



Appeal Decision

by **Michael R Lowe** BSc (Hons)

an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs

Decision date: 11 February 2016

Appeal Ref: FPS/Y3940/14A/3R

John David Andrews

- This Appeal is made under Section 53(5) and Paragraph 4(1) of Schedule 14 of the Wildlife and Countryside Act 1981 (the 1981 Act) against the decision of Wiltshire Council not to make an Order under section 53(2) of that Act.
 - The Application dated 10 January 2012 was refused by Wiltshire Council on 20 February 2012.
 - The Appellant claims that the appeal route in the Parish of Crudwell, starting from the A429 road at grid reference 9648 9573 and then in a generally south-easterly direction to the C85 road at grid reference ST 9713 9482, should be added to the definitive map and statement for the area as a bridleway.
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Decision

1. In accordance with paragraph 4(2) of Schedule 14 to the 1981 Act Wiltshire Council is directed to make an order under section 53(2) and Schedule 15 of the Act to modify the definitive map and statement for the area to add a bridleway as proposed in the application dated 10 January 2012 and considered here as the appeal route. The width to be specified as 3.048m (10 feet) between points A and B and a width of 4.572m (15 feet) between points B and C as shown on the attached plan. The section B - C to be subject to the condition of being coextensive with a private carriage road and driftway.
2. 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.

Preliminary Matters

3. On 24 May 2012 I dismissed the appeal by John Andrews¹ on the basis of the ruling by Schiemann J² that section 8 of the General Inclosure Act 1801 made no provision for the setting out of public highways less than 30 feet wide, and I reached this conclusion on the basis that section 10 was concerned only with the setting out of private footpaths and bridleways. That decision was upheld in the High Court by Foskett J on 8 May 2014³ but quashed by the Court of Appeal on 1 July 2015⁴. The Court of Appeal held that section 10 of the 1801 Act did authorise a commissioner to set out and appoint public bridleways and footpaths in an award.
4. I have been directed by the Secretary of State for Environment, Food and Rural Affairs to re-determine the appeal under Section 53(5) and Paragraph 4(1) of Schedule 14 of the Wildlife and Countryside Act 1981.

¹ Appeal Decision FPS/Y3940/14A/3 dated 24 May 2012

² R (Andrews) v Secretary of State for the Environment (1996) 71 P&CR 1

³ R (Andrews) v Secretary of State for the Environment (2014) EWHC 1435 (Admin)

⁴ R (Andrews) v Secretary of State for the Environment (2015) EWCA Civ 669

5. The appeal has been decided on the basis of the papers submitted and the judgment of the Court of Appeal.

Main issue

6. In considering the evidence and the submissions, I take account of the relevant parts of the 1981 Act and court judgments.
7. 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, and clarified in the case of R v Secretary of State for Wales ex parte Emery.

Test A: Does a right of way subsist? This requires clear evidence in favour of public rights and no credible evidence to the contrary.

Test B: Is it reasonable to allege that a right of way subsists? If there is a conflict of credible evidence but no incontrovertible evidence that a right of way cannot be reasonably alleged to subsist, then a public right of way has been reasonably alleged.

Reasons

8. The application was made by John Andrews. The basis of the application is that a bridleway was created along the application route to a width of 3.048m (10 feet) between points A and B and to a width of 4.572m (15 feet) between points B and C (as shown on the attached plan) by the Crudwell Inclosure Award of 1841, made pursuant to a local Act of 1816 "An Act for Inclosing Lands in the Parish of Crudwell, in the County of Wilts" (the Crudwell Act). The part of the route, between points B and C is described in the Award as a 'Private Carriage Road and Driftway and Public Bridle Road'. The public bridleway is therefore coextensive with private rights and the exercise of the public rights is subject to that limitation and condition.
9. In the light of the decision of the Court of Appeal I am satisfied that the Commissioners had the power to make the Crudwell Award and that the Award established a bridleway as set out in Mr Andrews' application. There is no evidence to suggest that the way has been subsequently extinguished and it therefore exists to the present day.

Conclusion

10. Having regard to these and all other matters raised in the written representations I conclude that the appeal route subsists as a bridleway and that the appeal should be allowed.

Michael R Lowe

INSPECTOR