



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: 19 March 2020

Appeal Ref: FPS/Y3940/14A/14

- 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 Wiltshire Council not to make an Order under section 53(2) of that Act.
- The Application dated 25 June 2015 was refused by Wiltshire Council on 4 June 2019.
- The Appellant claims that a part of Bridleway No.7 Chippenham running between Rowden Hill and a former builder's yard should be upgraded to the status of Byway Open to All Traffic.

Summary of Decision: The appeal is refused.

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 showing the route for reference purposes.

Main issues

4. Section 53(3)(c)(ii) 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 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.
5. 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.
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 appeal route runs from the A4 road, known as Rowden Hill at this point, northwards as far as a former builder's yard. From there Bridleway 7 passes under a railway and then continues westwards as Bridleway 35.

Documentary Evidence

8. It would appear that the appeal route came into existence in around 1837 at the time that the railway was constructed. Plans prepared before this time do not show the route.
9. The route is not shown on the plans deposited in connection with the Great Western Railway Amendment Act 1837 which authorised the construction of the railway. If it had been regarded as a public route at this time, it should have been shown along with details of how it would cross the proposed railway. The land crossed by the route was described as arable or pasture fields in private ownership and part of a brook and it would appear that the bridge was constructed to allow the landowners to gain access to their fields and to allow the brook to pass under the railway.
10. The Chippenham Tithe Award Map 1848 shows the appeal route uncoloured with no plot number and excluded from adjacent plots in the same manner as the parish road network. This could suggest the existence of public vehicular rights over the route. However, the continuation of the route (now Bridleway 35) is numbered and described in the apportionment document as a 'Road' in private ownership. The OMA argues that this indicates that this route was likely to have been a private accommodation road as, if it were a public highway it is likely that the owner/occupier would have been listed as the Surveyor of Highways in the same manner as other public roads. It is further argued that, as the appeal route and its continuation are shown as a single route, it is unlikely that its status would alter part way along.
11. The Finance Act 1910 records show the appeal route uncoloured and excluded from adjacent hereditaments. This may be indicative of the route being regarded as a public vehicular highway as footpaths and bridleways were usually included within hereditaments and dealt with by way of deductions from the value. However, there could be other reasons for the exclusion of routes which were seen as being of no value to a specific landowner.
12. The appeal route was originally recorded in the definitive map as a CRB (Carriage Road used mainly as a Bridleway), its continuation, path 35 was recorded as a bridleway. An objection was made to the recording of both paths by the British Transport Commission but, after a public inquiry in 1955, the appeal route remained on the definitive map as a CRB.
13. An attempt was subsequently made to reclassify both paths as footpaths at the request of Chippenham Borough Council. Another public inquiry was held in 1978 and it was determined that there was no new evidence to justify downgrading Bridleway 35 and that paths 7 and 35 were parts of the same route and the council was directed to reclassify path 7 as a bridleway.

Conclusions regarding the Documentary Evidence

14. The evidence regarding the appeal route is somewhat mixed. It seems that it was originally a private access road but by the time of the 1910 Finance Act survey it might have come to be regarded as a public route. However, the

documentary evidence has previously been considered in the definitive map process and at public inquiries and no new documentary evidence of public rights has now been adduced. In these circumstances, it is my view that the available documentary evidence is insufficient to show that the route is a byway of any sort.

Evidence of Use

15. The appellant relies primarily on evidence of public use of the appeal route having given rise to its presumed dedication as a public vehicular route in accordance with the provisions of the 1980 Act (Statutory Dedication) or its inferred dedication at common law.

Statutory Dedication

16. Evidence has been provided of use of the appeal route in vehicles over a lengthy period from as early as 1977. All this evidence relates to use of the route to gain access to the builder's yard, which closed in 2012, or to the rear of properties on Rowden Hill.
17. Although it would appear that significant use of the appeal route by vehicular traffic has taken place, the evidence suggests that this use cannot be regarded as use by the public in general but only by specific categories of users, namely residents of a few properties on Rowden Hill and their visitors and customers and employees of the builders' merchant.
18. Also, it is arguable that such use took place not 'as of right' as required under the 1980 Act but in the exercise of private rights to access property.
19. In addition, I note that the site of the former builder's yard now has planning permission for the erection of 5 dwellings and that when the application for this was being considered, the access to the site was described as being via a private way from Rowden Hill.

Conclusions regarding statutory dedication

20. Although the appeal route has been used by vehicular traffic over a lengthy period, this use was not, in my view, use by the public as of right as required under the provisions of the 1980 Act and accordingly does not raise the presumption that the route has been dedicated as a public vehicular route.

Common Law

21. 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.
22. In this case, the ownership of the appeal route is not known and, as already stated, use of it in vehicles was not by the public in general. Also, no substantive evidence of action by landowners which would indicate an intention to dedicate the route for public vehicular use has been submitted. It would therefore not be reasonable to infer that the route has been dedicated as a byway of any sort at common law.

Conclusion

23. 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 a byway subsists over the appeal route.

Formal Decision

24. The appeal is refused.

Barney Grimshaw

Inspector

Application to Upgrade Bridleway no.7
Chippenham (part) to a Byway Open to all Traffic

