



Appeal Decision

by Barney Grimshaw BA DPA MRTPI (Rtd)

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

Decision date: 11 March 2019

Appeal Ref: FPS/M1900/14A/8

- This Appeal is made under Section 53(5) and Paragraph 4(1) of Schedule 14 of the Wildlife and Countryside Act 1981 against the decision of Hertfordshire County Council not to make an Order under section 53(2) of that Act.
- The Application dated 9 January 2006 was refused by Hertfordshire County Council on 20 September 2017.
- The Appellant claims that a footpath running from Moor Lane to Holloway Lane should be upgraded to the status of Byway Open to All Traffic (BOAT).

Summary of Decision: The appeal is not allowed.

Preliminary Matters

1. I have been directed by the Secretary of State for Environment, Food and Rural Affairs to determine this appeal under Section 53(5) and Paragraph 4(1) of Schedule 14 of the Wildlife and Countryside Act 1981 (the 1981 Act).
2. I have not visited the site, but I am satisfied I can make my decision without the need to do so.

Main issues

3. Section 53(3)(c)(ii) of the 1981 Act provides that an Order should be made to modify the Definitive Map and Statement if evidence is discovered which, when considered with all other relevant evidence available shows that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description.
4. Some of the evidence in this case relates to usage of the claimed route. In respect of this, the requirements of Section 31 of the Highways Act 1980 (the 1980 Act) are relevant. This states that where a way over any land, other than a way 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 actually 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.
5. Common law also requires me to consider whether the use of the route and the actions of the landowner have been of such a nature that the dedication of the route by the landowners as a byway can be inferred.

Reasons

Documentary Evidence

6. Early commercial maps appear to show the claimed route or part of it but are not clear and in any event cannot be relied upon to indicate the status of routes shown.
7. The tithe map prepared for Chenies (1838) shows a short portion of what may be the commencement of the claimed route apparently excluded from titheable apportionments in the same manner as other public roads. It is shown continuing from Buckinghamshire into Hertfordshire and annotated "to Sarrat" but it does not indicate whether the route that continued to Sarrat followed that currently claimed. The map for Sarrat (1840) shows the claimed route as a broken line running through apportionments named as "Common Moor" and "Common Meadow". Tithe maps were prepared to show productive land and not to identify public rights of way and therefore cannot be relied upon to determine the status of routes shown. In this case, the way that the possible commencement of the claimed route is shown on the Chenies map is consistent with the route having been regarded as a vehicular route but the manner in which the route itself is shown on the Sarrat map is more consistent with the route having had a lesser status.
8. Ordnance Survey (OS) maps published from 1877 onwards show the route. Although these maps provide good evidence of the existence of features present at the time they were surveyed they do not indicate the status of routes shown.
9. Documents prepared in connection with the survey carried out in accordance with the Finance Act 1910 show that the claimed route crossed two hereditaments in which deductions from the value were allowed for public rights of way. Both hereditaments were crossed by a number of routes and it therefore cannot be concluded that the deductions necessarily related to the claimed route. However, if the route had been regarded as a public vehicular route, it is likely that it would have been excluded from the adjoining hereditaments for valuation purposes. The records are therefore consistent with the route having been regarded as a footpath or bridleway.
10. In the Parish Survey undertaken in 1953 as part of the process of preparing the first definitive map, the application route was claimed as a footpath and it was included as such in the Draft, Provisional and First Definitive maps. In a subsequent review, started in 1977 but abandoned in 1984 the route was considered for regrading as a bridleway, but it was decided that there was insufficient evidence for this. It has therefore continued to be shown as a footpath on the current map.

Conclusions regarding the Documentary Evidence

11. The documentary evidence that is available shows that the claimed route has existed for a long time but apart from the definitive map cannot be relied upon to determine its status. In my view the evidence is more consistent with the route having been regarded as a footpath or bridleway rather than a vehicular route and I note that the question of whether it should in fact be upgraded to bridleway status was considered in the 1977-84 review of the definitive map and not accepted.

12. On balance, the documentary evidence is not in my view sufficient to justify a conclusion that the route has a higher status than public footpath.

Evidence of use

13. Sixteen User Evidence Forms (UEFs) have been submitted in support of the application describing use of the claimed route between 1929 and 2016. Most of these described use of the route on foot and on horseback for various periods. Only one person claimed to have used the route in a motor vehicle and two with bicycles.
14. Most users also referred to a locked gate having been in place at the western end of the route which stopped their use of it on horseback. However, the date given for when this occurred varied significantly between 1970 and the early 1980s. There were also a few reports of signs having been in place or of users being challenged.
15. In these circumstances it is difficult to determine from the evidence currently available when public use of the route other than as a footpath was brought into question. However, there is some evidence of 20 years continuous use of the route on horseback before 1970.

Conclusions regarding evidence of use

16. Evidence of use of the claimed route other than as a footpath is limited. There is also evidence of action by landowners which might have brought such public use into question in the 1970s or earlier and/or indicated a lack of intention to dedicate a public right of way of any higher status than footpath.
17. On balance, it is my view that the evidence of use available is not sufficient for it to be concluded that the route should be recorded as being of a higher status than public footpath.

Conclusion

18. Having regard to these and all other matters raised in the written representations I conclude that the evidence that is available does not show that the claimed route is of higher status than public footpath. The appeal should therefore not be allowed.

Formal Decision

19. The appeal is not allowed.

Barney Grimshaw

Inspector