(c)(i) and 53(3)(c)(ii) of the Wildlife and Countryside Act 1981 ('the 1981 Act'). I must consider whether, on a balance of probability, the evidence discovered, when considered with all other relevant evidence available is, as regards Section 53(3)(c)(i), sufficient to show that a public bridleway which is not shown in the Definitive Map and Statement ('DMS') subsists. This applies to the section of the Order route between A and B. As regards Section 53(3)(c)(ii), I must consider whether, on a balance of probability, the evidence discovered, when considered with all other relevant evidence available shows that the existing public footpath, B to C, ought to be shown as a public bridleway, and that the DMS requires modification as a result.

4. The case relies on documentary evidence. Section 32 of the Highways Act 1980 requires me to take into consideration any map, plan or history of the locality, or other relevant document provided, giving it such weight as is appropriate, before determining whether or not a way has been dedicated as a highway. I shall therefore consider whether the documentary evidence available to me, when considered as a whole, shows that historic bridleway rights exist over the Order route.

Reasons

Tithe records

5. The Tithe map produced in the 1840s shows the Order route coloured in like manner to the routes to which it connects at either end: the route to the south-east of C is described in the apportionment as a 'Lane' and the route to the south of A also as a 'Lane'.
6. In isolation, the tithe map can give no more than an indication as to whether the Order route is public or private. I note the Objectors' research reveals that private routes were coloured in the same way as the Order route, including some that are cul-de-sac ways. Although both public and private roads were capable of reducing the productiveness of land for the purposes of tithe assessment, I consider its depiction as the continuation of what is a known public highway provides some support for a public status of one sort or another.

Ordnance Survey Maps

7. Ordnance Survey ('OS') 25-inch maps of 1882 and 1907, and 6-inch maps of 1888 and 1908, are consistent in their depiction of the Order route. At point A on the Order plan the track is gated and continues towards point B and around to C passing beside and to the south of buildings at Cardeast. A feature, annotated as a footpath in 1907, is shown joining from the north-west, and this corresponds with the present Footpath 1. A gate is marked at C to the north-west of a building annotated as a Methodist Chapel on the 1882 map. The 1950 OS 1:25,000 map depicts the route un-gated, as do the 1-inch maps of 1895, 1946 and 1961. A 1903 Bartholomew half-inch map depicts it similarly.
8. Whilst providing good evidence of the physical features of the Order route when surveyed, its status cannot be determined from the OS mapping. Neither can its status be determined from the Bartholomew map.

Finance Act 1910 records

9. The extract provided from the Finance Act Map shows the Order route was included within a hereditament indicating that it was unlikely to have been considered to be a public road as these were usually excluded from land holdings. However, no deductions for public rights of way or user are recorded in the Field Book for the hereditament through which the Order route passes.
10. However, the Council's reliance on these records concerns the possible identification of the location of a building where an obstruction (a dung heap) is referred to in Parish Minutes dating to 1896, which I consider next.

Parish Minutes

11. The Parish Minutes, on which the Council places particular reliance, cover the period 1896 to 1953, but the Objectors dispute how many references concern the Order route and/or Bridleway 2.
12. A complaint about the dung heap obstructing “a path leading through Cardeast” is reported in March of 1896. The Council believes the obstruction to have been between points A and B. The Objectors consider it more likely it was at the building nearer to point B where it would have been on Footpath 1¹. However, it is argued it cannot be assumed that the use made of the buildings in 1896 remained the same at the time of the Finance Act valuation, especially given a change in ownership of the property in 1905: but this assertion is not supported by any evidence. Nevertheless, point B (and the adjacent building) is also on the Order route, and there is nothing in the Parish Minute that identifies the obstruction as being on a ‘footpath’. Although the Objectors point out there is no indication as to how the matter was resolved, nor whether the landowner accepted the obstruction, that there was no further reference to it in the Parish Minutes suggests to me that the obstruction was duly removed from the path.
13. A Minute dated October 1896 describes a locked gate obstructing Cardeast Lane, which was not unlocked until the following February further to requests to the landowners Mr Lander² of Cardeast and Mr Thomas of Higher Cardeast to do so. However, it was located on Bridleway 2 rather than on the Order route. At the same time, the Footpath Committee was requested to “ascertain as far as possible whether the Lane through Higher Cardeast is a public bridle path or public footpath”. Although the Parish Minutes make no further reference to this investigation, this route was claimed as a public bridleway in 1953 for inclusion in the DMS (paragraph 24).
14. I agree that a 1901 Minute is likely to refer to another part of Footpath 1 and not to the Order route. However, I do not attach significant weight to the Objectors’ point that there are few entries in the Parish Minutes that can be shown to refer to the Order route and/or Bridleway 2. As the Council points out issues concerning public rights of way would only be recorded in the Minutes if they arose.

Conveyancing documents

15. Research carried out by the Objectors reveals a complex conveyancing history as the properties here formed one hereditament that was split, re-amalgamated and split again.
16. Contemporary with the 1896 Parish Minute (paragraph 13) is an Indenture dated 1898. It was made between Mr Lander and Mr Thomas, both of whom were involved with the locking of a gate on Bridleway 2. It gave a right to each of the landowners (their tenants, servants and workmen) to pass and repass over the separately owned parts of the lane between Cardeast and Higher Cardeast. In addition it extended a right to Mr Thomas of Higher Cardeast

¹ Footpath 1 was originally shown to terminate near and slightly west of point B, similarly some distance from the public road at point C. However, an order adding the ‘missing link’ to the DMS was confirmed in September 2011.

² Mr Lander was Chairman of the Parish Council at the time

“through the tenement of Lower Cardeast to the Cardeast Wesleyan Chapel where the said lane meets the parish road”.

17. It is arguable that there would have been no need to enter into such an agreement that allowed passing and repassing with horses had a public bridleway existed over the Order route (and beyond). However, this was a private agreement between the landowners and there may have been any number of reasons for entering into it, for example to protect private rights or to resolve a dispute. It was not concerned with public rights but with private rights, and such agreements are not uncommon. Accordingly I do not place significant weight on this evidence as indicating that no public bridleway existed over the Order route at that time.
18. This conveyancing document also refers to an additional gate that was erected to separate the two properties of Cardeast and Higher Cardeast. There is no mention of it in the Parish Minutes which suggests to me that it did not obstruct public passage. In any event, it does not appear to me to have affected the Order route, but rather was in place on Bridleway 2.

1929 Handover Map

19. Responsibility for maintaining highways was transferred from Rural District Councils ('RDCs') to County Councils by the Local Government Act 1929 and maps were prepared showing all roads that were maintained at public expense at that time. The Handover Map for Bodmin RDC shows the Order route coloured green as a 'District Road'. The Map has, however, been altered although when and on what basis is unclear. It is evident that the colouring extended beyond point A along Bridleway 2, but has since been erased.
20. I do not consider this lessens the evidential value of the Map as the Objectors contend. Rather, as the Cornwall Ramblers comment I consider that a correction or amendment suggests that if the alteration took place before the handover of maintenance responsibilities then the Map's contents were subject to some scrutiny. If it was altered at some later date, for example when the DMS was drawn up, then the Order route and Bridleway 2 was considered by the highway authority to be a district road maintained at public expense in 1929. Further, as the Council comments, retaining the Order route on the Map appears to have been a deliberate act on the part of the person responsible for drafting the change. In any event, the Order route was considered at the handover date to be a public road.
21. I note that this evidence is inconsistent with the private conveyancing documents adduced by the Objectors for 1898 and 1903 which refer to the public or parish road stopping at the former Chapel. The Finance Act records indicate likewise. Correspondence from the Council in 1988 also indicates the limit of the public highway accepted at the time. The Objectors' family has owned the land and property at Cardeast for over 100 years but has not occupied the property since the Parish Survey was carried out in the 1950s. Nevertheless, their recollections are that no maintenance of the Order route has been undertaken by the Council, but rather at private expense.
22. I agree that these maps were mainly used internally and were not usually subject to public scrutiny. Neither do they claim to be a record of rights. Nevertheless, they are conclusive evidence of the highway authority's

acceptance of maintenance responsibilities, a commitment that would not have been undertaken lightly. Accordingly the inclusion of the Order route in the 1929 Map as a publicly maintained road needs to be weighed in the balance in the context of the other evidence available.

Definitive Map records: Parish Survey

23. The Council places particular weight on the records produced further to the National Parks and Access to the Countryside Act 1949 which led to the production of the DMS.
24. The first of these is the Parish Survey carried out in 1953. The Parish Map extract provided, depicting the area from just south of Higher Cardeast to just north of Cardeast appears to show three sets of annotations in different handwriting: a series of field gates marked by the letters 'FG' including one corresponding with point A and another with point C, and the letters 'BW' indicating bridleway; a red line following the line of the bridleway now recorded as Bridleway 2 and terminating at A, together with the number '2' circled³; and the letters A, B and C with arrows marking their position, 'B' coinciding with point A on the Order plan and 'C' just north-west of point C on the Order plan⁴.
25. The Parish Survey Card records the start of the path as Cardeast and its destination as Cardinham Downs. Under the heading 'Name of Path (if any)' is written "Cardeast yard to Cardinham Down", although this appears to be crossed through. The reason given for believing the path to be public is stated as "Awarded". In what appears to me to be in a different handwriting is the description "Bridleway linking Cardeast with Higher Cardeast and BR42"⁵. The Definitive Statement carries the same details, although nothing is entered for the name of the path. The Revised Statement describes it from Cardeast to the junction with Bridleway 34.
26. The circled number adjacent to the way is consistent with the guidance for completing the maps being positioned at the start of a route. It is also consistent with the extent of acknowledged publicly maintained road (as amended) shown on the 1929 Handover Map. Although there is some evidence from the records that routes passing through farmyards were omitted from the maps (as was the case for Footpath 1), research undertaken by the Objectors demonstrates this was not always the case. Overall there appear to be inconsistencies in how the Parish Survey was completed and no hard and fast rules in interpreting it can be applied. There is no apparent explanation for believing Bridleway 2 to be public on the basis that it was 'awarded' as there is no inclosure award for the area. The issue though is what, if anything, the Parish Survey reveals about the extent of the bridleway claimed, whether it terminated at the farmyard, or whether it continued to point C.
27. Although the path is *named* 'Cardeast yard to Cardingham Down', its start point is given as 'Cardeast'. This contrasts to the Schedule completed for Footpath 1 which described its ultimate destination as Lower Cardeast, and it is arguable that if the footpath joined a bridleway that continued to point C it would not have been described as terminating at Lower Cardeast.

³ Annotations in red ink it seems were added by the District Council

⁴ The latter are said by the Objectors to have been added by the Applicant for the Order.

⁵ This annotation is said by the Objectors to have been added by the District Council

Nevertheless, I do not consider the reference to 'Cardeast' indicative that the claimed route commenced at a private location, a farmyard. It is equally indicative, in my view, of describing Cardeast as where the claimed right of way met the public road. The area A-B was the cattle yard with a milk parlour which the Objectors say was in constant use during the 1950s and 1960s. They argue it was unlikely the route passed through the yard and continued in front of the farmhouse. Yet it is not uncommon for public rights of way to pass through farmyards and close to dwellings. Indeed, Footpath 1 follows the alignment of part of the Order route passing farm buildings and the farmhouse.

28. The Objectors argue that many routes recorded did not connect to other public rights of way or places of public resort. But there is no obvious reason for the Surveyor to claim a route that terminated (as a cul-de-sac) at a farmyard some distance from the public road where it could not be accessed by the public. The purpose of the exercise was a "Survey of Public Rights of Way", and Parish Councils were required to identify those routes they considered the public had a right to use, in this case on foot and on horseback, or leading a horse.
29. Furthermore, the Surveyors were required to record the various features along the routes, including, in this case, field gates. The recording of a field gate at C is not inconsistent with the existence of Footpath 1, but neither is it inconsistent with the possible existence of a bridleway passing through the yard to point A. No field gate was recorded at point B, although one exists there now and is said to have been present at the time of the Survey. If that were so then the expectation is it would have been recorded. The Objectors assert that at the time of the Survey the field gate recorded at A was in a different position, where it exists on the ground now. However, the map evidence does not support this view.
30. The description of the route 'linking' Cardeast and Higher Cardeast and Bridleway 42 was added by the District Council. Again, there would be no purpose served in recording a route linking these destinations had the start point intended been a private farmyard rather than the public road at Cardeast. Accordingly I do not concur with the Objectors that the Parish Council's intention was not to record a through route.
31. I can find no evidence to support the Council's contention that the Parish Surveyor was unsure about the extent of the public highway. Neither is there any evidence that in the light of the 1929 Handover Map they considered the Order route to be a public vehicular highway and, in claiming the route to point A, they were establishing a link to an existing highway.
32. There is nothing to indicate the 1929 Map was available to those conducting the Survey or indeed that they consulted it. Had that been so, it would have been unnecessary to record Footpath 1 as ending at Lower Cardeast. Examples of public rights of way running along district roads shown on the 1929 Map are cited by the Objectors as further evidence to support this view. However, it is not uncommon for routes to be recorded in both the DMS and highways maintenance records: the documents are not mutually exclusive.

Definitive Map records: Draft Provisional, Provisional and Definitive Maps

33. The Draft Provisional, Provisional and Definitive Maps⁶ are all consistent in depicting Bridleway 2 terminating at point A, in other words short of the public road at point C. All are consistent in no longer recording the presence of a field gate at C.
34. The Objectors contend that it was not until latterly that they became aware of Bridleway 2, as neither the outcome of the Parish Survey, or the DMS were directly communicated to them. That, however, was not a requirement of the definitive map process which included advertising the various stages and providing opportunities for objections to be made by the public and landowners, which were subsequently determined. Further the Council's evidence is that the proper procedures were carried out with regard to compiling the DMS.

Aerial photographs

35. Aerial photographs dated between 1946 and 2005, like the OS mapping considered above, provide evidence of the existence of the Order route at the dates they were taken, but not of its status.

Conclusions on the evidence

36. I find that the Finance Act evidence does not support the existence of a public right of way over the Order route, given that no relevant deductions were recorded. The conveyancing documents confer private rights over it, and describe the termination point of the public road as point C. However, neither was directly concerned with public rights nor open to public scrutiny when drawn up. OS maps are helpful in terms of the physical evidence of the route.
37. The Tithe Map, in my view, provides limited evidence of reputation given the Order route was shown as a continuation of a known public road, yet not conclusive as to its status. I consider the March 1896 Parish Minutes support the existence of a public right of way, although this is equally applicable to the (existing) public footpath as to there being a possible bridleway over the Order route. The Minute for October 1896, in my view, lends support for public rights of some sort existing over the Order route as the continuation of a way, enquiries into the status of which by the Parish Council and its Footpath Committee were about whether the way affected was a footpath *or* a bridleway. The Minutes subsequently record that the gate was unlocked.
38. The 1929 Handover Map lends support to the existence of higher rights over the Order route (and initially over its continuation), although this is not echoed, for example, in the Finance Act records compiled in the early part of the previous decade, or by any apparent evidence of public monies having been expended on it. However, the Order route (and its continuation, until amended) was regarded as a district road in 1929 by the authority responsible for its maintenance.
39. In 1953 the route referred to in the 1886 Parish Minutes was regarded as a bridleway when it was claimed in the Parish Survey for inclusion in the DMS of

⁶ Last Consolidation 31 October 1996

public rights of way. There are some anomalies, however. It was described as commencing at Cardeast, although its name was given as "Cardeast yard" and its alignment shown stopping at the yard. It was said to have been "awarded" despite there being no inclosure award. In addition, Footpath 1 had originally been described as ending at Lower Cardeast, although this was subsequently described as Cardeast in the Draft and Definitive maps. Nevertheless, a field gate was recorded at C, the junction with the public road. It is equally applicable to Footpath 1, but like Footpath 1 there is no reason for a public bridleway to have been claimed that terminated at a point where the public could not access it from the public road. I note the Objectors' reference to exercising caution in the weight to be applied to the appearance of a route on the 1950s Definitive Map records. It is, in my view, unlikely that the Surveyors were recording a cul-de-sac path that did not connect with a highway at either end. There is no evidence to suggest that the Parish Surveyor, or indeed those responsible for producing the subsequent Draft, Provisional and Definitive Maps consulted the 1929 Handover Map which indicated a different point at which the public road ended. I attach some weight to the Parish Survey and Definitive Map records.

40. Considering the evidence as a whole and on balance, I conclude that the tests (paragraph 3) are met and a public bridleway should be recorded over the Order route.

Other matters

41. The Objectors believe the inclusion of Bridleway 2 in the DMS was an error. However, the DMS is conclusive evidence of what it shows unless or until evidence demonstrates otherwise. Furthermore, the Order before me concerns the addition to and upgrading of rights of way to the DMS (paragraph 3). The deletion of a route is a matter dealt with under Section 53(3)(c)(iii) of the 1981 Act and is not before me.
42. The Objectors refer to a gate at B which is not referred to in the Order but which would have been essential to create the cattle yard in use in the 1950s and before. No gate is depicted on the OS mapping at this location at the time of the Parish Survey, or earlier, and no evidence has been produced by the Objectors to support their assertion that it was omitted due to issues of scale or policy in not showing details through yards. An old gate post is in situ, but as the Council remarks this could have been moved from elsewhere. Accordingly, there is insufficient evidence from which I can conclude that a modification of the Order to include reference to the gate at B is justified.

Overall Conclusion

43. Having regard to these and all other matters raised in the written representations, I conclude that the Order should be confirmed.

Formal Decision

44. I confirm the Order.

S Doran

Inspector

Wildlife & Countryside Act 1980 Section 53
Order Map: WCA 507

Parish: CARDINHAM CIVIL PARISH

Produced by Countryside Access Team: 15 April 2015

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