



Order Decision

Inquiry opened on 7 August 2018

by Mark Yates BA(Hons) MIPROW

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

Decision date: 04 October 2018

Order Ref: ROW/3186868

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the 1981 Act") and is known as the Bath and North East Somerset Council (Restricted Byway BA21/12, Beeks Mill, St Catherine) Definitive Map Modification Order 2017.
- The Order was made by the Bath and North East Somerset Council ("the Council") on 2 August 2017 and proposes to add a restricted byway ("the claimed route") to the definitive map and statement, as detailed in the Order Map and Schedule.
- There were four objections and one representation outstanding at the commencement of the inquiry.

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

Procedural Matters

1. I held a public inquiry into the Order on 7-8 August 2018 at the Guildhall, Bath. I made an unaccompanied visit to the site of the claimed route on 6 August 2018 and I revisited the site accompanied by the interested parties following the close of the inquiry.
 2. The Council has adopted a neutral stance in respect of the Order and the case in support was presented at the inquiry by the applicant (Mr MacIntyre). Mr Dunlop represented Ms Chubb who objects to the confirmation of the Order. Whilst Ms Chubb previously raised some issues in relation to the Order, these were not pursued at the inquiry. I do not find there to be any matters arising from the way the Order has been drafted that warrant further consideration.
 3. Both Mr MacIntyre and the Council's representative (Mr Stark) raised the matter of late documents being tendered by Mr Dunlop. Firstly, documentation relating to the surrender of an interest in land crossed by the claimed route was submitted to the Planning Inspectorate on the ground that it formed an essential part of evidence referred to in most of the witness statements and Mr Dunlop's statement of case. This point is disputed by Mr Stark and he draws attention to the approach taken in other cases. Secondly, two additional statements were presented to the inquiry.
 4. In terms of the agreement and deed of surrender, these documents had already been circulated in advance of the inquiry. Nonetheless, I consider it appropriate to have regard to all evidence that may be relevant to my decision subject to the parties having an opportunity to consider and comment on any documents. The parties had ample time to examine the contents of this documentation, which reveals that Mr R. and Mrs S. Godwin of Beek's Farm occupied land crossed by the claimed route until 2009.
 5. On the second issue, Mr Wright and Mr Coombe had not previously provided any written statement but were called as witnesses by Mr Dunlop. However,
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their evidence was very brief and supported the evidence of other witnesses. There was no need in the circumstances to take an adjournment.

6. The references to points A and B below correspond to those points delineated on the Order Map.

Main Issues

7. The Order relies on the occurrence of an event specified in Section 53(3)(c)(i) of the 1981 Act. Therefore, if I am to confirm the Order, I must be satisfied that the evidence discovered shows that a right of way which is not shown in the definitive map and statement subsists. The burden of proof to be applied is the balance of probabilities.
8. 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 ("the 1980 Act"). This requires consideration of whether there has been use of a way by the public, as of right¹ 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.
9. If statutory dedication is not applicable, I shall consider whether an implication of dedication can be shown at common law. Dedication at common law requires consideration of three main issues: whether the owner of the land had the capacity to dedicate a highway, whether there was dedication by the landowner and whether there has been acceptance of the dedication by the public. Evidence of the use of a way by the public as of right may support an inference of dedication and may also show acceptance of the dedication by the public.
10. Section 66 of the Natural Environment and Rural Communities Act 2006 prevents the creation of a public right of way for mechanically propelled vehicles after 2 May 2006 and there is nothing to suggest that any of the exemptions in the Act apply to the claimed route. Further, as outlined in guidance issued by the Department for Environment, Food and Rural Affairs², use by mechanically propelled vehicles will not give rise to a lower public right of way. In respect of the use by cyclists, as mentioned at the inquiry, I shall have regard to the Court of Appeal case of *Whitworth & ORS and Secretary of State for Environment, Food and Rural Affairs 2010* ("*Whitworth*").

Reasons

Documentary Evidence

11. Mr MacIntyre drew attention to some pieces of documentary evidence in his statement of case. He did not pursue this matter in his proof of evidence but referred to it in closing. Whilst I note the concern of Mr Dunlop regarding this issue, the documentary evidence had previously been provided by Mr MacIntyre. In the circumstances, I consider that this evidence warrants consideration.

¹ Without force, secrecy or permission

² Paragraph 14 of guidance titled "Part 6 of the Natural Environment and Rural Communities Act 2006 and Restricted Byways. A guide for local authorities, enforcement agencies, rights of way users and practitioners Version 5 – May 2008".

12. It is submitted that the claimed route is schematically shown on the Thorpe map of 1742 and annotated 'To Marshfield'. Reference is also made to the depiction of the route on Ordnance Survey maps of 1886 and 1904. The first Ordnance Survey map names the route as "Beck's Lane" and the second has the annotation "RH" to denote a road house. Mr MacIntyre also draws attention to two marker or milestones. However, there is some doubt regarding the authenticity of these features.
13. The depiction of the claimed route in conjunction with the highway to the north of point B could lend some support for the route forming part of a historical highway. However, the weight of the documentary evidence falls way short of supporting a finding that a public right of way subsists on the balance of probabilities. I therefore take the view that the Order needs to be determined in light of the user evidence.

Statutory Dedication

When the status of the claimed route was brought into question

14. It is acknowledged that signs were erected and gates locked in the spring and summer of 2012. This action clearly served to challenge public use of the claimed route. However, there is a degree of symmetry between acts that constitute a lack of intention to dedicate a public right of way and action to bring the status of a route into question. This means that regard should be given to the slightly earlier statement and statutory dedication by the landowners of March 2012, made in accordance with Section 31(6) of the 1980 Act. I consider the evidence regarding earlier signage later in this decision.
15. I take the documents deposited by the landowners as being an event that brought the status of the claimed route into question and the starting point for the consideration of whether the route has been dedicated under statute. This means the relevant twenty year period to be considered for the purpose of statutory dedication ("the relevant period") is 1992-2012.

Evidence of use by the public

16. Thirty-one user evidence forms ("UEFs") were completed in support of use of the claimed route and nine of these people gave evidence in support of the Order at the inquiry. Twenty-eight additional people originally submitted statements that are not generally intended to lend support to the confirmation of the Order. Mr Dunlop called eleven people who had previously provided a statement³ along with two additional witnesses (Mr Wright and Mr Coombe).
17. In light of the first matter outlined in paragraph 10 above, I have discounted the use by mechanically propelled vehicles and this means that three people have been removed from my assessment of the user evidence. A further three people did not use the route during the relevant period. Having regard to the issue addressed in paragraph 24 below, I do not find that the public use during this period was interrupted.
18. In terms of whether the use was as of right, there is nothing to suggest that it was conducted in secret or by force. A proportion of those who completed a statement viewed the route as a permissive bridleway but it is unclear how they formed such a view. There is no clear evidence of signage being erected during the relevant period to indicate that use was by way of permission. It is

³ Dr Colbourne originally completed a UEF

apparent that permission was given for specific activities such as tractor rallies or for people to use the route in vehicles but this does not relate to the other use documented in the UEFs. Whilst a leaflet by the South Gloucestershire Council and the British Horse Society refers to the claimed route being used by the permission of the landowner, this was produced after the end of the relevant period.

19. There was some evidence at the inquiry that pointed to permissive use and this was most evident from the testimony of Mr E. Lippiatt. The fact that particular people knew members of the Godwin family does not necessarily mean that they used the route with permission. In respect of the use by Mr Osborn as a police officer, he highlighted that he also used the route in a personal capacity. However, as well as knowing the Godwin family, he obtained permission to shoot on the land they farmed in this locality. In considering the user evidence I have done so with caution and discount the evidence of Mr E. Lippiatt and Mr Osborn. In addition, I exercise caution in relation to the UEFs completed by two other members of the Lippiatt family. Nonetheless, a significant number of other people state that they used the claimed route without permission.
20. Mr Dunlop ascertained during cross-examination information regarding the level of use by particular witnesses, most notably Mr Strutt and Mr MacIntyre. It is apparent that their use was less during the periods they did not permanently reside in the area. However, both have lived in the area during the relevant period. Again, I have taken such matters into consideration when assessing the level of use. There is evidence of use by pedestrians, horse riders and pedal cyclists. I note that the UEFs contain a single space for cycle and horse drawn vehicle usage. However, no personal evidence has been provided in support of use by horse drawn vehicles. Although the use over the twenty year period is variable, I find that there is evidence of use by at least nine people during each year of the relevant period from my assessment of the user evidence provided in support. The frequency of this use ranges from isolated occasions to a few times a week.
21. When assessing the extent of the use regard should be given to the sparsely populated area within which the claimed route is located. In particular, I note that there is evidence of both personal and observed use from other people who have provided evidence. This evidence points to more widespread use of the route, particularly by horse riders. The evidence as a whole is in my view sufficient on balance to raise a presumption of the dedication of a public right of way. Having regard to this evidence and paragraph 42 of the Whitworth judgment, the foot and equestrian use along with the cycle use would most likely be indicative of the dedication of a public bridleway.

Whether any landowner demonstrated a lack of intention to dedicate a public bridleway

22. The land crossed by the claimed route was in the ownership of Revd Lane from 1964 until 1987, when the land was put in trust with his children having an equal share. Revd Lane and his eldest daughter (Mrs Thornhill) administered the estate until he passed away in 2000. The land was sold in 2009 and the current occupier of Beeks Mill is Ms Chubb who is a life tenant. As outlined in paragraph 4 above, Mr and Mrs Godwin's occupation of the land also ceased in 2009.

23. It is acknowledged that there has been a longstanding gate at point A. The evidence of the supporters and some of the other parties is that it was generally open but when closed it was unlocked. In contrast, the evidence of Mr Smart points to widespread locking of this gate by Mr C. Godwin. Support for the locking of the gate on occasions is also found in the written evidence of Mrs Tate and Mr Lindup. Mr C. Godwin lived at Paper Mill Cottage and he parked his car adjacent to the claimed route near to point A.
24. There may well have been occasions when the gate at point A was closed. However, bearing in mind the significant amount of evidence which points to the gate being unlocked, it cannot be determined that any locking of the gate impacted on the use of the claimed route. The evidence in support of the gate being locked at times is far more limited and this may indicate that any such action occurred when people were less likely to have used the route, for instance there are references to it being locked in the evening. Nonetheless, the evidence of Mrs Tate is that Mr C. Godwin passed away in 1982, which is ten years before the commencement of the relevant period. Therefore, I do not consider it has been shown that a gate at point A was locked during this period which served to interrupt or challenge use of the claimed route.
25. Turning to point B, there is conflicting evidence regarding whether there was a gate in place at this point. It is not alleged that any such gate was locked. This issue is relevant in terms of the potential recording of a limitation in the Order at point B. Mr MacIntyre acknowledges that there was a wrought iron gate in the adjacent hedge and this was identified during the site visit. Given the number of years that have elapsed, it cannot be determined whether the gate was still in place at the onset of the relevant period. However, there is some evidence dating back over a number of years in support of the existence of a gate at point B. Whilst the evidence points to it being in a poor condition and not having an impact on use of the route, the gate would still constitute a limitation. In the circumstances, I find on balance that there is evidence to warrant the recording of the limitation of a gate at point B, should the Order be confirmed.
26. The user evidence is not generally supportive of the existence of signage to deter access during the relevant period and this was endorsed by the supporters who spoke at the inquiry⁴. In contrast, there is evidence from other people of a sign containing the word "*Private*" at point A. There is also some limited evidence of a sign worded "*Private Road*". Mr Watkins carried out works in around 1996, which included the re-hanging of the field gate at point A and the erection of an adjacent side gate. He says he erected a private sign in this locality at the request of Revd Lane. I do not consider that any significant weight can be attached to a 2009 photograph which shows a sign worded "*Beeks Mill*" on the eastern fence near to point A. This photograph only shows part of the site on one particular day.
27. I agree with Mr MacIntyre that there were some inconsistencies in the evidence of the witnesses at the inquiry who recalled seeing a sign. Nonetheless, the evidence of the relevant witnesses is that the sign was located on either the gate or the fencing to the side of the gate. Further, the evidence of these witnesses is supportive of the sign facing the road. Mr MacIntyre points to the lack of evidence of a sign at point B. This indicates that people travelling from the north were less likely to have seen the sign. In any event, I do not

⁴ The only user who has mentioned a sign is Mr E. Lippiatt

consider that a sign only worded "*Private*" or "*Private Road*" is sufficient to convey that there was no intention to dedicate a public bridleway.

28. There is also some evidence of other signage to indicate that the route could be used by bridleway users but not motor vehicles. Such signage could be supportive of an acknowledgment by the landowner that the claimed route is a bridleway. In terms of the "*no through road*" sign erected by the Gloucestershire Council, this is indicative of the unclassified county road not continuing beyond a certain point. It is apparent that the recorded highway terminates at the border of South Gloucestershire at point B. Again it would not indicate that there was a lack of intention by the landowner to dedicate a public bridleway over the claimed route.
29. None of the users state that they were challenged when walking, cycling or riding along the claimed route. Some of the other parties have stated that Mr R. Godwin would have challenged such use but there is no evidence to show that this actually occurred. Even if he did challenge people on occasions, there is nothing to show that this was undertaken at the request of the landowner.
30. It is my view, on balance, that the evidence is not supportive of any landowner taking sufficient action to communicate to the public that there was a lack of intention to dedicate a public bridleway during the relevant period.

Conclusions

31. I have concluded on balance that the evidence of use is sufficient to raise a presumption that the claimed route has been dedicated as a public bridleway. In addition, I consider that the landowners did not take sufficient action to demonstrate to the public that there was a lack of intention to dedicate the way during the relevant period. Therefore, I conclude on the balance of probabilities that a public bridleway subsists and the Order will need to be modified accordingly. In light of this conclusion, there is no need for me to address the user evidence in the context of common law dedication.

Overall Conclusion

32. Having regard to these and all other matters raised at the inquiry and in the written representations I conclude that the Order should be confirmed with modifications.

Formal Decision

33. I propose to confirm the Order subject to the following modifications:

- Replace all references in the Order to "*restricted byway*" with "*bridleway*".
- Delete the text after "*Limitations*" in Part II of the Order Schedule and insert "*The right of the landowner to erect and maintain gates at grid references ST 7611 7106 and ST 7624 7121*".
- Replace the notation on the Order Map for a restricted byway with the notation for a bridleway and amend the map key accordingly.

34. Since the confirmed Order would show as a highway of one description a way which is shown as a highway of another description in the Order as submitted I am required by virtue of Paragraph 8(2) of Schedule 15 to the 1981 Act to give notice of the proposal to modify the Order and to give an opportunity for

objections and representations to be made to the proposed modifications. A letter will be sent to interested persons about the advertisement procedure.

Mark Yates

Inspector

APPEARANCES

The case in Support:

Mr D. MacIntyre Applicant

He also called:

Mr I Plaister
Mrs B. Johns
Mr W. Johns
Mr M. Strutt
Mr W. Osborn
Mr N. Perry
Mr E. Lippiatt
Mr P. Russell

For the Objector:

Mr A. Dunlop On behalf of Ms Chubb

He called:

Mr R. Coombe
Mr B. Wilson
Mr J. Wright
Dr D. Colbourne
Mr G. Watkins
Ms J. Watkins
Mr R. Guild
Mr P. Smart
Ms B. Dymond
Mr A. Turner
Mr S. Earle
Ms S. Godwin
Mr M. Roberts

Interested Party:

Mr G. Stark Definitive Map Officer for the Council

DOCUMENTS

1. Email of 18 July 2018 from Mr Davey
2. Statement of Mr Wright
3. Statement of Mr Coombe
4. Photographs supplied by the parties
5. Summary of interests in land in the locality of Beeks Mill
6. Closing submissions by Mr Dunlop
7. Closing statement by Mr MacIntyre

