
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 December 2016

Appeal Ref: FPS/Q2500/14A/3

- 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 Lincolnshire County Council not to make an Order under section 53(2) of that Act.
- The Application dated 4 March 2015 was refused by Lincolnshire County Council on 11 July 2016.
- The Appellant claims that a route running between Grantham Road and Doncaster Gardens, Navenby, Lincolnshire should be added to the definitive map as a bridleway.

Summary of Decision: The appeal is allowed subject to the claimed route being described as a footpath rather than a bridleway.

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)(i) 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 right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates. In considering the evidence under this section there are two tests which need to be applied, as set out in the case of *R v Secretary of State ex parte Mrs J Norton and Mr R Bagshaw (1994) 68P & CR 402 (Bagshaw)*:

Test A: Does a right of way subsist on the balance of probabilities? This requires me to be satisfied that there is clear evidence in favour of public rights and no credible evidence to the contrary.

Test B: Is it reasonable to allege that on the balance of probabilities a right of way subsists? If the evidence in support of the claimed path is finely balanced but there is no incontrovertible evidence that a right of way cannot be reasonably alleged to subsist, then I should find that a public right of way has been reasonably alleged.

5. Much 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 path and the actions of the landowner have been of such a nature that the dedication of the paths by the landowner as a bridleway can be inferred.

Reasons

Documentary Evidence

7. Lincolnshire County Council, the Order Making Authority (OMA), looked at a number of historic documents held by the council itself and the Lincolnshire Archives but none were considered to contain any relevant information. Aerial photographs submitted by the applicant show that the route was in existence before 1995.

Statutory Dedication

Evidence of public use

8. It is generally accepted that a gate across the western end of the route (Point A) was locked by the landowner in February 2015. Although the owner of a neighbouring property subsequently removed a fence panel to allow users of the route to bypass the gate it is clear that the locking of the gate brought public use of the claimed route into question and led to the application being made for the route to be added to the definitive map. Accordingly, the 20 year period of use required to raise a presumption that it has been dedicated as a public right of way in accordance with the provisions of the 1980 Act runs from February 1995 to February 2015 in this case.
9. Eighteen User Evidence Forms (UEFs) were submitted in support of the application to record the route. These forms describe use of the route from 1995 until 2015 on foot and in 2 cases by bicycle. A further 22 UEFs were submitted in support of the appeal describing use from 1994 to 2015, predominantly on foot but in a few cases by bicycle. No use on horseback was claimed although a few people mentioned having seen horse riders. Two forms were completed on behalf of more than one person. One person submitted 2 similar forms. In addition, a letter was received from a former resident of a nearby property describing use of the route from 1968 onwards.
10. Four UEFs were discounted by the OMA, because they were completed by people who had private rights or may have had permission to use the route. A further form was discounted as it was not fully completed. However, these discounted forms still provide some evidence of use of the route that may have been 'as of right' and use by other people who were seen on it but, even if they are completely disregarded, this still leaves evidence of use by over 35 people to be considered

11. Six people claimed to have used the route throughout the 20 year period from 1995 to 2015 and the number of people claiming to have used it on foot in any single year of the period varied between 7 and 35. In addition, between 3 and 6 people claimed to have also used the route with bicycles.
12. The frequency of use claimed varied between monthly and several times per day with most users claiming use on foot more than once per week. The frequency of cycle use claimed was less. Several people stated that they also saw others using the route. Mr and Mrs Brett, who allowed their garden to be used to bypass the gate, stated that they took this action because they could see the adverse effect the gate was having on a large number of people who used the claimed route.
13. I have seen no evidence of action taken by the landowner before 2015 that would have brought public use of the claimed route into question or indicated a lack of intent to dedicate a right of way. The gate was installed some time before 2015; numerous users and Mrs Brett who lived in the adjacent property stated that it was never locked until February 2015. The landowner himself has also confirmed that, although he sometimes closed the gate, it was not locked before 2015.

Conclusions regarding statutory dedication

14. On balance, the evidence of public use is sufficient for it reasonably to be alleged that the route has been dedicated as a public footpath in accordance with the provisions of the 1980 Act. It is not however sufficient to raise the presumption that the route is a public bridleway.

Common Law

15. 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.
16. In this case, although there is evidence that the public have used the route for over 20 years, there is no specific evidence of action by landowners which would indicate their intention to dedicate a public bridleway. However, in the light of my conclusion regarding statutory dedication there is no need to pursue this matter further.

Other Matters

17. The OMA had not seen the 22 additional UEFs that were submitted in support of the appeal when reaching the decision to refuse the original application. It has subsequently concluded that, in the light of this additional information, a public footpath is reasonably alleged to subsist along the claimed route and that an order should be made to record this.

Conclusion

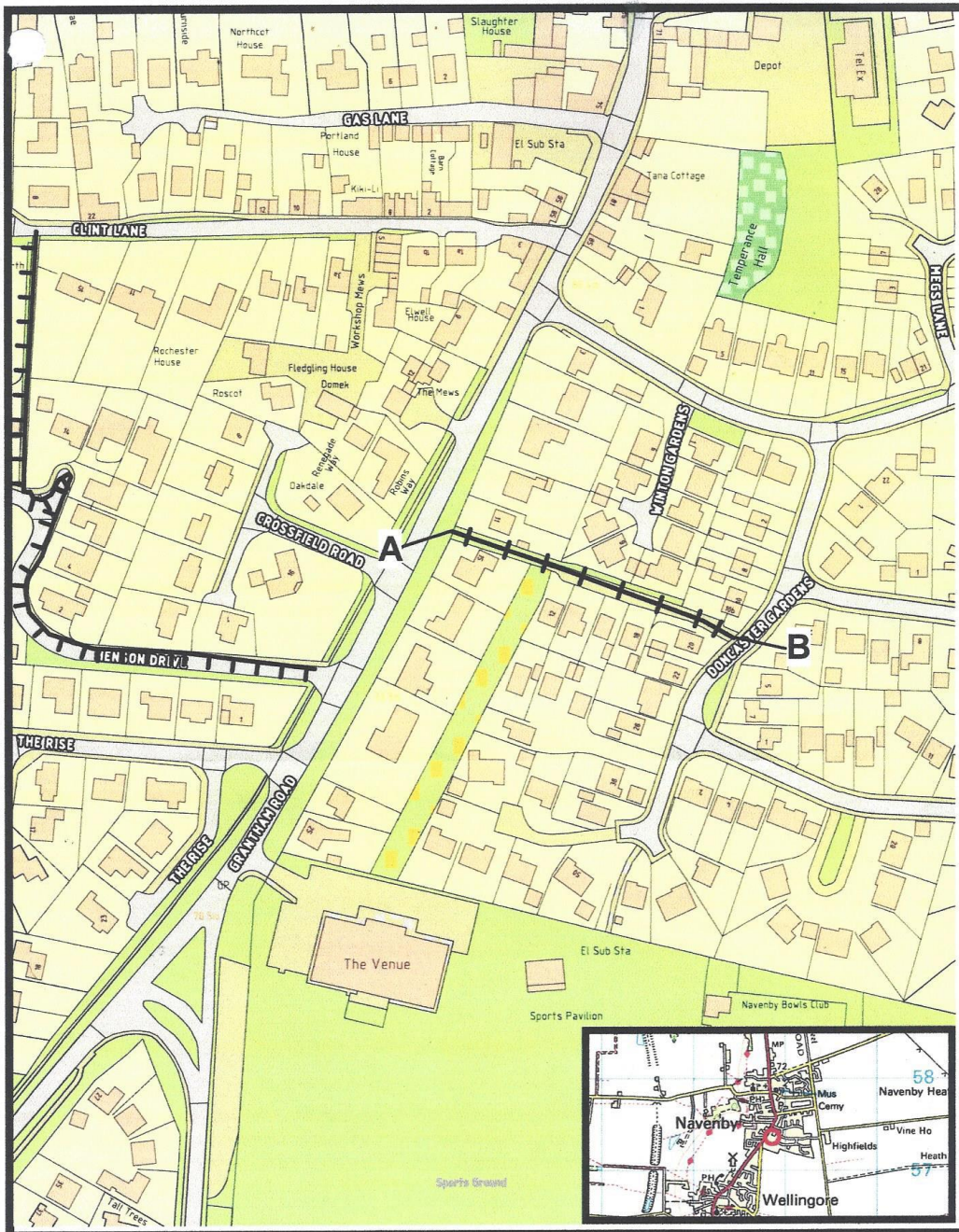
18. Having regard to these and all other matters raised in the written representations I conclude that the evidence shows that the claimed route is reasonably alleged to be a public footpath and an order should be made to modify the definitive map and statement so as to record it as such.

Formal Decision

19. The appeal is allowed subject to the claimed route being described as a footpath rather than a bridleway and in accordance with paragraph 4(2) of Schedule 14 to the 1981 Act Lincolnshire County Council is directed to make an order under section 53(2) and Schedule 15 of the Act to modify the definitive map and statement to add a footpath, on the route proposed in the application dated 4 March 2015. This decision is made without prejudice to any decision that may be given by the Secretary of State in accordance with her powers under Schedule 15 of the 1981 Act.

Barney Grimshaw

Inspector



<p>Key: Alleged public bridledway (A-B) </p> <p>Unaffected public footpath </p>	<p>Lincolnshire COUNTY COUNCIL </p>	<p>Definitive Map Modification Order Application 384: Navenby Alleged public bridledway between Grantham Road and Doncaster Gardens</p>
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