The Planning Inspectorate

Appeal Decision

by Jean Russell MA MRTPI

an Inspector on direction of the Secretary of State for the Environment, Food and Rural Affairs

Decision date: 01 October 2018

Appeal Ref: FPS/D0121/14A/4
Spying Copse to the A38 along AX30/29, AX30/33 and AX30/69

- The appeal is made under section 53(5) and Schedule 14, paragraph 4(1) of the Wildlife and Countryside Act 1981 (the WCA81).
- The appeal is made by Anne Gawthorpe on behalf of Woodspring Bridleways Association against the decision of North Somerset Council not to make an Order to modify its Definitive Map and Statement of Public Rights of Way under section 53(2) of the WCA81.
- The application, ref: EB/MOD18, was dated 25 November 1995 and refused by the Council on 15 September 2017.
- The claim subject to the application and appeal is that the route described above ought to be upgraded from a footpath to a bridleway on the Definitive Map and Statement.

FORMAL DECISION

1. The appeal is dismissed.

PRELIMINARY MATTERS

Procedural background

2. Mrs Craggs, on behalf of Woodspring Bridleways Association (WBA), applied on 10 June 1989 to Avon County Council (ACC) for an Order to modify the Definitive Map and Statement of Public Rights of Way (DMS) as now proposed. ACC made such an Order on 23 March 1993. I shall refer to the '1989 application' and '1993 Order'.

3. Following consultation, ACC submitted the 1993 Order to the Secretary of State for the Environment for confirmation. The appointed Inspector held an inquiry from 1-3 August 1995, and decided on 12 October 1995 to not confirm the 1993 Order; this was 'the 1995 decision'[1].

4. The application subject to this appeal was made by Ms Roseff on behalf of WBA; the appeal was made by Ms Gawthorpe on its behalf. References to the 'appellant' hereafter shall mean WBA, although it was not in the position of 'appellant' in the 1995 proceedings. This appeal is determined on the basis of the papers submitted.

The Claimed Route

5. The claimed route starts at the junction – **point A** on the route map – of public bridleway (BW) AX30/42 and public footpath (FP) AX30/29A. AX30/42 leads north-south through the area called Spying Copse on Ordnance Survey (OS) maps, and known locally as Spion Kop. AX30/29A runs west-east, and forms part of the route.

6. The route follows AX30/29A for about 300mm between hedges up to and through 'gate 1'. It then continues along AX30/29A past the junction with FP AX30/32, and then through a plantation and the wooded Goblin Coombe for about 400m until reaching 'gate 2'. The route is some 3m wide along this stretch.

[1] Planning Inspectorate ref: FPS/F0100/7/27

7. There is a crossing of paths shortly after gate 2, with FP AX30/29 leading north east towards Broadfield Farm; FP AX30/31 leading south west; and the route continuing eastwards for a short distance along FP AX30/33. Where this path drops south east to Cottage Farm, the route continues east/north east through Goblin Coombe to exit on to Winters Lane via a stile which adjoins 'gate 3'; **point B1**.

8. The route leads down and across Winters Lane to the junction with FP AX30/69; **point C**. The route follows that 3m wide path through a copse and 'gate 4', and then along a northerly hedge line to 'gate 5' at the southern boundary of Hailstone Cottages. The route, still on AX30/69, passes those dwellings for 120m, and then leads another 175m to meet a metalled track and 'gate 6' at the A38; **point D**. The metalled track provides vehicular access to Hailstone Cottages.

9. The claim is not only that parts of AX30/29A, AX30/33 and AX30/69 ought to be upgraded to public bridleways, as described on the application form. The part of the route between AX30/33 and AX30/69 is not recorded on the DMS as a public right of way of any kind. It is claimed that this part, save for the stretch on Winters Lane, should be added to the DMS as the public bridleway AX30/81.

10. The 1995 decision records use of AX30/81 by the public, with the permission of the Marshall family, as an alternative footpath to AX30/29. Wrington Parish Council (WPC) wrote to ACC in 1982 to request that AX30/29 be diverted to AX30/81 as a public footpath – but not bridleway. No such order was made to my knowledge.

11. There is an error on the map subject to the application. It marks the route as A-B-B1-C-D, with A-B and C-D being the parts to be upgraded, and B-B1 being the part to be added. Thus, 'B' should be marked at the junction of AX30/33 and AX30/81, but it is in fact shown at the junction of AX30/29A and AX30/33. The map would have needed to be corrected had I directed that an order be made.

MATTERS AT APPEAL

Legal Context

12. S53(2)(b) of the WCA81 requires local authorities to keep the DMS under review, and make by order such modifications to the DMS as appear to be requisite in consequence of the occurrence of events including, under s53(3)(c), the discovery of evidence which shows when considered with all other relevant evidence:

    (i) that a right of way which is not shown in the DMS subsists or is reasonably alleged to subsist over land in the area to which the map relates;

    (ii) that a highway shown on the DMS as a highway of a particular description ought to be shown as a highway of a different description.

13. The onus is on the appellant to demonstrate, on the balance of probability, that AX30/29A, AX30/33 and AX30/69 'ought to be shown' as a public bridleway on the DMS under s53(3)(c)(ii). The onus is also on the appellant to show that AX30/81 ought to be added to the DMS under s53(3)(c)(i) – but they only have to show at this stage that any such public bridleway is 'reasonably alleged to subsist'.

14. Had I allowed this appeal and directed that an order be made, the order would have been capable of confirmation only if it was then demonstrated that AX30/29, AX30/33 and AX30/69 'ought to be shown' **and** AX30/81 'subsists' as a public bridleway on the balance of probability. This is important because the 1995 decision had to be and was written on that basis, although the Inspector did not express matters in the same way.

15. S32 of the Highways Act 1980 (HA80) provides that, before determining whether a way has or has not been dedicated as a highway, consideration shall be taken of, and such weight as justified in the circumstances shall be given to any map, plan or history of the locality, or other relevant document which is tendered in evidence, and shall give such weight thereto as justified by the circumstances, including the purpose for which the document was made or compiled. The appellant has referred to documentary evidence in support of the claim.

16. The claim mainly rests, however, on evidence that the route ought to be upgraded or added, as may be, on the basis of presumed dedication as a public bridleway. S31 of the HA80 provides that where a way over any land, other than one 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 enjoyed by the public 'as of right' – without force, secrecy or permission – and without interruption for a full period of 20 years, the way is to be 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 Parties' Cases and Evidence

17. The 1995 decision was not subject to any successful challenge in the high court, and I have not been referred to any subsequent case law which would render it erroneous in law. It should be noted, then, that the Inspector's conclusions on the original written evidence – including that described below which is before me – were informed by examination which I did not hear.

18. Thus, the 1995 decision is a material consideration in this appeal, and one which carries significant weight. It is not binding, since other evidence is submitted, but the following findings of the previous Inspector are not contested:

    - Under s31(2), the 20 year period is calculated retrospectively from when the public's right to use the way is brought into question. With bridleway rights brought into question by the 1989 application, the Inspector took the 20 year period to be **1969-89**. The parties have approached this appeal likewise.

    - The 1995 decision stated that there was nothing to prevent dedication of the route as a public bridleway by common law; again, none of the parties have submitted evidence such that the question should be re-visited.

19. The appellant objects to the Inspector's overall conclusion that, while sufficient use was made of the route by the public on horseback to justify making the 1993 Order, it should not be confirmed because evidence by and for landowners showed that use was largely before the 20 year period and exaggerated. From locked or closed gates, notices and riders being turned back, there was no intention to dedicate the route as a bridleway.

20. The appellant argues that the Inspector's conclusions were based on errors in the evidence or interpretation of the evidence before him. The Council refused the appealed application on the basis that the new evidence[2] would not demonstrably have altered the 1995 decision. Whether the Council failed to evaluate the totality of evidence that now exists, as the appellant suggests, is outside of my remit.

REASONS

Documentary Evidence

21. The 1995 decision describes that users and their supporters believed the route to be a public bridleway from Spion Kop to the A38, because the nearby Bristol

[2] I refer here to evidence submitted to ACC with the application and subsequently on 5 March and 5 July 1996.

Airport runway had been extended over Cooks Bridleway to the north. No maps or records were submitted expressly in support of this claim.

22. The 1995 decision summarises the maps and records which were considered:

- Ms Reed's proof of evidence for ACC at the 1995 inquiry stated that the route or its user rights and status were not shown on Rocque's map of 1739; Donn's map of 1769; the 1810 Wrington Inclosure Award; the 1839 Wrington Tithe Map; 1782, 1815 and 1822 County maps; or 1884, 1903 and 1975 OS maps.
- Ms Reed noted that parish records concerning the preparation and modification of the draft DMS in the 1950s and 1960s led to the recording of AX30/29A, AX30/33 and AX30/69 as public footpaths. No information or request had been received that any part of the route should be added to the DMS as a bridleway.
- However, Mrs Gawthorpe submitted that some of the above historic maps and the Mudge Map of 1817 show the claimed route to be an 'old pack horse route'.

23. The Inspector found the documentary evidence indicative of an 'ancient' track, but inconclusive as to the user rights and status of the route. The appellant does not argue that the Inspector should have reached a different conclusion on the evidence before him, although Mrs Gawthorpe made this appeal for WBA.

24. The new documentary evidence comprises W & A K Johnson road atlases, printed and re-printed in 1940, 1964 and 1966. The appellant claims that these maps depict a route broadly on the claimed alignment, and at a higher status than footpath. I agree with the Council that the status of the route cannot be clearly discerned from the small scale and poor quality paper copies.

25. Moreover, the atlases do not show whether the claimed route carried public and/or private rights of use, and that is important because it is not unusual for public footpaths to carry private riding and/or vehicular rights. Road atlases exist to inform motorists as to the location of routes, and which modes of transport may be used where – but they do not necessarily need to depict public use rights.

26. I conclude that the road atlases submitted with the appealed application, taken with the historic maps and associated records considered at the 1995 inquiry, do not support the claim that AX30/29A, AX30/33 and AX30/69 ought to be shown or that AX30/81 is reasonably alleged to subsist as a public bridleway.

User and Landowner Evidence: the 1995 Decision[3]

User and Supporter Evidence

27. The 1989 application was submitted with 34 user evidence forms (UEFs), letters of evidence, and responses – mainly objections – received by the appellant after informal consultation. After making the 1993 Order, the Council received 14 letters of objection and 11 letters of support. Another UEF, more letters and written statements were then put to the 1995 inquiry.

28. The only 'original' evidence before me is: Ms Reed's proof of evidence for ACC; 1995 written statements of R G Marshall (RGM), R S Marshall (RSM), N S Marshall (NSM) and D M Telling (DMT); correspondence between WPC and Fountain Forestry Ltd in October 1965 and June 1966; the 1951 walking card for FP AX30/49; and a letter dated June 1995 from T J Banwell (TJB).

[3] Discounting any that related wholly outside of the period of 1969-89, or to the merits of use of the route

29. None of the parties have objected that the evidence in support of the claim was inaccurately summarised in the 1995 decision. From ACC's evidence, the Inspector accepted that 30 UEFs had been valid, and these showed that 17 riders had ridden the route for 20 years or more, from 1940 until 1995, with greater use being made of the western than eastern part, for pleasure, hacking and exercising horses.

30. ACC suggested that those who had completed the UEFs were never stopped from using the route, saw no prohibiting notices, locked gates or obstructions, and had not sought or been given permission to ride. Users also gave oral evidence at the 1995 inquiry that they had ridden the route, alone or with others, over years prior to and/or during the 20 year period. They had believed it to be a bridleway, never been stopped, not seen obstructions and not been given permission.

31. The 1995 decision referred to the letter written in support of the claim by TJB. He had lived at 1 Hailstone Cottages since 1938 and always known that his garden backed onto a bridleway. It had been used to drive milk carts from Goblin Coombe Farm and Broadfield Farm to the A38. "The Wills" used to travel on the route on their horses, as did the groom from Barley Wood House. JB usually saw about a dozen horses a week riding past, more in the summertime, until the gates were padlocked. He attached a photograph of a roadside gate, showing that 'the large gate did not need to be opened for them to pass through on to the A38'.

32. As noted above, the Inspector found the above evidence sufficient to show use of the route by the public on horseback. Indeed, he found that it 'would indicate 700 riders of the route a year in the 1960's and 70s. Allowing for riding in groups and those who did not submit forms the total could be twice that number'. However, he also found that there was an 'important conflict of evidence' between that given by supporters of and objectors to the 1993 Order.

WPC and Fountain Forestry

33. The 1995 decision describes evidence that WPC had corresponded in 1965 and 1966 with Fountain Forestry Ltd regarding a gate 'on the path from Wrington Hill to Goblin Coombe' that was locked 'to prevent the passage of persons on horseback'. The Inspector construed this as meaning 'at the western end near Spion Kop there has been a locked gate since at least 1963 to prevent riders entering'.

34. From points A to B to B1, and for a distance after point C, the route crosses Broadfield Farm, which was in the ownership of the Marshall family from 1952 up to and after 1995. Since Fountain Forestry Ltd did not own route land in the 20 year period, the appellant suggests that WPC was likely referring to a gate on FP AX30/49/20. I would not go that far[4], but accept that the above correspondence does not show exactly where the locked gate was. Moreover, there are no documents which mention any gate at point A; gate 1 is some 300m from there.

35. I shall give the appellant the benefit of the doubt and discount the information that Fountain Forestry Ltd locked a gate to prevent riding – but it does not follow that other evidence from WPC was unreliable. Their 'correspondence with landowners' in 1969-71 was said to show that the route was overgrown and impassable between Spion Kop and Goblin Coombe. That assertion was consistent with the evidence of others, as was WPC's claim that footpath signs were erected in 1982 at points B1 and D. WPC objected to the 1993 Order 'to protect walkers' rights' but that concern was not unusual or shown to affect WPC's credibility as a witness.

[4] Ms Sewell stated in her email of July 2017 that 'there is a bridle path on Fountain Forestry…the turning towards the road…has always been blocked or had a locked gate…' The walking card for AX30/49 did not mention a gate, although admittedly it was written in 1951.

Lord Sinclair and the Barley Wood Estate

36. The 1995 decision records evidence from DMT that Lord Sinclair had only allowed riding on the western end of the route with permission until c1957. Again, I shall accept that Lord Sinclair did not own land crossed by the route in the 20 year period. However, the stretch of AX30/29A between point A and gate 1 formed part of the southern boundary of the Marshall's land, and thus adjoined the Barley Wood estate, bought by DMT in 1974 from Mr Wills – presumably the "Wills" of TJB's letter. I have no reason to dispute DMT's evidence about his own property.

37. In his written statement of July 1995, DMT said that he had run a shoot on his land up to AX30/29A since 1974. The footpath was initially too overgrown even to be used for walking but, in 1984, DMT's keeper cleared the path and cut back the adjacent hedges. DMT had since ensured that all public rights of way over his land had been mown so that users would not wander. There had never been any riding on the route and [gate 1] was locked. DMT had walked between point A and gate 1 'on many occasions' – and the 1995 decision recorded him having problems getting his old dog over the locked gate. DMT had never seen a horse print.

38. As described in the 1995 decision, RAD said that gate 1 was 'shut' rather than locked before 1984, but also that western end of the route to the gate had been overgrown and just passable to walkers until it was cleared. He also said that the gate had always been locked unless forced open or lifted off. Unlike DMT, RAD had seen riders trying to enter or exit Goblin Coombe – but only on a 'few occasions since 1984, probably three'. If the riders were heading east, RAD had told them that the route was not a bridleway and they had turned back[5].

39. The appellant objects that DMT 'gave no evidence to back up his claim' that he had not seen riders – but he plainly spoke to his own knowledge and knew the route, even if he did not see those riders observed by RAD or others.

The Marshall family

40. As implied above, the Marshall family owned the land crossed by the permissive footpath AX30/81, as well as the recorded footpaths AX30/29A, AX30/33 and – in part – AX30/69. Three members of the Marshall family, RGM, RSM and NSM gave evidence to the 1995 inquiry. RGM, the eldest son, had lived at Broadfield Farm from when he was about one in 1953 until he got married in 1979. He worked on the holding from 1968 until the time of the inquiry.

41. In their written statements, RGM and his mother NSM described that a fence and two gates were installed in 1960 at the junction of AX30/81 and Winters Lane, to stop people from driving onto and using Goblin Coombe as common land. 'Gate 3' was designed to allow farm vehicles through but kept closed to the public; the second gate was small, left unlocked for walkers and later replaced by the stile.

42. NSM did not say that gate 3 was kept locked, but RGM did – and NSM was clear that she had never seen or granted permission to a rider. Mr Bull, a local resident who had installed the fence 1960, told the 1995 inquiry that the small gate was not for horses. He said that if the amount of riding claimed had taken place, he and others would have been aware of it – but they had never seen it.

43. RGM also stated that he used Goblin Coombe to ride horses as a child, and to ride motorbikes and engage in gun sports as a teenager. He later formed a small shoot with friends in Goblin Coombe, and this still existed in 1995. Disturbance caused by

[5] The 1995 decision also records evidence from RAD that about two years before the inquiry, he had helped a rider thrown in front of the locked gate [1], and told them the route was a path. As the appellant suggests, this incident would have taken place after the 20 year period of 1969-89.

members of the public riding on the route could have affected the rearing and keeping as well as shooting of pheasants, and would have been noticed by people working on as well as taking part in shoots.

44. Messrs Trim, Croker, Summerell, Laver and Fraser were involved in pheasant rearing and/or shooting, and spoke at the 1995 inquiry. Mr Summerell and Mr Laver had seen riders approaching Goblin Coombe from the west but turned them back. Mr Croker had 'seen evidence of horses', but no riders themselves. Mr Trim and Mr Fraser had not seen riding or signs of riding on the land. Mr Summerell confirmed that gate 1 was kept locked to safeguard Christmas trees from theft.

45. RGM's work since 1968 had required him to spend time in Goblin Coombe, to check on animals and for timber clearance, planting and extraction. The route was closed in by trees and undergrowth until after years of clearance, particularly in the early 1980s. Mr Ridley and Mr Popham, who worked in timber abstraction here for short periods in 1967, 1971 and 1977, told the inquiry that they had not seen or received complaints from horse riders. They confirmed that timber was removed via Winters Lane, and [gate 3] was re-locked each time. In 1977, the gate at the top of the Coombe towards Spion Kop [gate 1] was overgrown with blackthorn.

46. The Marshall family did not object when the Council put up footpath signs up by the small gate in or around 1982, because AX30/81 was a more scenic and practical route for walkers – while also being further from their farmhouse – than AX30/29. However, neither AX30/81 nor AX30/29 was used for riding. RGM also gave evidence – like DMT and RAD – that 'the top gate at the western end of the footpath [gate 1] has been locked for most of the last 12 years at least. Walkers have either been able to get round the side of it or they have just climbed over'.

47. RGM had no recollection of seeing any horse riders on the route. He had not been told by others of any riders, and no one had asked him for permission to ride across the land. RSM, RGM's younger brother, gave evidence that he had worked on the farm since 1970 and never seen or been asked to permit a horse rider. The Inspector recorded, however, that 'another member of the Marshall family had turned back one rider who became abusive'.

The Hawkings Family

48. The 1995 decision records evidence from Mr and Mrs Hawkings, who had bought Hailstones Farm to the south of AX30/69 in 1980 – where Mrs Hawkings had lived since 1938. Both said that the path had been overgrown between Winters Lane and Hailstones Cottages, with Mrs Hawkings stating that it had been impassable. Mr Hawkings said it had taken a bulldozer several weeks to clear the way in 1980 before a hedge could be laid.

49. Mr Hawkings conceded that 'it was possible to see very little of the route from the farm' but nonetheless he had heard of 'one party' riding the route, and turned back 'another riding in ones and twos' as well as horseboxes. Mrs Hawkings, a rider herself, had never ridden the route, and she had turned back one rider. Some had ridden the route with permission after it was cleared.

50. Mr Hawkings said that there was increased usage of the route after it was cleared. He locked gates [4 and 5] in 1982-3, but the locks were vandalised, as were "no horses allowed" signs fixed to gates 4 and 6. Even so, Mr Hawkings asserted that the path had not been used by horse riders on a regular basis since 1980. There were some discrepancies between Mr and Mrs Hawkings' accounts, but neither could be said to assist the appellant.

51. Mr Ashman, Mrs Hawkings' father and the previous owner of Hailstones Farm, said that he could not recall seeing horses or vehicles on the claimed path between 1937 and 1980. If he had seen riders, he would have objected and told them to cease. He also confirmed that the route had often been overgrown, and would have been difficult for horses to use until 1980.

52. Mr Hawkings referred to statements from two persons who had ridden [separately] with permission. He also referred to objections from local residents that the path was unsuitable for horses; there was no evidence of horse usage; and only one rider had been seen, who had had permission. Mr Hawkings referred finally to a person who 'had not seen riders there for 18 months [before the inquiry], the last being 10 riders in a group'. The witness did not describe riding before the 'last' incident which could have been after the 20 year period.

53. The appellant argues that the evidence by or for the Hawkings family was at odds with that from TJB – who had a closer view of the route from Hailstones Cottages. However, TJB's letter does not show that any riders used the claimed route as a bridleway as of right. I find it improbable that drivers of milk carts, the Wills or the groom from Barley Wood House would have lacked permission. TJB did not give details of other riders.

54. M Johnson wrote in support of the application and then appeal. She is TJB's granddaughter and could recall horses 'often being ridden through the coombe as it remained unlocked' when she had visited him. She said that her mother could confirm this, but gave no dates or details of riding. MJ's other evidence was that riders had tried to use the route after 1989 but the gate had always been locked.

55. Furthermore, the 1995 decision records that Mrs Reece, also of Hailstones Cottages, had only seen 'about a dozen riders and a small group of children riding' since 1973 – and at least one of the these riders had permission.

Other objectors and the Inspector's findings

56. The 1995 decision records that Mrs Bendall, a local rider, would have considered riding in Goblin Coombe to be trespass, and was not aware of others doing so – except later and sporadically. She walked Winters Lane to the A38 about once a month, noting hoof prints of 1-2 horses in about 1 in 4 visits, but she did not say – or the Inspector did not record – whether this was during or after 1969-89.

57. Evidence given for the Ramblers' Association (RA) was that there had always been gates at various points along the route, and they had been 'locked intermittently'. The gates would inhibit riders but not walkers who could climb over. Evidence of horse use was only noted in 1993 and only between Spion Kop and gate 1. The RA described the "please keep to the footpath" sign and padlocked gate and stile on the west side of Winters Lane; a gate with the sign "no horses" on the other side of that road; and no evidence of horse use beyond that point.

58. The RA could not 'reconcile the unhindered usage claimed with the locked gates, notices and verbal requests to horse riders to leave over a substantial period of time'. The Inspector also focussed on this conflict – and his decision did not only rest on the evidence regarding Fountain Forestry Ltd and Lord Sinclair. He also referred to overgrowth on the route, described by several objectors; riders being turned away by or for DMT and the Marshall and Hawkings families; gates being installed and locked; the replacement of the small gate at Winters Lane with a stile; and the "footpath" and "no horses" signs at points on the way[6].

[6] A "private property" sign on the Marshall's land was referred to but it is not known if that was in situ after 1963.

59. The appellant suggests that riders could have got around, for example, the crane which was used for removing timber, as depicted in 1967 photographs from RGM. The previous Inspector acknowledged that riders might have been able to get through Goblin Coombe – some described jumping logs – but he also observed that supporters of the 1993 Order had scarcely mentioned seeing timber operations. Those involved with pheasants had not seen riders, but then riders had demonstrated little awareness even that shoots ever took place.

60. The appellant asks if DMT, RAD and friends or employees of the Marshall family would have been in a position to see riding, but the Inspector saw no reason to dispute that they could to a pertinent extent. The Inspector accepted that witnesses could have seen riders, had turned back or not seen riders, and had seen no or little evidence of riding on the land – and his decision was not quashed.

61. The appellant observes that some objectors did not say gates were locked, but that does not undermine the positive evidence given by those who did. The appellant also notes that some obstructions could have been illegal on a public right of way, but the flaw in that argument is that the route was not recorded as a bridleway and it was said that walkers could circumvent gates.

62. The appellant further suggests that 'overt' blockages of the route were few and sometimes temporary – but the objectors also relied on vegetation, notices and turning riders back. I allow that claims that the route was blocked by overgrowth seem at odds with admissions that the route was ridden at all. But the objectors described riders in low numbers, and said that different parts of the route were cleared at different times. User evidence from Mrs Gawthorpe was that the way was overgrown in the 1970's but vegetation died back in winter. The objectors' acceptance that some riding took place – with permission or facing challenge – did not undermine their claims that the route was sometimes impassable.

New Evidence

Long-distance rides

63. The evidence discovered for the second application includes that five organised, long distance rides (LDRs[7]) took place over the whole or part of the claimed route during the 20 year period as follows[8]:

    - 15 October 1978: 20 mile LDR organised by Brent Knoll Riding Club (BKRC), covering the whole of the route – as shown by the BKRC 1978 programme; ride instructions; adverts in the Western Daily Press on 16 and 23 September 1978; timesheet showing that '72 riders took part'; and a statutory declaration made by the ride organiser, S M Lansbury (SML), in July 1996.

    - 12 April 1980: another 20 mile ride organised by BKRC covering the whole route – evidenced by a letter from the organiser; the ride map and instructions; and an advert in the Western Daily Mail on 15 March 1980.

    - 15 May 1983: again organised by BKRC, this LDR crossed part of the route on the western side – shown by SML's declaration as organiser, and an article in the Weston Mercury dated 20 May 1983.

    - 13 May 1984: the final ride organised by BKRC crossed part of the route on the western side – shown by the entry form; instructions; SML's declaration as organiser; and a letter to 'Trevor and Sue' dated 21 May 1984.

[7] Some of the rides were of such a length as to properly known as 'pleasure' rather than 'long-distance' rides

[8] The appellant has also submitted annotated letters suggesting that adverts was sent to Horse & Hound and Pony & Horse Rider magazines on 11 January 1984 and 'March '81' respectively – but the adverts are not enclosed.

- 12 November 1989: this 10 mile ride organised by Banwell Pony Club (BPC) covered the whole route – shown by the ride entry form and instructions.

64. The appellant suggests that the LDRs show more riders were using the route than accepted in 1995, but there was no need to show greater numbers *per se* when the previous Inspector quoted a figure of up to 700 per year. The question is whether riding took place by the public as of right.

65. The evidence of the LDRs does not necessarily supersede that given by landowners and objectors to the 1995 inquiry; there are still conflicting accounts which must be reconciled. Indeed, Ms Sewell's email of July 2017 was clear that she had ridden in this area for around 30 years, but never been able to ride 'the route through Spying Copse to A38 [because it] has always been locked as it is private land'. While "30 years" would only go back to 1987, near the end of the 20 year period, Ms Sewell's evidence could cast doubt on the LDR of 12 November 1989.

66. J Verity (JV) emailed the Council on 12 June 2017 to respond to the appealed application on behalf of RGM. JV stated that RGM gave permission for charity rides which were organised by a family friend as one-off occasions in September 1996, September 2006 and August 2008. It can be construed that RGM's evidence is still that riding did not take place as of right during the 20 year period.

Evidence of the LDRs from the 1995 decision

67. The Council's most serious and obvious question about the five LDRs is why so little evidence was given about them at the 1995 inquiry. The 1989 application was made in the same year as the final LDR, but Mrs Cragg's evidence to the 1995 inquiry did not touch on any of the five claimed rides. There is little mention of any LDR in the descriptions of the UEFs in Ms Reed's proof of evidence. The LDR most notably mentioned in the 1995 decision is one that Mrs McMillan took part in during 1987. The appellant has not described any LDR in that year, and there is no evidence that Mrs McMillan might have got the year wrong.

68. SML not only organised the 1978 ride; she was also listed as one of the riders on the timesheet for event. In the 1995 decision, SML's evidence was summarised as including that she rode the route with '3 named and other local friends…as part of circular routes' but not that she organised rides for BKRC in 1978, 1983 or 1984.

69. Miss Eagle and Mrs Gawthorpe were also listed as riders on the 1978 timesheet and witnesses to the 1995 inquiry. There are no references to the 1978 or other organised ride in the summaries of their evidence in the 1995 decision. Mrs Gawthorpe made this appeal, but the papers do not suggest that that she took part in any of the five LDRs. There are no new UEFs from any LDR participant.

70. SML said in her declaration that 'at the last public inquiry I was questioned by Mr Marshall[9], who said he had challenged me on the use of the way on the last ride I organised [13 May 1984], this is correct. But he did not stop us from continuing to complete our days ride. I still continued to use the route after this ride, believing that this was a bridleway and I was never challenged again'.

71. The Council also noted that an organised ride in 1984 'was questioned at the inquiry where the owner conceded that he had allowed it to continue'. Since the 1984 LDR only crossed the western part of the route, the owner must have been a member of the Marshall family. Again, however, the summary of SML's evidence in the 1995 decision does not describe this encounter: '…she would jump logs in the

[9] From paragraph 6.3.8 of the 1995 decision, I surmise that questions were put to SML by Counsel on behalf of the Marshall family – but this makes no practical difference.

Coombe and often met a farmer on a tractor *between Winters Lane and the A38*, who would wave and *never challenged* her' [my emphasis].

72. The appellant has given no satisfactory explanation as to why the original user evidence did not describe the five LDRs, and there is so little new user evidence now. The appellant has sought to turn the question as to why some of the original objectors did not see the LDRs, but those people were not seemingly cross-examined on the events. They were not presented with evidence of the LDRs that they might have been expected to refute – and the onus of proof was not on them.

73. If the route was crossed by the claimed LDRs, by the number of riders described, I would expect someone living or working by the route to have seen the events taking place and/or churned ground later. Yet there is a complete absence of any reference to such sightings in the 1995 decision – and that is surprising because the objectors did not refrain from describing other incidents of riding on the route. RGM was plainly alert to any potential disturbance to his pheasants.

74. However, I cannot assume that RGM, RSM and NSM all failed to mention the 1984 ride in their written statements in order to conceal the event from the Inspector; they had nothing to gain by doing so. Since SML's evidence is that the owner challenged her about the ride and then allowed it to continue – it appears that the event was unwelcome but permitted, and so did not take place as of right.

Evidence on permission

75. This brings me to the Council's second claim regarding the LDR evidence – that it is 'inconceivable' that rides on the scales described would have been arranged without first consulting the owners of the land – if not to ask for permission, then at least to ensure that the event did not conflict with land management.

76. The appellant's case is that rides took place which involved large numbers of riders who set off at intervals and followed plastic markers and stewards, yet faced no hindrance at all. Since landowners were opposed to and alert to the 'problems' – as RGM put it – of riding, the appellant has to explain how such visible events could have taken place without permission. It is not enough to say that objectors did not mention the events at the 1995 inquiry.

77. Indeed, the appellant concedes that the LDR organisers would have been aware of the 1903 and 1975 OS maps which showed the route; the Council also points out that the DMS was prepared before 1978. The ride organisers believed the route to be a historic bridleway, but could have been expected to know that it was not recorded as such, and that the land was private property over which riding could be taken as trespass. They might also have known that, after 1982, participants in the rides would encounter footpath signs.

78. Looking at the 1978, 1983 and 1984 rides, SML's declaration was that she 'and local riders were using the way without let or hindrance…we never asked the farmers for permission and the gates were never locked'. However, she also said that the plastic markers were tied to bushes or gates the day before the rides; someone was sent round to open gates on the morning; and the last rider shut the gates. I realise that any LDR organisers would ensure riders behave responsibly, but the care taken to open and close gates still denotes sensitivity to the needs of landowners – no matter whether or how the gates had firstly been unlocked.

79. The Weston Mercury article indicates that the 1983 LDR started from an address 'by kind permission' of a couple that was likely to include SML. This same couple was likely to be the 'Trevor and Sue' who received the 1984 letter – which thanked them for the use of their facilities. I accept that SML would have given 'permission'

as a formality, and provided parking and other 'facilities' to riders, not just access to or through her land. Even so, the appellant has not shown why BKRC would note her 'kind permission' and yet not even consult other landowners.

80. The 1980 LDR organiser said in her letter than riders had 'unhindered access to the route' but not that this was gained without permission. The 1980 ride instructions asked the riders to close gates – as did those for 1989, which also asked riders to walk and stay close to a fence and hedge by Hailstones Cottages. The Council speculated in suggesting that this request was made because of landowner issues or unsuitable land, but the appellant has given no other explanation.

Other points raised by the Council

81. The instructions for the 1978 LDR included a footnote that no ride map was prepared because 'many of the paths and tracks…do not appear on any available maps'. I disagree with the Council that this means the event did not cover the claimed route, since that was clearly described from points D to A.

82. However, I am concerned that the timesheet said to relate to the 1978 LDR did not include a date or details of the ride – when, as noted above, three riders listed on the timesheet did not mention the event at the 1995 inquiry. The only evidence that the 1978 LDR actually took place is SML's statutory declaration – and that carries significant weight but does not give information about rider numbers.

83. The organiser of the 1980 LDR did not say how many riders took part. The Weston Mercury article indicates that 116 riders took part in the 1983 event, but does not give the date or exact location, and SML's declaration did not give rider numbers. The letter to 'Trevor and Sue' described that £111 was raised in entry fees at the 1984 ride, meaning that some 37 riders took part, but this was the event that SML has shown was probably permitted. There is no evidence that the 1989 LDR took place at all, and the entry form told participants to ring a telephone number two days in advance of the event for the start times.

Other Matters

84. From SML's evidence of challenge by a member of the Marshall family, the public's right to use the route as a bridleway was brought into question in 1984. However, it is not shown that the route was enjoyed as a public bridleway as of right and without interruption for the 20 year period of 1964-1984.

Conclusion

85. It was held in *Ridley v SSEFRA* [2009] EWHC 171 (Admin) that an accumulation of material pieces of evidence, taken as a whole, may lead to a conclusion or result that none of the pieces points to of itself. While the judgment applies, it does not follow that a large quantity of evidence will make the appellant's case.

86. I have taken account of the appellant's concerns, but find that the previous Inspector had no choice but to make the decision that he did. Even if Fountain Forestry Ltd and Lord Sinclair were irrelevant, the evidence for and on behalf of landowners was more consistent and detailed than that of supporters.

87. As to whether a second order should be made, the new evidence that the whole or part of the route was ridden during organised LDRs in 1978, 1980, 1983, 1984 and 1989 is limited and raises more questions than answers. No matter why objectors did not mention these events at the 1995 inquiry, it is the original and new user evidence which contains the more striking omissions. The appellant has not shown

that the rides took place without permission, or otherwise so as to undermine the evidence of a lack of intention to dedicate the route as a public bridleway.

88. I have already noted that the previous Inspector accepted that the route had been used for riding; the new evidence of the LDRs is sufficient to reinforce that finding. However, when the original and new evidence for all parties is taken as a whole, the appellant has not shown that use of the claimed route was such to raise a presumption of dedication as a public bridleway under s31 of the HA80.

89. I have considered whether AX30/81 is reasonably alleged to subsist as a public bridleway – but I am satisfied that even this lower test is not met, given the evidence concerning the whole of the route where it crosses land owned by the Marshall family.

90. Where an order is sought to add or upgrade a right of way on the DMS under s53 of the WCA82, but the requirements under s31 of the HA80 are not met, the question of dedication must be examined in the context of common law. In this case, the use of the claimed route by the public, and the actions of the past or current landowners does not show that express dedication of a public bridleway has taken place, or that dedication could be inferred.

91. With regard also to my findings on the documentary evidence, and to all other matters raised, I conclude that the appellant has not demonstrated that AX30/29A, AX30/33 and AX30/69 ought to be shown as a public bridleway on the balance of probabilities, or that AX30/81 is reasonably alleged to subsist as a public bridleway. The appeal should be dismissed.

Jean Russell

INSPECTOR