
Order Decision

Inquiry held on 3 September 2019

by Barney Grimshaw BA DPA MRTPI(Rtd)

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

Decision date: 25 September 2019

Order Ref: ROW/3213130

- This Order is made under Section 53(2)(a) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the North Yorkshire County Council, Public Bridleway No.15.10/9 Moss carr Lane to County Boundary, Bickerton, Harrogate, Modification Order 2013.
- The Order is dated 27 March 2013 and proposes to modify the Definitive Map and Statement for the area by adding a bridleway running from Bridleway 15.10/8, Moss carr Lane to the county boundary, as shown on the Order Map and described in the Order Schedule.
- There were 5 objections outstanding at the commencement of the inquiry.

Summary of Decision: The Order is confirmed.

Procedural Matters

1. I held a public inquiry into this Order on 3 September 2019 at Tockwith Village Hall. I made an unaccompanied site inspection on 2 September when I was able to view the whole of the Order route. It was agreed by all parties at the inquiry that a further accompanied visit was not necessary
2. 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

3. The requirement of Section 53(3)(c)(i) 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 right of way that is not shown on the definitive map and statement subsists along the Order route.
4. Much 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.

5. 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

Stopping up of the Turnpike 1828

6. The Order route appears to have existed since at least the 18th century and was part of the old turnpike road between Wetherby and Bickerton. However, as a result of an Act of 1826 and a subsequent Order of the Collingham and York Turnpike Trustees in 1828, the turnpike was then diverted on to a newly constructed road on the line of the current B1224 and the old road stopped up as a public highway.
7. However, it was suggested by supporters of the Order that as the route continued to physically exist after 1828 it was likely that it would have continued to be used by local people as it was the most direct route between Bickerton and Wetherby and was toll free.
8. Under the provisions of the 1828 Order, possession of the old road was given to Richard Fountayne Wilson in exchange for the land taken for the new road but this was subject to a right of free passage for all purposes being retained for George Rhodes, his heirs and assigns and their tenants, guests, agents, servants and workmen. It was argued that this meant that, even after the route had ceased to be a public highway, a large number of people would have been permitted to use it and it might not have been practicable to differentiate these from other members of the public who might also have continued to use it.

Tithe Commutation Documents

9. Under the Tithe Commutation Act 1836, tithes were converted into a monetary payment. Tithe documents were prepared with the sole purpose of identifying titheable or productive land. They are statutory documents which were in the public domain but were not produced to record public rights of way.
10. In this case, the Order route appears on 3 tithe maps, those for Bickerton in Ainsty (1851), Kirk Deighton (1847) and Wetherby (1838). These maps show the Order route as being excluded from liability for tithe payment and coloured in the same manner as public roads in the area. In addition, the Bickerton map includes the words "*From Wetherby*" at the western end of the route and the Wetherby map has the words "*To York*" at the eastern end. Similar annotations are included in respect of the turnpike road (now the B1224).
11. It was argued that it was unsurprising that the Order route was regarded as unproductive and therefore not liable for tithe payment as it had previously been a public highway and had remained in use as an occupation road for the benefit of several people. On the other hand, the colouring of the route in the same manner as public roads and the annotation of it "*To*" or "*From*" named towns could suggest that the route was thought to be a public highway of at least bridleway status.

Ordnance Survey (OS) Maps

12. OS maps published from 1850 and 1858 onwards show the Order route. This is good evidence that the route continued to exist but does not necessarily indicate the presence of any public rights over it. It was argued that, as the maps were sold for public use, members of the public would have used routes that were shown and there would have been an outcry from landowners if routes that were shown were private. However, surveyors would have mapped whatever features they found to exist on the ground and the maps would have included disclaimers to the effect that routes shown were not necessarily public.
13. Perhaps of greater significance is an OS Boundary Remarks document dated 1890. In this a boundary immediately to the west of Point C is described as running along the public road, this being the continuation of the Order route now within the area of Leeds City Council. Although this description does not refer to the Order route itself, it is not likely that a public road would have terminated at Point C but would have continued along the Order route.

Other Maps

14. The Order route has been consistently shown on a number of commercial maps in the same manner as public roads. These include maps produced by Cary (1825, i.e. before stopping up of public rights in 1828), (Greenwood (1834) and Frank (1840). More recently in the 1920s, Bacon's Cycling Road Map, Johnston's Motoring and Touring Map and Philip's Road Map all showed the route in the same manner as known public roads. A Geographia Road Map (1923) showed the route in a manner described as representing "*Other Roads (Subject to a right of way)*".
15. These maps suggest a continuing belief that the Order route was available for public use. However, they cannot on their own be relied upon to accurately indicate the status of the route including what, if any, public rights it carried.

Other Documents

16. A book, Lower Wharfedale by Edmund Bogg (1923), describes a walk taken by the writer commencing in Wetherby. The route described would appear to have crossed the continuation of the Order route to the west. It was suggested that, if this route had not been public, this might not have been possible.

Conclusions regarding Documentary Evidence

17. The available documentary evidence shows that the Order route continued to exist after it ceased to be a public highway in 1828 and is consistent with it having still been available for public use. In addition, the way in which the route is depicted on tithe maps, OS and commercial maps and the way in which its continuation to the west is described in the 1890 OS Boundary Remarks document is in my view indicative of a belief that the route was a public highway of at least bridleway status.

Statutory Dedication

Date when public use was brought into question

18. On 10 January 1991, the then owner of the land crossed by the Order route, Mr Parker, deposited a Declaration (under section 31(6) of the 1980 Act) making

clear that he did not accept the Order route as a public right of way. This effectively brought public use of the route into question at that date, even though people claim to have continued to use the route until they found it to be obstructed by a locked gate some time later.

19. Mr Parker has also stated that in the late 1980s he erected new gates across the route which were kept locked most of the time. However, the evidence of users of the route was that they did not encounter locked gates on the route until after 1991. It is therefore doubtful whether public use was brought into question earlier than 1991.
20. Accordingly, I have taken the relevant period of 20 years public use which would raise a presumption that this route has been dedicated as a public footpath in accordance with the provisions of the 1980 Act as running from January 1971 to January 1991 in this case.

Evidence of Users

21. Forty-five User Evidence Forms (UEFs) were submitted in support of the Order, including 6 submitted at the inquiry. These had been completed at various times between 1997 and 2015. Seven letters describing use of the route were also submitted, three of which were written by people who also completed UEFs. In addition, two people gave evidence of their use of the route at the inquiry, one of whom had not previously completed a UEF. Accordingly, I have been able to consider evidence of use provided by a total of 50 people.
22. More than 30 people claimed to have used the route on foot, 20 on horseback and 14 on bicycles. Several people had used it by more than one means.
23. The UEFs describe use of the Order route from the late 1960s until 1996, but most of those providing evidence did not claim to have begun using the route before 1971. In fact only 3 people claimed to have used it before 1971. A further 6 claimed to have started to use it in 1971 but, as the Declaration regarding rights of way was lodged by the landowner early in January of that year, it seems likely that their use began some time after that event.
24. Two of the three people who claimed to have used the route before 1971 did so in letters that provided little detail of their use except that they had walked the route regularly. The third person stated in a UEF that he had used the route daily on foot and also sometimes on a bicycle.
25. Although a substantial amount of evidence has been submitted of public use of the Order route by various means, there is very little evidence of such use in the very earliest part of the relevant 20 year period under the 1980 Act, that is immediately after 10 January 1971..

Actions of landowners

26. Mr Parker, who owned part of the Order route from 1972 and the whole of it from 1991, has stated that in the late 1980s, after problems with poachers and trespassers, he erected new gates across the route which were chained and locked most of the time. He also stated that he gave permission to many people to use the route and challenged others although he could not recall specific details.

27. In addition, he stated that he erected a sign stating that the route was not a public right of way but this was said to be at the western side of Ingmanthorpe Hall Farm and therefore not on the Order route.

Conclusions regarding Statutory Dedication

28. There is a substantial amount of evidence of public use of the Order route during the period from 1971 to 1991 and only limited evidence of action by the landowner during the same period to indicate a lack of intention to dedicate it as a public right of way. However, very little evidence of public use in the period immediately following 10 January 1971 has been submitted and it cannot therefore be concluded that the route has been enjoyed by the public for a full period of 20 years as is required under 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 considerable evidence of public use of the Order route as a bridleway after 1971 and little substantive evidence of action by a landowner to indicate a lack of intention to dedicate a public right of way before the late 1980s. On its own this evidence is insufficient to satisfy the test under the 1980 Act, as stated above. Nor, in my view, can it reasonably be inferred on the basis of this evidence alone that dedication of the route took place at common law as there is no evidence of actions by the landowner to indicate an intention to dedicate a right of way and some to suggest the opposite.
31. However, documentary evidence indicates the reputation of the route as being a public highway of at least bridleway status from the 1830s onwards.
32. When all the available evidence is considered together, it is my view that it indicates that, on the balance of probabilities, the Order route became re-established as a public bridleway under common law as a result of continuing public use after the stopping up in 1828. Accordingly, as there is no evidence that the route has subsequently been stopped up again, it is appropriate for it now to be recorded as a public bridleway.

Conclusions

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

Formal Decision

34. I confirm the Order.

Barney Grimshaw

Inspector

APPEARANCES

For the OMA

Stephanie Hall Counsel, representing North Yorkshire
County Council (NYCC)

Who called:

Ron Allan Definitive Map Officer, NYCC

Tricia Heaps Applicant and path user

Supporters

Annabel Hartley Path user

Caroline Bradley British Horse Society (BHS)

Catriona Cook Byways and Bridleways Trust (BBT)

Objectors

Catherine Johnston Solicitor, Lister Haigh, representing Mr A
Alton, Mr R Danforth, Mr SA Parker, Mr
M Wainwright, Mr R & Mrs C Wilson and
Mr L Wilson

DOCUMENTS

1. Statement of case of NYCC.
2. Proof of Evidence of Ron Allan, NYCC.
3. Statement of Tricia Heaps.
4. Statement of Case of BHS.
5. Proof of Evidence of Caroline Bradley, BHS.
6. Statement of Case of BBT.
7. Proof of Evidence of Catriona Cook, BBT.
8. Statement of Case on behalf of landowners.
9. Proof of Evidence on behalf of landowners, Catherine Johnston, Lister Haigh.
10. Proof of Evidence of Stephen Parker (read by Catherine Johnston).
11. Email statement from Jon Kelly (submitted at the inquiry).
12. Six additional User Evidence Forms (submitted at the inquiry).
13. Opening submission on behalf of NYCC.

