The Planning Inspectorate

Order Decision

Site visit on 18 July 2018

by Paul Freer BA(Hons) LLM PhD MRTPI

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

Decision date: 27 December 2018

Order Ref: ROW/3187038

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981. It is known as the South Gloucestershire Council (Upgrading Footpath PSN 42A at Siston to Bridleway) Definitive Map and Statement Modification Order 2017.
- The Order is dated 31 March 2017. It proposes to modify the definitive map and statement for the area by upgrading to bridleway status the public footpath linking Cann Lane with Homeapple Hill, in the Parish of Siston, as shown on the Order map and described in the Order schedule.
- There were two objections outstanding when South Gloucestershire Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.

Summary of Decision: The Order is confirmed with a modification, as set out in the Formal Decision below.

Main Issues

1. The main issue here is whether the evidence is sufficient to show that in the past the Order route has been used in such a way that a public bridleway can be presumed to have been established.

2. The Order was made under the Wildlife and Countryside Act 1981 on the basis of events specified in sub-section 53(3)(c)(ii). If I am to confirm it, I must be satisfied that, on a balance of probability, the evidence shows a public right of way on horseback or leading a horse subsists along the route described in the Order in addition to the public footpath already recorded on the definitive map.

3. The case in support is based primarily on the presumed dedication of a public right of way under statute, the requirements for which are set out in Section 31 of the Highways Act 1980. For this to have occurred, there must have been use of the claimed route by the public on horseback or leading a horse, as of right and without interruption, over the period of 20 years immediately prior to its status being brought into question, thereby raising a presumption that the route had been dedicated as a public bridleway. This may be rebutted if there is sufficient evidence that there was no intention on the part of the relevant landowner(s) during this period to dedicate the way for use by the public; if not, a public bridleway will be deemed to subsist.

Reasons

4. South Gloucestershire Council (SGC) made this Order in response to an application dated 16 November 2015 from Mrs Ann Fray on behalf of the British Horse Society, supported by eighteen forms giving evidence of use.

Bringing into question

5. The application arose from complaints that vehicles were blocking the bridleway. The investigation of that complaint revealed that the route was recorded as a footpath and not, as the complainant believed, a bridleway. This led to the application for upgrading in November 2015. I therefore conclude that the status of the Order route was brought into question by that application and on the date of that application. Consequently I need to examine use by the public during the period between November 1995 and November 2015.

Assessment of the evidence

6. In addition to the eighteen user evidence forms submitted with the application, a further seven user evidence forms were added subsequently. The twenty five user evidence forms mostly relate to the period from 1990 onwards, although some relate to the early 1970's and 1980's. One of the forms covers the entire period from 1938 to 2015.

7. In relation to the period between November 1995 and November 2015, five of the people returning forms indicate that they used the route for the whole of the relevant 20 year period. Other forms detail use of the route for 10, 12, 15 and 17 years respectively, taking November 2015 as the end date. One form records use of the route as a bridleway over a continuous period of 35 years up to 2010, and therefore covering the majority of the relevant period. A further twelve forms record use of the route as a bridleway over shorter lengths of time within the relevant period. Analysis of the user evidence forms reveals that the respondents used the route both on foot and on horseback on a regular basis, some as frequently as two or three times each week, and in a few cases as often as 200 occasions in one year.

8. There is some reference in the user evidence forms of notices being erected on or near the way "in recent years", but there is no detailed evidence in relation to these notices and the significant majority of the user forms indicate that no notices have been erected. In addition, there is some reference to the route being partially blocked by vehicles, albeit there is no indication that was on the part of the land owner. It would also appear that the route remained passable at all times, notwithstanding the obstruction. Consequently, there is no meaningful evidence to suggest that those completing the user evidence forms were ever challenged whilst using the path, by notice or otherwise, or used the route in secret or with express permission. I am therefore satisfied that the use was 'as of right', regular, and capable of establishing a right of way.

9. In addition to the user evidence forms, five other representations have been received supporting the claimed use as a bridleway. One of these representations is from a long-standing resident of a house close to the western end of the route, and confirms use a bridleway. A second representation describes use of the route by horse riders between 1980 and 2006. The other representations are, respectively, from a rambler detailing an encounter with horse riders using the route, the latter claiming that they had used the route as a bridleway for over twenty years; an extract from social

media referring to the use of the route for the last 35 years; and correspondence from Siston Parish Council indicating that it has no objection or critical comments in relation to the application. These representations all add weight, to a greater or lesser degree, to the claim that the route has been used as a bridleway.

10. One of the objections received disputes that horse riders have ever used the full length of the route, claiming that the route was overgrown and impassable for much of the relevant period. The objector contends that horse riders used the route from Cann Lane as far as the gates leading to the adjoining fields in order to access other paths but that, until the application was made to upgrade the route, never used the section up the A420 (Homeapple Hill). In support of that, the objector has provided a series of photographs that show various vehicles parked on the route where it joins with the A420 and which purport to show the route being blocked to horse riders.

11. I must balance the evidence of the objector in this respect against the more extensive body of evidence in the user evidence forms, which are consistent in indicating that the full length of the route has been used as a bridleway over the relevant period. I am also mindful that the application arose from complaints that vehicles were blocking the route. This is consistent with the objector's evidence that vehicles were parked in the area where the route joins with the A420. The obvious corollary is that, for horse riders to have encountered the parked vehicles that triggered the application, they must have been attempting the use the full length of the route.

12. The application was also accompanied by historic Ordnance Survey maps, all of which show the route edged by black lines. In addition, the Tithe Map of 1841 shows the route as an unencumbered through route. Comparison of the route with modern maps shows that the other routes shown similarly coloured and unencumbered are now recorded as adopted highways, bridleway or restricted byways. Only routes shown as cul-de-sacs on the 1841 Tithe Map are now recorded as footpaths. This tends to support the claim that the footpath subject to the application ought similarly to be shown with a higher status than footpath.

13. I am satisfied that this evidence is, when taken as a whole, sufficient to raise a presumption that the way in question had been dedicated as a public bridleway.

Intentions of the landowner

14. No evidence has been provided to demonstrate actions by or on behalf of the owner of the land affected by the Order route during the period November 1995 - November 2015 to challenge the claimed use or to otherwise rebut the presumed intention to dedicate a right of way for the public on horseback or leading a horse. I conclude therefore that any presumption of dedication raised would not have been rebutted.

15. In this context, I note that despite reasonable efforts by SGC no registered owner of the land affected by the Order route was found and that notices were placed at each end of the route. I am satisfied that the procedures followed were in accordance with those prescribed in Schedule 15 of the Wildlife and Countryside Act 1981.

16. Consequently I conclude that, on a balance of probability, a public bridleway has been established along this route.

17. In Part II of the Order, under the heading of 'Particulars as to position, length, width and limitations on conditions as in the opinion of the Authority it is expedient to record', the width of the route is stated as being 4 metres. Whilst I am satisfied that this is generally accurate for the majority of the route, the route narrows to a minimum of 1.6 metres at one particular point just to the west of Point B as shown on the Order map. The Council has indicated that this point is at Grid Reference ST 6874 7278. Because only this one specific point of the route is affected, I am satisfied that the Order can be modified to record this limitation without the need for any further consultation.

Other matters

18. The letters of objection raise concerns about the practical implications of pedestrians sharing the Order route with horse riders, the additional demands horse use may make in terms of future maintenance of the path and highway safety at the junction with the A420. Whilst these are clearly matters of importance to local users of the route and for the highway authority, they are not relevant to my consideration of this Order which seeks to determine whether or not the right to ride a horse has already been established in law through long unchallenged use.

Conclusion

19. Having regard to the above and all other matters raised in the written representations, I conclude that the Order should be confirmed with the modification referred to in paragraph 17 above.

Formal Decision

20. I confirm the Order with the following modification:

In Part II of the Order schedule, add to the "**Particulars as to position, length, width, limitations or conditions as in the opinion of the Authority it is expedient to record**": "Width reduces to 1.6 metres at Grid Reference ST 6874 7278".

Paul Freer

INSPECTOR

Wildlife and Countryside Act 1981 Section 53
South Gloucestershire Council (Upgrading Footpath PSN 42A at Siston to Bridleway)
Definitive Map and Statement Modification Order 2017

South Gloucestershire Council

Date: January 2017	Map No: 423 PT. 5211	Scale: 1:2500 at A4