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# 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: 21 July 2017**

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## **Appeal Ref: FPS/R0660/14A/1**

- 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 Cheshire East Council not to make an Order under section 53(2) of that Act.
- The Application dated 19 May 2016 was refused by Cheshire East Council on 16 March 2017.
- The Appellant claims that a route running from King Street (between Nos. 95 and 97) and Old Market Place, Knutsford, should be added to the definitive map as a footpath.

**Summary of Decision: The appeal is allowed.**

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## **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. The plan submitted with the application indicated the claimed route running between Nos. 95 and 97 King Street and then turning to run close to the rear of properties. However, the evidence of users seemed to indicate that the route used was slightly different.
4. I attach a copy of a map prepared by Cheshire East Council (Ref: WCA/013) showing the claimed route, amended in accordance with the evidence of users, for reference purposes.

## **Main issues**

5. 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.

6. All 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.
7. Common law also requires me to consider whether the use of the route and the actions of the landowner have been of such a nature that the dedication of the route by the landowners as a public right of way can be inferred.

### **Reasons**

8. No documentary evidence that would support the existence of public rights over the claimed route has been discovered.

### ***Statutory Dedication***

#### *Evidence of public use*

9. Fourteen User Evidence Forms (UEFs) have been submitted in support of the claim and in addition ten statements describing use of the claimed route, two of which were made by people who had not also submitted a UEF. These describe use of the route from 1934 until 2015.
10. In 2015, fences were erected across the route obstructing it and clearly bringing public use into question. Nine people claimed to have used the route throughout the 20 years before its obstruction and five for part of that period. Two people had ceased using it before 1995. People had generally used the route on foot and one had used it on a bicycle before 1995. Most people had used the route on a weekly basis or more frequently. Most people also stated that they had seen others using the route.
11. All those providing evidence of use stated that they had never been obstructed or challenged in their use of the route and most stated that they had never seen any signs on the route to suggest that it was not a public right of way. However, one person reported having seen a sign at one time that may have indicated that permission was given for the route to be used. He was not specific regarding the location of this sign or its location. One other person also remembered having seen a sign at some time but could not recall what it said.
12. An objection to the claim made on behalf of the owner of land crossed by the claimed footpath states that signage has been in place on the gable wall of No. 97 King Street, adjacent to the route, since 1980. Photographic evidence has been submitted of a sign, said to have been erected around 1991, stating "*THE USE OF THIS PRIVATE DRIVEWAY IS BY COURTESY OF HILLCREST Estates*"

and of another sign, said to have been placed over the original sign in 1999 and reading "PEDESTRIAN ACCESS BY KIND PERMISSION OF PREGO". Prego formerly operated a sandwich shop business at No.97 King Street. On a site inspection in 2017 both signs were visible, one mainly obscuring the other, and appeared to have been in place for a considerable period.

13. Although the presence of such signs might usually be sufficient to bring public use of a path into question and/or indicate a lack of intention on the part of the landowner to dedicate it for public use, this would be dependent on the signs being placed in a location visible to members of the public using the path.
14. In this case, only one user of the path specifically recalled seeing a sign. Many however referred to the presence of a florist's stall alongside the gable wall of No.97 King Street. A photograph, said to be from the 1980s provided by a previous owner of No.97 King Street shows a flower display with awning covering much of the gable wall. In addition, an e-mail from Lynda Drinkwater who traded as a florist from 97 King Street from 1993 to 2003. States that she displayed flowers and plants alongside the gable wall during this period. There is also evidence that during some periods there was considerable growth of ivy on the gable wall which might also have obscured any signs. In the light of this it seems possible that signs were not visible to users of the claimed route for some or all of the 20 year period before 2015.
15. There is also evidence from statements and photographs that vehicles have been parked on the claimed route at some times during the relevant 20 year period although it is my view that this would not have completely obstructed the route to the extent that passage on foot would not have been possible.

#### *Conclusions regarding statutory dedication*

16. Overall, it is my view that the available evidence of public use of the claimed route on foot in the period from 1995 to 2015 could raise a presumption, in accordance with the provisions of the 1980 Act, that it has been dedicated as a public footpath. However, there appears to be some doubt as to whether the presence of signs during this period might have brought public use into question during this period and/or indicated the landowner's lack of intention to dedicate a public right of way.
17. On the basis of all of the information available to me it is my view that on the balance of probabilities there is no incontrovertible evidence that a public footpath cannot be reasonably alleged to subsist over the claimed route.

#### **Common Law**

18. 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.
19. In this case, there is evidence of public use of the claimed route over a longer period than 20 years. On the other hand, it is also possible that a sign may have been in place for some time before 1995 and one person has stated that there were gates across the route in the 1960s and 70s. However, in view of my conclusions regarding the statutory dedication of the route, it is not

necessary to pursue the possible inference of its dedication at common law any further at this stage.

### **Other Matters**

20. In August 2016 approval was given to a planning application for the use of land crossed by the claimed route as an outdoor dining area in conjunction with the adjoining restaurant. This is a matter outside the criteria set out in the 1981 Act and accordingly I have given it no weight in reaching my conclusion.

### **Conclusion**

21. Having regard to these and all other matters raised in the written representations I conclude that the evidence that is available shows that on the balance of probabilities it is reasonable to allege that the claimed route is a public footpath. The appeal should therefore be allowed.

### **Formal Decision**

22. The appeal is allowed and in accordance with paragraph 4(2) of Schedule 14 to the 1981 Act Cheshire East 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 public footpath, as proposed in the application dated 19 May 2016 amended in accordance with the attached plan (Ref; WCA/013). This decision is made without prejudice to any decision that may be given by the Secretary of State in accordance with his powers under Schedule 15 of the 1981 Act.

*Barney Grimshaw*

Inspector

