



Order Decision

Site visit made on 1 August 2017

by Heidi Cruickshank BSc (Hons), MSc, MIPROW

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

Decision date: 09 August 2017

Order Ref: FPS/Y3940/7/20

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as The Wiltshire Council Great Hinton Path No 34 Rights of Way Modification Order 2016.
- The Order is dated 25 August 2016 and proposes to modify the Definitive Statement, recording a width for the route of the bridleway, Great Hinton Path No 34. Full details of the route are given in the Order Map and Schedule.
- There were four objections outstanding when Wiltshire Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is proposed for confirmation subject to modifications set out in the Formal Decision.

Procedural Matters

1. On 12 August 2004 an application was made to the Wiltshire Council, the Order making authority ("the OMA") under Section 53(5) of the Wildlife and Countryside Act 1981 ("the 1981 Act") to modify the Definitive Map and Statement ("the DMS") for the area so as to record a width for Bridleway No 34 in the Parish of Great Hinton ("BR34"). On 13 August 2015 the OMA were directed by the Secretary of State to determine the application. And they subsequently made this Order.
2. No-one requested to be heard in relation to this Order. I made an unaccompanied site visit and dealt with the matter by way of the written representations procedure.

Main issues

3. The Order is made under section 53(2)(b) of the 1981 Act by reference to section 53(3)(c)(iii), which states that an Order should be made to modify the DMS for an area on the discovery of evidence which, when considered with all other relevant evidence available, shows:
"that there is no right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification."
4. This Order seeks to modify the particulars contained in the statement by recording a width for BR34, as none is currently recorded. The Order gives a width of 6.1 metres (20 feet) and an objection was made on the basis that the route was not and had not physically been that wide. The applicant objected to the Order on the basis that the route should, in places, be recorded at a greater width.

5. Reliance was placed on documentary evidence, in relation to which section 32 of the Highways Act 1980 requires I take into consideration “...before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any took, place...”. I am required to give such weight to the document as I consider is “...justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it was produced.”
6. My decision as to whether or not the Order should be confirmed, or modified, will be taken on the balance of probabilities, which is the correct test under law in relation to these matters.

Reasons

Physical characteristics

7. BR34 runs south from the public highway, the C218, which runs west from Keevil to the A350. The northern area is known as Cold Harbour. The bridleway turns west at the hamlet of Bleet, running to the north of Hinton Brook, to join the road running south to Steeple Ashton, known as Common Hill at point B¹. There are properties and commercial premises on either side of the northern section of BR34 and residential properties at Bleet. I understand BR34 to be known locally as Bleet Lane.
8. In general the surface of the southern two-thirds of BR34 is a hardened vehicular access track with grass in the centre. There are verges and ditches on either side, with access to fields and properties. The northern section is tarmac with access to residential and commercial premises.

Documentary evidence

Rights of Way Act 1932

9. As a result of this Act there was encouragement for Councils to record public rights of way. In 1934 Great Hinton Parish Council showed the route in the category “*Lanes coloured crimson*”. This appears to be recognition of public rights over the route at that time.

The Definitive Map and Statement

10. The National Parks and Access to the Countryside Act 1949 introduced the concept of the DMS, setting out the procedures to be followed in their production. The route was first recorded as a Road Used as a Public Path (Carriage Road Bridleway) on the Warminster and Westbury Rural District Council area DMS, relevant date 1 May 1953. It was reclassified and recorded as BR34 during the Second and Special Review of the DMS in 1972. The relevant date of the current DMS in relation to BR34 is 12 May 1992.
11. As the route was included in the DMS when it was first compiled I consider that the dedicated width should be that at the relevant date, 1 May 1953. The only alteration made at the review was to the status, not to the width of the route. Physical changes subsequent to that date could not remove rights already dedicated.

¹ Points A and B are shown in the Order map

Steeple Ashton Inclosure Act and Award, 1813/18

12. Between 1545 and 1880 the old system in parts of England and Wales of farming scattered arable strips of land and grazing animals on common pasture was gradually replaced as landowners sought to improve the productivity of their land. The process of inclosure began by agreement between the parties concerned and by the early eighteenth century a process developed by which a Private Act of Parliament could be promoted to authorise inclosure. The process was further refined in the nineteenth century with the passing of the Inclosure Consolidation Act 1801, bringing together the most commonly used clauses and applying these to each local Act unless otherwise stated.
13. The land crossed by the bridleway was formerly the eastern edge of Ashton Common ("the common"), which was shown in the Plan of the Manor of Steeple Ashton belonging to Walter Long, 1760. This plan shows the cottages at Bleet on the eastern side of the common and the C218 running towards the common at Cold Harbour. The common was inclosed under *An Act for inclosing Lands in the Parish of Steeple Ashton, in the County of Wilts [21st May 1813]*.
14. This local Act empowered Commissioners to make an award of public and private roads, footways and bridleways. In the 1818 Award the bridleway was awarded as "*Private Road Bd ONE private carriage road and driftway 20 feet wide marked Bd on the said map leading from Keevil turnpike road near Cold Harbour southward and westward to Hag Hill Road.*"
15. The route is clearly identified on the map annexed to the Award, annotated "*Bd 20 feet*". Although the route appears to have been a new feature on the ground, the Award map suggests variation in width from the outset.

Great Hinton Tithe Map and Apportionment, 1842

16. The Tithe Commutation Act 1836 (amended in 1837) converted tithes to a fixed money rent. Tithe documents are concerned with identifying titheable land and consist of the apportionment, the map and the file. Generally they can give no more than an indication as to whether any way is public or private, because a private right of way can also diminish the productiveness of the land for tithe assessment.
17. The Great Hinton map was a First Class tithe map and the route was shown coloured sienna, on the same route as seen in the Inclosure. I am satisfied that the widths shown accord with the Inclosure map.

Ordnance Survey maps

18. The formation of Ordnance Survey ("OS") was a response to a military need for accurate maps. Over the years, OS developed a variety of maps to meet the growing need for accurate and up-to-date maps of the UK and the production of maps for sale to the public became an activity of increasing importance to OS from the early twentieth century.
19. The OS surveyors drawing of 1807 predates the Inclosure and so does not show the route. Subsequent OS maps show a defined route from the 1885 map onwards, unchanged in appearance to the 1924 edition. By the time of the National Grid Series, 1980 development was obvious at the northern end of the route and further minor alterations are seen in the OS map used as a base for the Order map, dated 2016.

20. The map attached to the application seems to be a copy of the 1924 OS map. The route has been coloured green within the boundaries shown on that map, indicating the view of the applicant that this width should be recorded. The OMA provided a copy of the 1980 OS map overlain with the outline from the 1901 OS map, which has the same features as the 1924 OS map. This suggests that the development at the northern end of the route has altered the width in this area.

Finance (1909 - 1910) Act

21. The Finance (1909 - 1910) Act provided for the levying of tax on the increase in site value of land between its valuation as at 30 April 1909 and its subsequent sale or transfer. The 'assessable site value' of land allowed for deductions for, among other things, the amount by which the gross value would be diminished if the land were sold subject to any public rights of way or any public rights of user, to the right of common and to any easements.
22. Each area of land, or hereditament, was identified on a map and information recorded in a Field Book. The route was excluded from the numbered hereditaments on either side, as was the case with the adjoining public highways, now recorded as public roads. Although showing a route in such a way gives rise to the possibility that it was considered a public highway, normally but not necessarily vehicular, it is the case that private roads set out at Inclosure may be so shown.

Photographs

23. Photographs may confirm the existence of a feature at the time that they were taken. They cannot provide evidence of the rights that may exist over a route, only that it might be discernible on the ground on that date.
24. Some photographs were submitted looking to the south from the western side of the route, showing fencing works underway. I understand these to date from the early 1960s, therefore post-dating the dedication of public rights.
25. An aerial photograph dating from 2014 was overlain with the outline from the 1901 OS map. As with the OS map exercise this suggests that the development at the northern end of the route may have altered the width.

Conclusions

26. There appear to be no maps or photographs relating to the period around May 1953, that is the relevant date on which the route was first recorded, although public rights appear to have been recognised in the earlier 1932 Act mapping process. I agree with the OMA that when the route was physically formed, as a result of the Inclosure, the eastern boundary seems to result from existing enclosures, Bleet Cottages being already recognised on the edge of the common in the pre-Inclosure mapping. The Inclosure Award required a width of at least 20 feet² for the private carriage road but the route appears to have had a variable width from the outset.
27. The closest available evidence of the width at the relevant date that the route was first recorded on the DMS appears to be the 1924 OS map. This shows no change from the 1901 published OS map. Subject to very minor alterations I

² 6.1 metres

consider that this reflects the route initially laid out at Inclosure in terms of alignment and width. There was a change to the north of the Inclosure allotment number 1291, which I understand to have been due to a gate being put in to the paddock at this point. The southern section appears to differ little today with the verges and ditches, giving a variable appearance to the width arising hedge to hedge. The whole of this land was intended to form road outside the enclosed land, albeit a private road initially.

28. I have some sympathy with the view of the objector owning and occupying land adjacent to the northern section of the route, that people would only be able to use the bounded track between the ditches, which they have measured at around 4 metres on the southern section. I also note the view of OMA, that ditches could not have been used and therefore not dedicated to, or accepted by, the public. However, it is only guesswork that there were ditches on the route at the time of dedication, in the period 1818 – 1934. I understand that there were no ditches in the 1950s, as some were then dug, but these were not visible again by 1980s; it may well be the case that ditches have come and gone over time, due to maintenance and lack of maintenance. When and where they were present the land could not be used but, if not present, then the land could be used by the public, even if only to step aside for others.
29. I consider, on the balance of probabilities, that the 1910 Act mapping shows the physical route identified as either a private carriage road or a public highway at that time. Irrespective of the existence of ditches, the identified 'road' was hedge to hedge. The route over the whole width appears to have been identified as a public route by 1934, and may have had that status prior to that time.
30. I consider, on the balance of probabilities, that at the relevant date 1 May 1953 the entire width of the route between the boundaries shown on the 1901 OS map was part of the public right of way. I agree with the objector who points out that scaling from OS maps may not be appropriate. However, they are noted for their accuracy and a surveyor would be able to set out the width by reference to the mapped features on the ground. As a result, I consider that the width should be recorded on the DMS by reference to the 1901 OS map.
31. Once a public highway has been dedicated to the public, and accepted by them, subsequent changes can only be made by legal order. There do not appear to have been any such orders altering the width or alignment of the route after 1 May 1953.

Other matters

32. The law does not allow me to consider such matters as the need, or lack of need, to record a particular width; or, the potential effect on properties. I note that there have been no complaints from members of the public making use of the route as a bridleway and I found no impediment to access during my site visit. However, I have been unable to give weight to these matters in this decision.

Formal Decision

33. The Order is proposed for confirmation subject to the following modifications:
- Within Parts 1 and 2 of the Schedule:

- after text "...Width..." replace text "6.1 metres (20 feet)" with text "...shown by red hatching taken from the Second Edition 1885 survey, 1899 revision, 1901 publication Ordnance Survey map";
- Attach the map outlined above to the Order.

34. Since the confirmed Order would affect land not affected by the Order as submitted I am required by virtue of paragraph 8(2) of Schedule 15 to the Wildlife and Countryside Act 1981 to give notice of the proposal to modify the Order and to give the opportunity for objections and representations to be made to the proposed modifications. A letter will be sent to interested persons about the advertisement procedure.

Heidi Cruickshank

Inspector

