
Order Decision

Inquiry opened on 14 June 2016

by Barney Grimshaw BA DPA MRTPI(Rtd)

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

Decision date: 30 June 2016

Order Ref: FPS/P2745/7/48M

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the North Yorkshire County Council Public Footpath 25.85/43 Sheriff Hutton and Public Footpath 25.85/44 Sheriff Hutton Modification Order 2011.
- The Order is dated 14 October 2011 and proposes to modify the Definitive Map and Statement for the area by adding two footpaths running along a route known as the Coach Road, Sheriff Hutton, as shown on the Order Map and described in the Order Schedule.
- In accordance with Paragraph 8(2) of Schedule 15 to the 1981 Act I have given notice of my proposal to confirm the Order with modifications to delete part of one of the Order routes and to amend references to gates.

Summary of Decision: The Order is confirmed subject to the modifications that I proposed previously.

Procedural Matters

1. I held a public inquiry into this Order on Tuesday 17, Wednesday 18, Thursday 19 and Friday 20 March 2015 at Sheriff Hutton Village Hall (the first inquiry).
2. An Interim Decision was issued on 3 June 2015 in which I proposed to modify the Order by deleting part of one of the Order routes and amending references to gates.
3. Following advertisement of the notice and deposit of the associated documents relating to the proposed modifications, 3 objections and one representation were received within the statutory period specified. I therefore held a second inquiry on Tuesday 14 and Wednesday 15 June 2016 at Sheriff Hutton Village Hall and continued on Thursday 16 June at Sheriff Hutton Cricket Club. This inquiry was held to consider evidence relating to the proposed modifications and new evidence concerning parts of the routes not previously proposed to be modified. I made further unaccompanied site inspections on Monday 13 June and Wednesday 15 June. At the inquiry the parties agreed that a further accompanied inspection was not necessary.
4. In writing this decision I have found it convenient to refer to points marked on the Order Map. I therefore attach a copy of this map.
5. The Order relates to two claimed footpaths which are in fact both sections of a single route known as the Coach Road. The Order routes are separated by

another section of the Coach Road which is already recorded as a public footpath (Points E to F).

6. At the second inquiry North Yorkshire County Council, the Order Making Authority (OMA), adopted a neutral stance with regard to the proposed modification to delete part of one of the Order routes but appeared in support the confirmation of the Order with regard to the sections of the Order routes not proposed to be modified.

The Main Issues

7. With regard to the modifications proposed in my interim decision dated 3 June 2015, the main issues that now require consideration are:
 - i) whether the modifications proposed were justified, and;
 - ii) whether there is any new evidence that has a bearing on the proposed modifications to the Order as submitted.
8. With regard to the whole of the Order routes, the requirement of Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 (the 1981 Act) is that the evidence discovered by the surveying authority, when considered with all other relevant evidence available, should show that rights of way that are not shown on the definitive map and statement subsist along the Order routes.
9. Much of the evidence in this case relates to usage of the routes. In respect of this, the requirements of Section 31 of the Highways Act 1980 (the 1980 Act) are relevant. This states that where it can be shown that a way over land has been 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.
10. Common law also requires me to consider whether the use of the routes and the actions of the landowners have been of such a nature that the dedication of them by the landowners can be inferred.

Reasons

Documentary Evidence

11. It was argued on behalf of the British Horse Society (BHS) that, because numerous commercial maps published from 1819 onwards appeared to show a continuous through route linking the public highway at Point A with the public highway, Moor Lane, to the south-east of Point M by way of the Order routes (and the section of the Coach Road between Points E and F which is currently recorded as a public footpath), it is also likely that this route is also a public highway. This was referred to as the 'thoroughfare principle'.
12. This 'principle' was referred to in the judgement in the *Fortune* case¹. This is a lengthy and complex judgement but, on consideration, it is my view that, although in that case it was accepted that it might be possible to draw an inference where two recognised public highways are connected, it was not accepted that all such connecting routes should automatically be regarded as

¹ *Fortune & Others v Wiltshire Council and Another* 2010 (in the High Court) and 2012 (in the Court of Appeal)

public. It is in my view still necessary for the particular circumstances of any claimed route to be considered.

13. In this case, as referred to in my interim decision, it appears that a route leading to Sheriff Hutton Hall by way of Points A to I has existed since early in the 17th century but, it was not until the early 19th century that a second route by way of Points M to J appeared on any maps, almost 200 years later. Thus the route was not originally established as a through route. It was argued that, despite this, once a through route existed, members of the public would have used it. However, I have no substantive evidence upon which to conclude that this actually was the case. Similarly, I have no evidence regarding any action that the owners of the hall might have taken to prevent such public use although I note that a lodge was constructed at Point A which could have enabled access to be controlled at that point.
14. Although the whole route is now known locally as 'the Coach Road', former owners of the Hall stated that this is not how it was known to them. For example, Both Fr James and Mr Robert Blenkinsopp said the route was never known as 'the Coach Road', the western part (from Point A to the Hall gates was known as 'the front drive' and the eastern part (to Moor Lane by way of Points J to M) was known as 'the back drive'. Also, the current Historic England Register of Historic Parks and Gardens describes Sheriff Hutton Hall as having "*a main approach*" from the west and "*A further, south-east drive*" which joins the west drive 150m from the Hall.
15. It was further argued that the fact that a section of the eastern Order route was hedged on both sides suggested that the route was public as the hedges might have been installed to prevent the intermingling of the landowner's and other people's livestock which might have been grazing on the verges of the route. However, although it is known from minutes that Sheriff Hutton Parish Council raised money from the letting of public lanes for grazing until 1911, there is no evidence to suggest that the Order routes themselves were routes that were used in such a manner. Other sections of the routes appear to have been fenced or hedged on one side only or left open to adjacent land.
16. It was also pointed out that some Ordnance Survey (OS) maps show footpaths apparently terminating at the boundary of the Order route and then re-starting from the opposite boundary. It was argued that this indicated that the Order route must also have been considered to be public otherwise the paths would have been cul de sacs. However, OS maps showed features visible on the ground and a footpath would not normally be visible where it crossed the Order route and would not therefore be shown. On the other hand, the definitive map shows all the public rights of way affected crossing the Order route and not terminating at it.
17. An 1840 plan showing the route of the proposed Scarborough to York railway was also produced but this appeared to be a location plan based on a small scale commercial map which had been considered previously. The proposed railway did not affect the Order route and this map did not add anything to the evidence already taken into account in my interim decision.
18. In a 1951 Malton Rural District Council document a number of footpaths in Sheriff Hutton are referred to. Two of these, described as "*Link lane to Oak Farm*" and "*Link lane to Home Farm*", appear to have been routes which linked to the Order route and one, described as "*Sheriff Hutton Park to Moor Lane*",

would seem to include part of the Order route itself. It is assumed that this document may have been put together as part of the process of preparing the first definitive map. The first two of these routes are braced with other routes all of which are described as being accommodation roads and at least part of the third route was subsequently added to the definitive map as a bridleway from Point M to Moor Lane but the others were not. It was suggested that the inclusion of routes terminating at the Order route in this document indicated that it must have been considered to be a public route. However, as part of the Order route itself was also included and the routes were not subsequently recorded on the definitive map, it is not appropriate to afford any significant weight to this argument.

19. It was further suggested on behalf of the BHS that insufficient weight had been given to the large number of commercially published and OS maps which showed the Order routes. It was argued that these maps were produced for sale to and use by the public and it could therefore reasonably be expected that routes shown could be used by the public. However, it is known that private ways were also shown and OS maps included a specific disclaimer to the effect that routes shown were not necessarily public. In addition, it is not clear how the publishers of the maps could have determined the correct status of many of the routes shown.
20. Overall, it is my view that there is not sufficient new documentary evidence to alter my original conclusion that, on the balance of probability, the documentary evidence that is available does not indicate the existence of public rights over the Order route even though it is largely consistent with the possibility that such rights might subsist.

Evidence of Presumed Dedication under the 1980 Act

Date when public use was brought into question

21. A limited amount of new evidence was adduced with a bearing on the date when public use of the Order route was brought into question. In particular, Mr Ian Aconley, retired police constable, recalled in a written statement that a gate was erected at Point C soon after an incident that took place on 21 September 1994. He further states "*I believe these gates were locked once a year – New Year's Day, I seem to recall, but I can't remember how many years this went on for.*"
22. Mr David Armitage stated that he recalled blue signs reading "*PRIVATE ROAD – No public right of way*" being erected when lay-bys were built prior to the submission of a planning application for an open air theatre at the Hall in February 1994. This reinforced his statement at the first inquiry that the signs were erected in 1993. Mrs Howell, however, thought that the blue signs had been erected somewhat earlier, before the death of her father in 1992. On the other hand, the evidence of users of the route indicates that public use was not brought into question until 1995. On behalf of the OMA it was stated that even if public use of the routes had been brought into question in 1991 or 92, public use over the period 1971 to 1991 was similar to that in the periods already considered.
23. Overall, this new evidence does not lead me to depart from my previous conclusion that public use of the route was clearly brought into question in 1995 but may also have been in 1993.

Evidence of Use

24. Further arguments and a limited amount of new evidence were submitted by various parties regarding use of the Order route. To some extent this conflicted although this does not necessarily indicate that parties were mistaken or deliberately seeking to mislead. The relevant period of use ended over 20 years ago and began 20 years before then; it is not therefore surprising that memories of it are not all precise. Also, although landowners and others associated with the Order route did not see users of it in the numbers claimed; this does not necessarily mean that the claimed use did not occur. No one spent all their time monitoring use of the route and visibility of much of the route was limited by vegetation from some of the properties occupied by landowners. Similarly, the fact that users of the route who gave evidence stated that they were not challenged and did not encounter locked gates does not mean that some challenges were not made or that gates were never locked.
25. An Evidence of Use form completed by Mr J Calvert in June 2011 was submitted on behalf of landowners. This had been returned to Sheriff Hutton Villagers Group (SHVG) but not submitted by them to the county council. It was suggested that other forms might also have been held back. This was denied on behalf of SHVG and it was stated that this form alone had been withheld because Mr Calvert had been employed at Lodge Farm throughout his period of use of the Order routes and that therefore such use would have been regarded as with permission and not taken into account.
26. Some new evidence was presented regarding challenges made to users and regarding the locking of gates, particularly one at Point H.
27. Mr Ian McLoughlin, who owned Holme Farm from 1979 to 1983 and ran it as a pig farm, stated that he frequently challenged people using his section of the route (Points J to L) and sometimes between Points F and I with authority from the owner of that section until 1981, Mr Blenkinsopp. The only person he was able to name that he claimed to have challenged was Dr Johnson but this was denied by Dr Johnson himself. Mr McLoughlin also stated that there was very little use made of his part of the route before he paved the road between Points J and L in 1980. This is corroborated by further examination of the available evidence of use which shows that relatively few people claimed to have used the route between Points I and M in the 1970s.
28. Mr Robert Blenkinsopp also stated that he challenged 4 people between Points H and I during the last 5 years he lived at Sheriff Hutton Hall (1974 to 79). He further stated that 2 of the challenges were to people who appeared lost and were presumably strangers to the area. Mr Blenkinsopp was not at the time the owner of any part of the Order route but considered he had authority to challenge people from Mr Wilson who was the owner.
29. Mr McLoughlin also corroborated previous evidence regarding the locking of the Gate at Point L until 1979 when he became owner of Holme Farm. After then he said that he used to close the gate and secure it with a bolt but not lock it. He also stated that he frequently closed gates at Points J and K but didn't lock them.
30. Mr R and Fr J Blenkinsopp both gave new evidence to the effect that gates at Point H were locked on Christmas Day each year during the 1970s. They said

that their father would lock the gates on Christmas Day after attending church and then unlock them on Boxing Day. This action was taken by arrangement with Mr Wilson who was then the owner of the route and who also locked the gate at Point L but never on the same day so that access was always possible to the Hall and other properties served by the route between H and L. The reason for locking the gates was said to be to prevent public rights being established over the route. Mr McLoughlin said in his written statement that he knew this gate was locked around Christmas time but it did not affect him as he mainly used the eastern part of the Order route towards Point M. At the inquiry he also stated that on Christmas Day 1979 he was prevented from driving to the pub as a result of this gate being locked.

31. However, no one else who provided evidence of use of the route ever encountered a locked gate at H and, accordingly, it does not appear to have interrupted public use of the route. The stated reason for the locking of the gates was to prevent a public right of way being established and it was commonly believed at that time (the 1970s) that such action was sufficient to indicate a landowner's lack of intention to dedicate a route for public use and thereby bring public use into question and negate a presumption of dedication. Nevertheless, the law has been clarified by a number of judgements which suggest that simply locking a gate on a single day may not always be sufficient to prevent the establishment of public rights. In the *Godmanchester* case² a previous judgement³ was quoted in which Lord Denning stated that "*...in order for the right of the public to have been 'brought into question', the landowner must challenge it by some means sufficient to bring home to the public that he is challenging their right to use the way, so that they may be apprised of the challenge and have a reasonable opportunity of meeting it.*" Also, in a more recent case⁴ it was held that the blocking of a route at Christmas did not provide sufficient evidence that the landowner had no intention of dedicating a route for public use because it was not, in the circumstances of that case, a sufficiently overt action as to bring the lack of intent to the attention of the public who used the way.
32. In my view, similar consideration applies in respect of the gate at H. It is not contested that this gate was locked on Christmas Day in the early years of the relevant period but no member of the public who used the route ever encountered it when locked. No sign was erected to explain why it was being locked and no other attempt appears to have been made to bring the landowner's intention to the attention of users of the route. The evidence suggests that members of the public who used the route were unaware that the gate was locked. Accordingly, I do not think the locking of the gates at Point H interrupted public use of the Order route or brought it into question and was not sufficient to indicate that the landowner had no intention to dedicate it.
33. In my interim decision I afforded some weight to the locking of the gate at Point L and I realise that my conclusion regarding the locking of the gate at H might appear at odds with this. However, each case must be considered on its merits and in my view there are significant differences in the evidence relating to the two gates. The gate at L was not locked on Christmas Day but was locked by the landowner himself on other days. The evidence suggests it was

² R (on the application of Godmanchester PC and Drain v SSEFRA and others 2007

³ *Fairey v Southampton County Council* 1956

⁴ *Ali v SSEFRA and others* 2015

locked on more than one day each year. Several witnesses corroborated the evidence that it was sometimes locked. People with private rights to use the route were provided with keys to the lock and/or were forewarned when locking was to take place. Thus, the gate at L seems to have been locked more frequently than that at H and the fact that it was being locked was more widely known.

Conclusions regarding Evidence of Pedestrian Use

34. As I concluded previously, it is clear that many members of the public used the Coach Road as of right between Points A and I on a frequent basis in the 20 year periods ending in both 1993 and 1995. Despite the new evidence regarding the locking of the gates at Point H, it is my view that action taken by landowners was not sufficient to bring such use into question, interrupt it or indicate a lack of intention to dedicate it as a public footpath. It therefore remains my view that, on the balance of probability, the Order routes between Points A and E and the section between Points F and I can be presumed to have been dedicated as public footpaths in accordance with the provisions of the 1980 Act.
35. With regard to the section between Points I and M, less people claim to have used the route and generally on a less frequent basis, particularly before 1980. Also there is strong evidence that a gate at Point L was locked on a number of days each year between the late 1960s and 1979 with the specific intention of preventing a public right of way being established. Although the (relatively few) users of the route as of right during this period stated that they never encountered the gate when it was locked, several people with private rights to use the route did. Accordingly, it remains my view that it is appropriate that some weight be given to the locking of this gate which both interrupted use of the route and indicated a lack of intent on the part of the landowner to dedicate a public right of way. This, together with the limited evidence of public use before 1980 and the further evidence of challenges made by Mr McLoughlin confirms my previous view that, on the balance of probability, the route between Points I and M cannot be presumed to have been dedicated as a public right of way of any sort under the provisions of the 1980 Act.

Use as a Bridleway or Vehicular Route

36. Little new evidence was presented of use of the Order routes on horseback, bicycle or in vehicles and it remains my view that the available evidence is not sufficient to raise the presumption that the Order routes have been dedicated as public bridleways in accordance with the provisions of the 1980 Act.

Common Law

37. No new evidence was presented that would lead to an inference that landowners intended to dedicate public rights over the Order routes.

Other Matters

38. Attention was drawn to two conveyances in 1966 which included covenants stating that purchasers of land including the Order routes should not allow "*any further gates*" to be erected across the route. It was suggested that this meant that the gate at Point L had been erected illegally and should be given no weight in the determination of the Order. On behalf of landowners it was pointed out that the gate erected by Mr Wilson at point L was in fact a

replacement for a broken down gate and was not therefore a 'further' gate. In any event, it is not for me to determine the legality of this gate but its effect on usage of the Order route which I have done.

39. No further comments were made regarding my proposed modification of references to gates in the Order.

Conclusions

40. Having regard to these and all other matters raised, I conclude that the Order should be confirmed subject to the modifications I proposed previously to delete reference to the section of the Order route between Points I and M and to delete references to BS 5709 (2006) with regard to gates.

Formal Decision

41. I confirm the Order subject to the following modifications:

In the Schedule to the Order, Part 1, in the description of Footpath 25.85/44 delete reference to Points J,K,L and M and all words after "*...at its junction with Public Footpath 25.85/7.*"

In the Schedule to the Order, Part 2:

In the description of Footpath 25.85/43, delete references to BS 5709 (2006).

In the description of Footpath 25.85/44:

Amend the Grid Reference End Points to read "*46531 46560 to 46587 46560*".

In the description of the route, delete all words after "*...at its junction with Public Footpath 25.85/7.*"

In the column describing the length of the route, amend the second entry to read "*0.462 km*" (not 1.130 km) and amend the Total to read "*0.585 km*" (not 1.416 km).

Delete the third entry in the columns relating to the Nature of Surface, Length and Width.

Delete all references to BS 5709 (2006) and all references to field gates at points J, K and L.

Amend the Order Map accordingly.

Barney Grimshaw

Inspector

APPEARANCES

For the OMA

Andrew Parkinson

Counsel, representing North Yorkshire County Council (NYCC)

Objectors

Dr Richard Johnson

Path user and SHVG

Who called:

Dr David Willis

SHVG

Dr Sarah Anderson

Path user

Dr Simon Sweeney

Path user

Charles Wilson

Path user

Helen Spath

Path user and SHVG

Penny Bean

Sheriff Hutton Parish Councillor

Catriona Cook

BHS

Richard Oliver

Path user

Michael Lawson

Path user

John Hamilton

Path user

John Barrett

Counsel, representing Beaufort Farms Ltd., Mr A Lewis, Mr D Armitage, Mr R Barker, Mr R Brumby and Mr M Rickatson.

Who called:

John Calvert

Retired farm worker

Fiona Howell

Former resident of Lodge Farm

David Armitage

Tenant of affected land

Michael Rickatson

Adjacent landowner

Robert Brumby

Adjacent landowner

Ian McLoughlin

Former owner of affected land

Robert Blenkinsopp

Former resident of Sheriff Hutton Hall

Fr James Blenkinsopp

Former resident of Sheriff Hutton Hall

Robin Carr

Public Rights of Way Consultant

DOCUMENTS

1. Statement Subsequent to the Interim Order Decision and Summary position Statement, NYCC.
2. Statement of Case of SHVG.
3. Proof of Evidence and supporting documents, SHVG.
4. Revised tables detailing use of the Order routes, SHVG.
5. Statement of Case and supporting documents, BHS.
6. Proof of Evidence of Catriona Cook, BHS.
7. Statement of Case and supporting documents, Hill Dickinson on behalf of Beaufort Farms/Mr A Lewis, Mr R Barker, Mr D Armitage, Mr R Brumby and Mr M Rickatson (landowners).
8. 25 Witness Statements of David Armitage, James Blenkinsopp, Robert Blenkinsopp, Robert Brumby, John Calvert, Robin Carr, Ian McLoughlin, Michael Rickatson, Ian Aconley, John Armitage, George Armitage, Robin Barker, Geoff Duck, Alice Forsdyke, Derick Forsdyke, Michael Frank, Kevin Grinham, Linda Harris, Fiona Howell, Milly Pennock, Dorothy Rickatson, Eric Weightman, James Ray Westaby, Dorianne Butler and Sheila Armitage.
9. Opening and Closing submissions (including table of users 1973-81 and copy of Order Decision FPS/P2935/7/42), NYCC.
10. Opening and Closing submission on behalf of landowners.
11. Summing up for BHS.
12. Opening and Closing submissions, SHVG.
13. Letter, dated 14 June 2016, from Dr Sarah Anderson.
14. Copy of Email (part redacted), dated 28 April 2011, from Helen Spath to Jill Johnson.
15. Statement, dated 5 June 2016, from Mrs EJ Johnson.
16. Evidence of Use Form of John Calvert, dated 6 June 2011.
17. Copy of report of the Board of Trustees and Statement of Accounts, East 15 Acting School Ltd, 30 September 1994.
18. Copy of plan showing ownership of Mr R Brumby.
19. Letter, dated 15 June 2016, from Michael Lawson.
20. Copies of correspondence in February and March 1995 between A Farnaby and C Brookes and NYCC (also submitted at first inquiry).

