
Order Decision

Site visit made on 4 December 2018

by Barney Grimshaw BA DPA MRTPI(Rtd)

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

Decision date: 31 December 2018

Order Ref: ROW/3189289

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Derbyshire County Council (Upgrading to Bridleway of Public Footpath No.17 (part) and 18 – Parish of Pleasley) Modification Order 2016.
- The Order is dated 15 September 2016 and proposes to modify the Definitive Map and Statement for the area by upgrading to Bridleway footpaths running along a route known as Outgang Lane, Pleasley, as shown on the Order Map and described in the Order Schedule.
- There were 35 objections outstanding when Derbyshire County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed.

Procedural Matters

1. A public inquiry into this Order on was arranged to consider objections to this Order. However, before this took place, all the objections were withdrawn. It was therefore decided, with the agreement of Derbyshire County Council, the Order Making Authority (OMA), that the inquiry should be cancelled and the matter dealt with by the written representations procedure.
2. I made an unaccompanied site inspection on Tuesday 4 December 2018 when I was able to walk the whole of the Order route.
3. In writing this decision I have found it convenient to refer to points marked on the Order Map. I therefore attach a copy of this map.

The Main Issues

4. The requirement of Section 53(3)(c)(ii) 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 highway shown in the definitive map and statement as a highway of a particular description ought to be there shown as a highway of a different description.
5. Most of the evidence in this case relates to usage of the route. 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 path and the actions of the landowners have been of such a nature that the dedication of the path by the landowners can be inferred.

Reasons

Documentary Evidence

7. The Order route is currently shown in the definitive map and statement as a public footpath.
8. The OMA, investigated a number of historic documents for evidence relating to the Order route. It was found that the route was shown on Sanderson's Map (1835), the map prepared in connection with the Pleasley Tithe Award (1843) and Ordnance Survey Maps (c. 1880 and 1898). However, although these maps show that the route has existed since the first half of the 19th century they do not indicate whether there were any public rights over it.
9. Accordingly, the determination of this Order depends entirely on the evidence of public use of the claimed route that is available and whether this indicates that a public bridleway can be presumed to have been dedicated in accordance with the provisions of the 1980 Act (statutory dedication) or inferred at common law.

Statutory Dedication

Date when public use was brought into question

10. No evidence has been discovered of specific action which has brought public use of the Order route into question. The OMA has therefore taken 10 October 2012, the date the application for the route to be upgraded to bridleway was submitted, as the date when its public use as a bridleway was brought into question. Accordingly, the relevant period of 20 years public use which would raise a presumption that this route has been dedicated as a public bridleway in accordance with the provisions of the 1980 Act runs from October 1992 to October 2012.

Evidence of Users

11. Sixty User Evidence Forms (UEFs) were submitted in support of the application. These describe use of the route by various means from 1947 to 2012. Sixteen people claimed to have used the route solely on foot, two on pedal cycles and one on horseback. A further thirty-six people said they had used the route both on foot and pedal cycle and another five on foot pedal cycle and horseback. Nearly all users also stated that they had seen others using the route on pedal cycles and/or horseback as well as on foot.
12. The frequency of use claimed varied but most people who completed UEFs said they had used the route at least once a week. Where people had used the route by more than one mode, for example on foot and on pedal cycle, the form did not ask them to specify how frequently each mode was used. It is therefore difficult to quantify the amount of each type of use.

13. Fifty-six people claimed to have used the route throughout the 20 year period 1992 to 2012 and four for a substantial part of that period.
14. No users stated that they had been obstructed or challenged when using the route, nor had they received permission to use it or seen signs restricting their use.
15. Overall, it is my view that, despite the difficulty of accurately quantifying each type of use, the amount and type of public use of the Order route between 1992 and 2012 was such as to raise a presumption that it had been dedicated as a public bridleway in accordance with the provisions of the 1980 Act. However, this presumption would be rebutted if there is sufficient evidence of action taken by owners of the land crossed by the route that indicated a lack of intention to dedicate a public right of way during the same period.

Action of Landowners

16. Outgang Lane is a private road owned by Bolsover District Council which provides access to and passes through Pleasley Vale Business Park. The District Council has not objected to the Order.
17. There are currently two vehicle barriers across the route which control vehicular access to the business park. Gaps at the side of the barriers roughly 1.5 metres wide allow free passage of pedestrians, cyclists and horse riders. Signage close to the barriers indicates that cyclists should use the gaps rather than attempt to pass through the barriers.
18. There are 'Private Road' signs close to the barriers but these do not indicate that all public access is restricted. The route is already recorded as a public footpath and other signs and information boards along the route indicate that public access (other than in vehicles) is recognised and accepted.
19. In objections that have now been withdrawn, it was suggested that security staff have always informed people that no public right of way other than on foot exists along the road. However, this suggestion is not corroborated by any of the 60 UEFs completed by users of the route. In addition, when interviewed by an officer of the OMA, the security staff member responsible for manning the vehicle barriers stated that he had never challenged anyone using the route on horseback or pedal cycle and had not been instructed to do so.
20. Overall, it is my view that there is no substantive evidence of any action taken by the landowner or others to bring use of the Order route as a public bridleway into question before 2012 or to indicate a lack of intention to dedicate it as such between 1992 and 2012.

Conclusions regarding Statutory Dedication

21. There is a considerable amount of evidence of public use of the Order route by pedal cyclists and horse riders in the period from 1992 to 2012 and no substantive evidence of action taken by the landowner during the same period to indicate a lack of intention to dedicate the route as a public bridleway. Accordingly, it can be presumed that the route has been dedicated as a public bridleway in accordance with the provisions of the 1980 Act.

Common Law

22. An inference that a way has been dedicated for public use may be drawn at common law where the actions of landowners (or lack of action) indicate that they intended a way to be dedicated as a highway and where the public have accepted it.
23. In this case, the available evidence indicates that the public have used the Order route for a lengthy period during which the landowners took no action to discourage such use and appear to have accepted it. In these circumstances, it may well be reasonable to infer that the route has been dedicated as a public bridleway at common law. However, in the light of my conclusions regarding statutory dedication, it is not necessary to pursue this matter further.

Other Matters

24. As much of the use of the Order route during the relevant period under the 1980 Act was by pedal cycle, this could be consistent with the route being presumed to have been dedicated as either a bridleway or a byway. However, in such cases it is appropriate to infer the form of dedication that is least burdensome to the landowner. It is therefore entirely reasonable to propose the recording of the Order route as a bridleway in this case, particularly as the landowner took steps to restrict access by other forms of vehicle than pedal cycles.
25. Bolsover District Council has indicated that it wishes to relocate the vehicle barrier situated a short distance from Point A to a new location further to the south-east. The reason for this is to make it safer to negotiate by large vehicles. It is suggested that this proposed new location might be reflected in the Order in some way. However, as the barrier was present in its current location throughout the relevant 20 year period, it is appropriate that it is recorded as a limitation on public use in the Order. If the barrier is re-located in the future, it may be necessary for a further modification to be made to the definitive statement but, confirmation of the current Order should not restrict the district council's ability to have the barrier re-located.

Conclusions

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

Formal Decision

27. I confirm the Order.

Barney Grimshaw

Inspector

