
Order Decision

Inquiry opened on 17 April 2018

by Barney Grimshaw BA DPA MRTPI(Rtd)

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

Decision date: 21 May 2018

Order Ref: ROW/3180973

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as The Shropshire Council (Footpath 44R Deletion and Addition, Parishes of Neen Savage and Cleobury Mortimer and Footpath Addition, Parish of Cleobury Mortimer) Modification Order 2013.
- The Order is dated 19 July 2013 and proposes to modify the Definitive Map and Statement for the area by deleting an existing footpath and adding 2 new footpaths, as shown on the Order Maps and described in the Order Schedule.
- There was 1 objection outstanding at the commencement of the inquiry.

Summary of Decision: The Order is confirmed.

Procedural Matters

1. I held a public inquiry into this Order on Tuesday 17 and Wednesday 18 April 2018 at Cleobury Mortimer Market Hall. I made an unaccompanied site inspection on Monday 16 April when I was able to walk parts of the Order routes and view other parts. It was agreed by all parties at the inquiry that a further accompanied visit was not necessary
2. In writing this decision I have found it convenient to refer to points marked on the Order maps and an additional point (Point X) that I have added to Order map 1. I therefore attach copies of these maps.
3. The Order relates to 3 separate routes:
 - the existing route of Footpath 44R, Neen Savage and Cleobury Mortimer (Points A to B on Order Map 1), which I will refer to as Order Route 1a (OR1a);
 - the proposed new route of Footpath 44R, Cleobury Mortimer and Neen Savage (Points C to D on Order Map 1), which I will refer to as Order Route 1b (OR1b);
 - the proposed additional footpath in Cleobury Mortimer (Points A to B on Order Map 2), which I will refer to as Order Route 2 (OR2).

The Main Issues

4. With regard to the proposed addition of the new footpaths, 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 a right of way that is not shown on the definitive map and statement subsists along the Order routes.

5. Some 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.
6. Common law also requires me to consider whether the use of the paths and the actions of the landowners have been of such a nature that the dedication of the paths by the landowners can be inferred.
7. With regard to the proposed deletion of the existing footpath, the requirement of Section 53(3)(c)(iii) of the 1981 Act is that the evidence discovered by the surveying authority, when considered with all other relevant evidence available, should show that there is no public right of way over land shown in the map and statement as a highway.

Reasons

OR1a

8. No historic documentary evidence has been discovered which indicates that a path has ever existed on most of this route. The available evidence of both walkers and landowners also indicates that no path has ever existed or been used on the section of the route north of the stream. On my visit I noted that there was no visible evidence of a path and that the route crosses a steep slope and is obstructed by fences.
9. In the parish survey carried out before the preparation of the first definitive map, Neen Savage Parish Council (PC) claimed a footpath running from Footpath 43 on the north side of the stream and terminating at the parish boundary which is in the centre of the stream at this point (Point X). The path is described as "*towards Union – very overgrown*" it was further stated "*not used. Good path across stream in CM parish*" and "*marked FP on 1903 ord.*". The reference to 'Union' relates to the former Union Workhouse that occupied the site which is now the Glen Caravan Park. This path appears to coincide with the eastern most section of OR1b. No continuation of the path south of the stream was claimed by Cleobury Mortimer PC. No section of the current definitive route of Footpath 44R (OR1a) was claimed by either parish.
10. The first definitive map (relevant date 1957) then included a cul de sac path as claimed by Neen Savage PC and numbered 44. Subsequently, maps prepared in the first review of the definitive map (1960) showed Footpath 44 running on the line of OR1b. However, when the current definitive map was published (1965) it did not include that path but showed a path, Footpath 44R, running along the line of OR1a.
11. No reason for the alteration of the route of the path between the 1960 review and the 1965 published map has been discovered and Shropshire Council, the Order Making Authority, (OMA), has therefore concluded that the currently

recorded alignment of Footpath 44R (OR1a) is the result of an error made in the preparation of the 1965 definitive map and subsequently perpetuated.

12. The apparent 'error' in the definitive map was raised on behalf of Neen Savage PC in 1993 and has been referred to on a number of occasions since then.

Conclusions regarding OR1a

13. Overall, as there appears to be no evidence that a path has ever existed on the line of OR1a and taking account of the sequence of maps relating to the preparation of the first and subsequent versions of the definitive map, it seems likely that on the balance of probability this path was recorded in error and should be deleted from the map.

OR1b

Documentary Evidence

14. The earliest map that appears to show a route similar to this Order route is the Ordnance Survey (OS) 1st edition map of 1883. This map shows the route running north of the stream and south of the stream within the grounds of the Union Workhouse. However, the expert witness employed by the objector points out that no crossing of the stream at Point X is shown on this map.
15. The OS 2nd edition map of 1902/03 shows the same route but also includes the annotation 'F.B.' (footbridge) at the point where the route to the south reaches the stream (Point X). This map is the one referred to by Neen Savage PC when claiming the route north of the stream in the 1950s parish survey. However, as is pointed out by the objector's expert the path shown to the north of the stream appears to stop some distance to the east of the 'F.B.' annotation. This map also includes the annotation 'F.P.' (footpath) part way along the route to the south of the stream although the objector's expert suggests that this could relate to a route shown running north-westwards from the Order route to the stream.
16. OS maps from this period can usually be relied upon as an indication of features that were present on the ground when they were surveyed but they did not purport to indicate the existence of public rights over any routes shown.
17. More recent OS maps do show public rights of way based on information from definitive maps. An OS Pathfinder map, revised in 1964, appears to show OR1b as a public footpath, presumably based on the draft 1960 review of the definitive map. A later version of the same map (1977) does not show this route but shows the current definitive route of Footpath 44R.
18. Other documents such as Inclosure and Tithe maps do not show the route and it does not appear to have been identified as a public right of way in the survey carried out under the Finance Act 1910.
19. As previously mentioned, the easternmost section of OR1b was claimed by Neen Savage PC as a footpath and it was included in the first definitive map as a cul de sac path between Point D and the stream at Point X. It is unlikely that the parish council intended the path to terminate at the stream and it seems to have been believed that it continued in Cleobury Mortimer parish. However, Cleobury Mortimer PC did not claim a linking path and have not commented

since on the existence or otherwise of such a path despite having been consulted.

20. Overall, the documentary evidence indicates that this route existed from at least 1883 and that it is the route that was claimed in part as a public footpath by Neen Savage PC in the 1950s and that claimed part was subsequently shown on the first definitive map. Although Cleobury Mortimer PC did not claim the section of the route in that parish, it appears that by 1960 the county council intended to add the whole route to the definitive map. Then, apparently in error a different route was recorded in 1965 (OR1a).

User Evidence

21. Evidence of use of the route was provided by 16 people who submitted User Evidence Forms (UEFs), thirteen of whom also submitted additional statements and seven of whom appeared at the inquiry. One further person also appeared at the inquiry and gave evidence of his use.
22. It was common ground between the parties that the claimed route was obstructed and became impossible to use in around 2007/08 when gabion walls were constructed close to the stream south of Point X. It was suggested that the construction of another gabion wall in 2000/01 in connection with the installation of gas tanks also obstructed the route but evidence of users suggests that it remained possible to pass this wall.
23. The period of use described by witnesses ran from the 1940s to 2007/08. During the period from 1987/88 to 2007/08, six or seven people claimed to have used the path during any single year.
24. A number of witnesses referred to the route (and OR2) having been used by large numbers of school children on cross country runs but it was not known whether the school had requested or been given permission for this activity.
25. Detailed examination of the written evidence and the oral evidence given at the inquiry reveals some inconsistency in the description of the route and the use made of it. In particular, the frequency and the period of use was sometimes inconsistently described. In addition, it emerged at the inquiry that some people who claimed to have used both OR1b and OR2 had mainly used OR2 and had only infrequently used OR1b. I also note from maps attached to UEFs that some people appear to have used a route continuing on the south side of the stream to join Footpath 64 and then used the footbridge on that path rather than crossing the stream at Point X on the Order route.
26. I have no reason to believe that these inconsistencies arose for any other reason than the difficulty witnesses had in remembering details of events many years previously. Nevertheless, it does suggest that some caution should be exercised with regard to consideration of the user evidence.
27. There is currently a sign in place close to Point C which directs walkers to Footpath 62 and states "*NO RIGHT OF WAY THROUGH THE CARAVAN PARK*". This sign was said to have been erected in 2010 to replace a previous sign. It was stated on behalf of the objector that there had been a sign at this point for up to 40 years and that the wording of it would have been similar to that of the present sign. However, no other evidence of previous signage at this point was available and users of the path generally did not recall a previous sign. No evidence was submitted of any other signs on OR1b.

28. It was further stated on behalf of the objector that anyone found trespassing on any part of the Glen Caravan Park would have been challenged but no specific evidence of any challenge being made on the route of OR1b before 2008 was presented.
29. Overall, the amount of user evidence that is available the 20 year for the period ending in 2007/08 is limited, caution needs to be exercised in its consideration and there is some evidence of action by landowners indicating a lack of intention to dedicate the route as a public right of way. Accordingly, it is my view that it is not sufficient to raise a presumption that this route has been dedicated as a public footpath in accordance with the provisions of the 1980 Act as a result of use by the public during that period. However, the evidence does indicate that there has been use of the route by the public over a long period and this reinforces the documentary evidence that this is the route that ought to have been recorded in the definitive map rather than OR1a for which there is no evidence either documentary or of use.

Conclusions regarding OR1b

30. The documentary evidence indicates that it was intended in 1960 that this Order route should be recorded as a public footpath, including the section in Neen Savage that had already been recorded on the first definitive map. Someone then made an error and the wrong route was recorded in the 1965 review (OR1a). Nevertheless, the Order route which had been used by the public before 1965 continued to be used after then and it is therefore appropriate that the error should now be rectified by the deletion of the incorrect route and the addition of the intended one.

OR2

31. Documentary evidence shows that this route has existed since at least 1840 but does not indicate the existence or otherwise of public rights over it.
32. Seventeen people submitted User Evidence Forms (UEFs), thirteen of whom also submitted additional statements and seven of whom appeared at the inquiry. One further person also appeared at the inquiry and gave evidence of his use.
33. It was common ground between the parties that signs currently located close to Points A and B on Order Map 2 had been in place since 2010/11 and clearly states that there is no public right of way along the route.
34. The period of use described runs from the 1940s to the present day and between 7 and 9 people claim to have used the route during any single year between 1990/91 and 2010/11. The frequency of use claimed varied between once per year and weekly but most witnesses claimed to have used the route monthly or more often.
35. On behalf of the objector it was stated that signs had been in place since the caravan site changed hands in 1973. A new sign had been erected at Point B in 2010 but the sign near Point A is older and had been in place for some time before 2010. The wording of other earlier signs was not known but it was thought that it would have been similar to the present signs. A photograph was submitted of a sign said to date from the late 1970s or early 1980s and to have been situated near Point A. This reads "GLEN CARAVAN PARK PRIVATE ROAD". Such a sign might not be considered sufficient to indicate clearly that there is

no right of way on foot as there are many examples of public footpaths running along private roads and indeed part of the driveway to the Glen Caravan Park is also recorded as a public footpath.

36. It was also claimed that walkers using the route were challenged and advised that it was not a public right of way. Mr Crompton, park manager from 2010 until 2018 said that he had often challenged people on the route during that period. Mr Rose, occupant of a chalet at the park since 1991 who also worked there from 1994 to 1999, stated that he had seen the previous park manager challenge people on the route.
37. As the evidence of use in the period 1990/91 to 2010/11 is fairly limited and there is some evidence of action taken on behalf of landowners to indicate their lack of intention to dedicate this route as a public right of way during this period. I have therefore also considered public use of the route in the 20 year period ending in 1973, this being the earliest date on which it is claimed that any action to discourage public use was taken.
38. In this period between 5 and 11 people claim to have used the route during any single year. The frequency of use claimed by these people varies from 4-6 times per year to weekly. All of them claim to have seen others using the route. None reported having met with any challenge or obstruction to their use of the route and none had sought or received permission to use it.
39. The description of the route given by users was largely consistent which is perhaps not surprising as it follows a tarmac driveway; although one witness stated that the route had at one time been a stoned track and subsequently stated that this was not correct.
40. No evidence was available to indicate any action by landowners which would indicate a lack of intention to dedicate the route as a public right of way before 1973.

Conclusions regarding OR2

41. Although the available evidence of public use in the 20 year period before 1973 is limited this is not surprising in relation to a period between 45 and 65 years ago. Bearing this in mind and in the absence of any contrary evidence it is my view that on the balance of probability, this route can be presumed to have been dedicated as a public footpath in accordance with the provisions of the 1980 Act as a result of public use in the period from 1953 to 1973.

Conclusions

42. Having regard to these and all other matters raised, I conclude that the Order should be confirmed.

Formal Decision

43. I confirm the Order.

Barney Grimshaw

Inspector

APPEARANCES

For the OMA

Christian Hawley Counsel, representing Shropshire Council (SC)

Who called:

Lucy McFarlane Rights of Way Officer, SC

David Eve Landowner and path user

William Duley Path user

Alan Kimber Path user

Lionel Bishop Path user

James Hulme Path user

John Taylor Path user

Anthony Booton Path user

Supporters

Donald Thompson Path user

Objectors

Rowena Meager Counsel, representing Lickhill Manor Ltd (LML)

Who called:

Raymond Rose Chalet owner and former employee of LML

Benjamin Crompton Former Park Manager, Glen Caravan Park, LML

Denis Lloyd Jones Director LML

DOCUMENTS

1. Statement of Case on behalf of the OMA, SC.
2. Two Proofs of Evidence of Lucy McFarlane, SC, with summaries.
3. Proofs of Evidence of Raymond Pearce, James Hulme, Selwyn George, Anthony Booton, J Rodenhurst, Alan Kimber, Lionel Bishop, David Eve, William Duley, H Horton, Kenneth Reynolds and HG Woodhouse.
4. Bundle of documents, SC.
5. Statement of Case on behalf of LML.
6. Witness Statements of Benjamin Crompton, Denys Gwyerl Lloyd Jones, Raymond Rose ad Stephen Massey.
7. Report on historical mapping, Julian Mann Assoc.
8. Two Bundles of documents assembled on behalf of LML (containing previously submitted material).
9. Letter and attachments dated 10 November 2017, Alan Guest.
10. Opening Statement on behalf of the OMA, SC.
11. Closing Statement on behalf of the OMA, SC.
12. Closing Statement on behalf of LML.



