



# 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: 30 August 2019**

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## **Appeal Ref: FPS/M1900/14A/11**

- 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 February 2016 was refused by Hertfordshire County Council on 15 October 2018.
- The Appellant claims that a number of routes at Park Wood, Ragged Hall Lane, St Michael Rural should be added to the definitive map as footpaths.

**Summary of Decision: The appeal is allowed.**

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## **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.
3. I attach a copy of a map submitted with the application showing the claimed routes for reference purposes.

## **Main issues**

4. Section 53(3)(c)(i) of the 1981 Act states that an order should be made on the discovery by the authority of evidence which, when considered with all other relevant evidence available, shows that a right of way which is not shown on the map and statement subsists or is reasonably alleged to subsist over land to which the map relates.
5. Most 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.
6. 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 public right of way can be inferred.

## **Reasons**

7. The application seeks the recording of a number of paths within Park Wood which can be divided into 19 separate sections.

## **Documentary Evidence**

8. The only historic documentary evidence of the claimed routes discovered by the authority was various Ordnance Survey (OS) maps.
9. OS maps from 1867-1894 show a number of unannotated tracks through the wood. One roughly coincides with the application route O-N-M-L and one with the route K-J-I-H. A further route runs roughly from K to D and part of this approximates to the claimed route F-E-D. Later OS maps (1897-1953) show similar information except that after 1916 the maps show another route commencing roughly from Point O and then running outside the boundary of the wood close to Points Q and P. This route is annotated "F.P." and coincides with currently recorded Footpath 8.
10. These maps provide good evidence of the existence of routes shown but do not indicate whether there were any public rights over them.

## *Conclusions regarding the Documentary Evidence*

11. The limited documentary evidence available does not assist in determining whether the claimed routes are public rights of way. Accordingly, the determination of this appeal depends entirely on the evidence relating to public use of the claimed routes that is available and whether this indicates that public footpaths can be presumed to have been dedicated in accordance with the provisions of the 1980 Act (statutory dedication) or inferred to have been dedicated at common law.

## **Statutory Dedication**

### *Date when public use was brought into question*

12. The application to add the claimed routes to the definitive map was made in February 2016 which would indicate that public use of the routes had been brought into question by then. However, there is evidence that new signs were erected in 2010 stating that the wood was private property and the authority considered that these brought public use of the routes into question at that time. The appearance of the signs around this time is corroborated by the evidence of several path users.
13. There is also evidence of other signs having been erected as early as 1984 but this was largely not corroborated by users.
14. Accordingly, I have taken the relevant period of 20 years public use which would raise a presumption that these routes have been dedicated as public footpaths in accordance with the provisions of the 1980 Act as running from 1990 to 2010 in this case.

### *Evidence of Use*

15. A total of 54 User Evidence Forms (UEFs) were submitted in support of the application. These describe use of the routes from 1961 until 2016.
16. Thirty-three people claimed to have used the routes throughout the period 1990 to 2010 and a further 18 for some of that period. However, the routes

taken by users varied and most people did not claim to have used all of the 19 path sections claimed. The frequency of use claimed varied from daily to yearly but, where people had used more than one route, the UEFs did not specify the frequency of use of each route separately.

17. The use claimed was predominantly on foot although one or two people stated that they had used routes on horseback or bicycle.
18. Users generally stated that they had not been challenged on the paths or been given permission to use them. Almost half of the users said they had seen notices on the routes but the majority of these stated that they had not seen the notices before 2010 and/or the notices had related to forestry activities or had stated that walkers were welcome. A number of people also referred to obstructions having been encountered but these had generally been temporary associated with forestry activities or had been seen after 2010.
19. Overall, it is my view that the amount and nature of use described in the UEFs could be sufficient to raise the presumption that all of the claimed routes had been dedicated as public footpaths in accordance with the provisions of the 1980 Act, if the use was 'as of right' and unless the landowner had indicate a lack of intention to dedicate rights of way during the same period.

#### *Actions of landowners*

20. The current landowner, CP Holdings, acquired the wood, which forms part of a larger estate, in the early 1980s and there is documentary evidence that in 1984 signs were ordered reading "*PRIVATE WOOD*" which were said to be intended to be sited in prominent places and at entrances to woodlands, especially where there was fly tipping and large numbers of walkers.
21. A letter written in 1993 by the Property Manager for the owner expressed an intention to arrange for the installation of fencing and appropriate signs to prevent public access through the woods.
22. A woodland management report in 2006 contained plans for the erection of some fencing and private property signs and, in 2009, there was correspondence regarding the purchase of signs. Ten of these signs were to read "*PRIVATE PROPERTY TRESPASSERS WILL BE PROSECUTED*" and a further three were to state that there was no access for vehicles or bicycles. These may well have been the signs erected in 2010 which brought public use of the claimed routes into question.
23. Although this evidence indicates that the landowner intended to restrict public access to all or part of the estate, users of the claimed routes would not have been aware of this intention unless and until the signs and fences referred to were erected at appropriate locations on the routes being used.
24. In a statement said to be written in 2014, Robin Winward, who had been employed by, CP Holdings since 1990, states that signs restricting public access were erected on a regular basis but vandalised and removed just as regularly and that fencing and gates were also removed/vandalised. He also states that assessment of trees that were potentially dangerous to anyone with a legitimate right to be near them was carried out on a regular basis, but no such assessment was carried out in Park Wood as there was no public access.
25. Other evidence relates to access points having been secured and to signage and fencing having been erected after 2010.

### *Conclusions regarding statutory dedication*

26. The user evidence indicates a significant amount of public use of the claimed routes on foot during the period 1990 to 2010 although it is not possible to quantify the precise amount of use made of each section claimed.
27. There is also evidence of signage (and fencing) having been erected to prevent access. However, no details are available of the location of signs and fences before 2010 or of when they were in place and, although some users acknowledged having seen "Private" signs most did not.
28. In these circumstances, the available evidence is not sufficient to indicate the landowner's lack of intention to dedicate any specific section of the claimed routes as a public footpath. Accordingly, it is my view, in the light of my conclusions regarding the user evidence, that it is reasonable to allege that the claimed routes have been dedicated as public footpaths in accordance with the provisions of the 1980 Act.

### **Common Law**

29. 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.
30. In this case, there is evidence of public use of the claimed routes over a lengthy period. However, with the possible exception of some "Walkers welcome" signs seen by a few people at unspecified locations, the available evidence does not indicate landowners' intention to dedicate any or all of the claimed routes as public footpaths. It would not therefore seem reasonable to infer that the claimed routes have been dedicated as public footpaths at common law. However, in the light of my conclusions regarding statutory dedication, there is no need to pursue this possibility further.

### **Conclusion**

31. Having regard to these and all other matters raised in the written representations I conclude that the evidence that is available shows that on the balance of probabilities it is reasonable to allege that the claimed routes are public footpaths. The appeal should therefore be allowed.

### **Formal Decision**

32. The appeal is allowed and in accordance with paragraph 4(2) of Schedule 14 to the 1981 Act Hertfordshire County Council is directed to make an order under section 53(2) and Schedule 15 of the Act to modify the definitive map and statement to add public footpaths, as proposed in the application dated 9 February 2016. This decision is made without prejudice to any decision that may be given by the Secretary of State in accordance with her powers under Schedule 15 of the 1981 Act.

*Barney Grimshaw*

Inspector

