



Order Decision

Inquiry opened on 1 August 2017

by Mark Yates BA(Hons) MIPROW

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

Decision date: 19 September 2017

Order Ref: FPS/E0535/7/37

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the 1981 Act") and is known as The Cambridgeshire County Council (Public Bridleway No.20 Warboys) Definitive Map Modification Order 2013.
- The Order was made by Cambridgeshire County Council ("the Council") on 7 June 2013 and proposes to record the route claimed ("the claimed route") as a public bridleway in the definitive map and statement, as detailed in the Order Map and Schedule.
- There were twelve objections outstanding at the commencement of the inquiry.

Summary of Decision: The Order is not confirmed.

Procedural Matters

1. I held a public inquiry into the Order on 1-2 August 2017 at Warboys Parish Centre. I made an unaccompanied visit to the claimed route on 31 July 2017 and I revisited the site accompanied by the interested parties following the close of the inquiry. I met the landowners (Mr and Mrs England¹) during the unaccompanied visit but I did not enter into any discussion regarding the merits of the case.
2. The Council submitted the proofs of evidence relied upon within the required timeframe but a procedural error within the Planning Inspectorate meant that these were not circulated to the other parties until 27 July 2017. No concerns were expressed regarding this issue at the inquiry.
3. All of the points referred to below correspond to those delineated on the Order Map. The claimed route proceeds over an existing section of Footpath No. 8 (points A-B) and then continues over sections which are presently unrecorded (points B-C-D and E-F). The gap between points D and E arises due to a section of the former alignment of Heath Road having not been legally stopped up. Further, I accept that, if confirmed, Part I of the Order Schedule should be modified to specify that the A-B section has a length of 245 metres rather than 243 metres.
4. The tests that I need to apply are set out in paragraph 5 below. Issues relating to the potential impact of the claimed route being recorded as a public bridleway are not relevant to my decision. This applies irrespective of any alleged breach of human rights as it is not possible to interpret the 1981 Act in a way that it is compatible with the Convention rights.

Main Issues

5. The Order relies on the occurrence of events specified in Section 53(3)(c)(i) and (ii) of the 1981 Act. Therefore, if I am to confirm the Order, I must be satisfied that the evidence discovered shows (i) that sections of bridleway

¹ They acquired the land from St John's College Cambridge in the autumn of 2010

- which are not shown in the definitive map and statement subsist and (ii) that a section of footpath ought to be shown as a bridleway. The burden of proof to be applied is the balance of probabilities.
6. The relevant statutory provision, in relation to the dedication of a public right of way, is found in Section 31 of the Highways Act 1980 ("statutory dedication"). This requires consideration of whether there has been use of a way by the public, as of right and without interruption, for a period of twenty years prior to its status being brought into question and, if so, whether there is evidence that any landowner demonstrated a lack of intention during this period to dedicate a public right of way.
 7. The Council do not consider that a case can be made for the dedication of the claimed route at common law.

Reasons

When the status of the claimed route was brought into question

8. There is clear evidence of verbal challenges being issued by Mr England to the applicants for the Order (Mrs Tinsley and Mrs Fazackerley) when they were seen riding on the route on two consecutive Saturdays in the early part of 2011. I accept that nothing turns on the precise date of the first challenge. However, Mr England says his diary records that this occurred on 26 February 2011. It was this action that triggered the submission of the application of 22 March 2011. In terms of the sign outlined in paragraph 21 below, those horse riders who saw the sign did not interpret it as being a challenge to their use. Nor in my view would its wording constitute a clear bringing into question of the claimed route for the purpose of statutory dedication.
9. The challenges in the early part of 2011 clearly served to bring the status of the claimed route into question. This means that the relevant twenty year period to be considered is 1991-2011 ("the relevant period").

Evidence of use by the public

10. Nineteen user evidence forms ("UEFs") were completed on behalf of twenty people in support of use of the claimed route and seventeen of these users state that they used the route on horseback. Eleven of the users were subsequently interviewed by a Council Officer and this information is set out in the form of statements. Additional statements have been provided from other people, including Mr England and the former tenants of the land in question (Mr Onyett and Mr Smith²). However, both Mr Onyett and Mr Smith were unable to attend the inquiry. Therefore, it was not possible to clarify any information contained in their statements. Eight people gave evidence at the inquiry in relation to equestrian use of the claimed route.
11. The UEFs contain a map which indicates the extent of the route used. Whilst the route appears to be coloured in the same way on a number of these maps, the majority are signed by the user. The written and oral evidence provide further support for the use of the route which is broadly shown on the maps with the UEFs. In terms of the divergence between these maps and the route included in the Order at Heath Road, the accompanied site visit was supportive of the claimed route being correctly shown on the Order Map. An examination

² They tenanted the land between 1973-2001 and 2001-2010 respectively

of the Land Registry documents provided indicates that this section falls outside of land owned by Mrs Jeeves.

12. Mrs Sharples, on behalf of Mr England, draws attention to the degree of the claimed use and the variations between the information contained in the UEFs and the subsequent statements and oral evidence of the users. I give the greatest weight to the evidence given at the inquiry followed by the statements provided. This means that I take the oral evidence to be a greater guide of the extent of the use by horse riders. I do not dismiss the untested evidence contained in the UEFs but I treat it with caution unless it is clarified in a subsequent statement. The statements and oral evidence of the users indicate that the level of use in the UEFs was overestimated to some extent.
13. It is apparent from an examination of the user evidence that the number of horse riders using the claimed route varied during the course of the relevant period. However, the Council's principal witness (Mr Smith) accepted in cross-examination that by the end of the relevant period the only regular users were the applicants. Although I do not consider the number of users during each year of the relevant period to be substantial, regard should be given to the rural setting of the claimed route. Consideration also needs to be given to the frequency of the alleged use during this period.
14. Mrs Sharples refers to periods when particular people did not use the claimed route, for instance due to holidays or pregnancy³. However, such relatively short gaps in use may be expected for these reasons during a period of twenty years. Further, it is apparent that some of the users were trying to give an average frequency for their use during the period they used the claimed route. In some cases, the more prevalent use occurred during the summer months. An issue nonetheless occurs where the user has not quantified statements such as "*occasional use*". This is most evident from the form of Ms Ancell where she also states that during the relevant period she has "*ridden this route thousands of times*".
15. The evidence of the users who spoke at the inquiry is indicative of a good proportion of the use occurring during Saturday morning rides, which incorporated other rights of way and routes believed to be public. Whilst this group of riders generally included Mrs Tinsley and Mrs Fazackerley, the composition of the other riders varied at times. The group included on occasions other family members of the riders. A large number of the users state that they used the route with the applicants. Given that Mrs Fazackerley says that the rides involved groups of up to five people, it is apparent that only a proportion of the relevant riders would have used the route on any given Saturday.
16. A number of people have provided evidence of a lack of observed use of the claimed route by horse riders. In some cases, the visits to this locality were not particularly frequent. However, Mr and Mrs England have lived at Broad Pool Farm on Fenside Road since 2000 and Mr England has farmed land in the area for a much longer period of time. They point to a lack of observed use of the route by horse riders until the challenges in the early part of 2011. This is based on the views that were previously available from the farm and its yard along with Mrs England's office. They also regularly drove along Fenside Road. In addition, Mr Clarke says he did not see any horse riders on the verge of Heath Road during the times he travelled along the road during the relevant

³ Mrs Fazackerley did not use the route for this reason for two-three months in 1992

- period. Nor has he seen any horse riders from the field he rents on the southern side of Heath Road.
17. A lack of observed use does not demonstrate that such use did not occur. This use may have gone unnoticed whilst people were engaged in other activities or due to the short period of time it takes to ride along the route⁴. The evidence of the users who spoke at the inquiry is supportive of use of the claimed route during the relevant period. Further, as outlined below, there is some acknowledged equestrian use of the claimed route albeit to a limited extent.
18. Mrs Jeeves lived at Woolvey Farm between 2000 and 2006. She retained land at Foxhole Barn and moved into this property in 2009. Her statements provide evidence of use by three to five horse riders on Saturdays for part of the relevant period. However, Mrs Jeeves says that this observed use did not occur on a frequent basis.
19. Mr Onyett says he did not personally see horse riders using the route but he was aware of some occasional use due to evidence of hoof prints. In his statement to the inquiry Mr Onyett refers to two employees not seeing any use by horse riders. However, he states in an earlier statement that one of his tractor drivers mentioned that he saw horse riders occasionally. There is also a conflict between the statements of Mr Smith regarding whether there was any potential signs of hoof prints. Some of the users mention seeing people working in the fields but the extent to which this occurred cannot be determined.
20. Additional statements have been submitted by Dr Allery and her daughter which outline that they used the route on a permissive basis, prior to the more recent permission granted to them by Mr England. Dr Allery says that permission to use the claimed route was obtained via the late Mrs England⁵. However, it is unclear who actually granted this permission. Mr Onyett and Mr Smith deny giving any such permission and there was an absentee landowner. Nonetheless, the written evidence of Dr Allery and her daughter is that they used the claimed route with permission. This means that it would be unsafe to rely upon their evidence as constituting user as of right.
21. Mr Onyett says that he erected a sign to deter horse riders in wet conditions. Three of the users state that they saw such a sign and that it was in place for between two weeks and a month⁶. These users stopped using the route whilst the sign remained in place. This sign is mentioned by Dr Allery and Mr England and they believe that it was erected on more than one occasion. The sign was located off Fenside Road and worded along the lines of "No Horses Too Wet". Although there may be some doubt regarding when the sign was erected, it was clearly in place on at least one occasion during the relevant period.
22. There is nothing in the wording of the sign to indicate that the use was by way of permission or that permission was temporarily withdrawn. It indicates that the tenant did not wish horse riders to use the route due to ground conditions. The users who saw the sign clearly took it to indicate that the route was unsafe for them to use or that they should not use it to prevent further damage. Nor do I find that anything can be deduced from the "thumbs up" signal given by someone in the field to Mrs Tinsley after the sign was removed.

⁴ It is estimated to take no more than five minutes to ride along the claimed route

⁵ The aunt of Mr England

⁶ The statement of Mrs Wadlow indicates that the sign was erected on two occasions

23. Where use is claimed over a period of twenty years there may well be periods when a route is not used. In this case the sign was in place for a relatively short period of time and the use continued shortly after it was removed. This issue would not in my view serve to interrupt the use so as to prevent dedication from arising under statute. Nor do I consider that an interruption arises during the period of the foot and mouth outbreak in 2001 when it is acknowledged that the users rode on the roads rather than the existing or claimed public rights of way.

Conclusions regarding the evidence of use

24. I accept that the claimed route has been used by horse riders during the relevant period. Although there have been some periods when the route was not used, I am not satisfied on balance that this would have prevented the dedication of a bridleway in this case. However, I am concerned about the degree of use during the relevant period.
25. The evidence provided indicates that this use mainly occurred during a ride undertaken every Saturday by a group of up to five riders. It is stated that this involved riding along the claimed route at around 08:30 and took no more than five minutes to complete. I do not find that it can be determined from the evidence that the route was used to any significant extent on other occasions. This could mean that the use went unnoticed to a certain extent. The lack of observed use by Mr England in the period between the acquisition of the land in the autumn of 2010 and the challenges in 2011 indicates that the level of use had diminished further by the end of the relevant period. This is supported by the user evidence and the testimony of the applicants.
26. Having regard to the above, I do find on balance that the evidence of use is sufficient to raise a presumption of the dedication of a bridleway under statute. Therefore, the first part of Section 31 of the Highways Act 1980 is not satisfied and there is no need for me to consider the issue of statutory dedication further. It is not alleged that dedication under common law arises in this case.

Overall Conclusion

27. Having regard to these and all other matters raised at the inquiry and in the written representations I conclude that the Order should not be confirmed.

Formal Decision

28. I do not confirm the Order.

Mark Yates

Inspector

APPEARANCES

For the Council:

Mrs S. Rumfitt

Consultant instructed by the Council

She called:

Mr L. Smith

Manager of the Council's Definitive Map Team

Mrs A. Tinsley

Applicant

Mrs A. Fazackerley

Applicant

Mrs H. Dennis

Mr B. Fisher

Additional Supporters:

Mrs H. Glover

Ms S. Cummings

Mr R. Pummell

Mrs E. Thomas

Objectors:

Mr P. Clarke

Cllr P. Bucknell

Local member for Huntingdonshire District Council

Mr R. Reeves

Clerk for Warboys Parish Council

Mrs J. Jeeves

Mrs D. Sharples

Solicitor instructed by Mr England

She called:

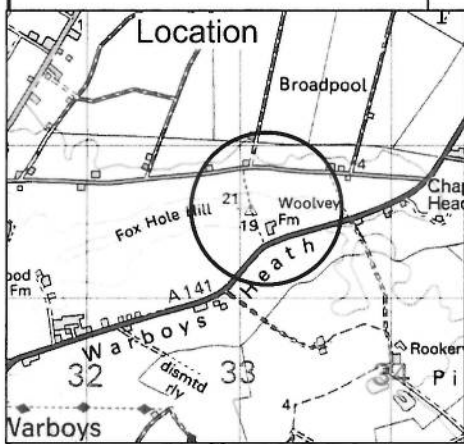
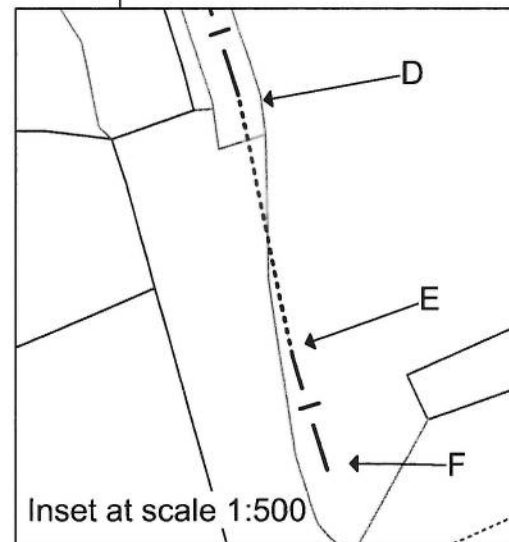
Mr M. England

Mrs J. England

DOCUMENTS

1. Land Registry extracts
2. Statement of Mrs Wadlow
3. Statement on behalf of Warboys Parish Council
4. Statement of Mrs Jeeves
5. Closing submissions for Mr England
6. Closing submissions on behalf of the Council
7. Location map

Public Bridleway No 20, Warboys



Scale: 1:2500
Date: 14/05/2013
By:

Key

Public Bridleway to be added
Unaffected Public Footpath
Section of route already
recorded as carriageway

