



Appeal Decision

by **Mark Yates** BA(Hons) MIPROW

an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs

Decision date: 31 July 2020

Appeal Ref: FPS/C1245/14A/10

- This appeal is made under Section 53(5) and Paragraph 4(1) of Schedule 14 of the Wildlife and Countryside Act 1981 ("the 1981 Act") against the decision of the Dorset Council ("the Council") not to make an order under Section 53(2) of that Act.
- The application was dated 21 December 2004 and this appeal relates to the Council's decision of 26 March 2019 to not make an order.
- The appellant claims that Beaminster Bridleway No. 14 should be upgraded to a byway open to all traffic ("BOAT").

Summary of Decision: The appeal is dismissed.

Preliminary Matters

1. I have been directed by the Secretary of State for Environment, Food and Rural Affairs to determine an appeal under Section 53(5) and Paragraph 4(1) of Schedule 14 of the 1981 Act.
2. I have not visited the site but I am satisfied that I can make my decision without the need to do so.
3. Submissions have been received from the appellant, the Council, affected landowners and other interested parties regarding this appeal. References below to 'the landowners' relate to the representations made on behalf of Mr and Mrs Clunes.
4. The alleged BOAT ("the claimed route") is shown on the map attached to this decision between points A, B, C, D and E. It links at point A with the C102 county road and at point E with BOAT 89. The definitive map was modified in 2001, following a public inquiry held to determine the status of the route that became BOAT 89.

Main Issues

5. Section 53(3)(c)(ii) of the 1981 Act specifies that an order should be made following the discovery of evidence which, when considered with all other relevant evidence, 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*". The evidential test to be applied is the balance of probabilities.
 6. The case in support relies on various historical documents and maps. I shall consider whether the evidence provided is sufficient to infer the dedication of higher public rights over the claimed route at some point in the past. Section
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32 of the Highways Act 1980 requires a court or tribunal to take into consideration any map, plan or history of the locality, or other relevant document which is tendered in evidence, giving it such weight as appropriate, before determining whether or not a way has been dedicated as a highway.

7. The Natural Environment and Rural Communities Act 2006 ("the 2006 Act") has the effect of extinguishing unrecorded public rights of way for mechanically propelled vehicles unless one or more of the exemptions in Section 67(2) or (3) of the Act is applicable. In this case, reliance is placed on the exemption in Section 67(3)(a) of the 2006 Act, namely that prior to the relevant date¹ an application was made for an order to modify the definitive map and statement to show the route as a BOAT.

Reasons

Consideration of the documentary evidence

8. The comments of the Council's Senior Archaeologist point to the claimed route being potentially of medieval origin. In respect of the representation from Mr Legg, I share the landowners concern in terms of the lack of evidence provided by him in support of his assertions regarding the historical use of the claimed route.
9. Two commercial maps produced by Taylor in 1765 and 1796 show a feature that could correspond to the claimed route. This is shown linking with a route at possibility point C or point E. No through route is visible to the south, beyond the land shown as a common. It can only be said that these maps could potentially provide support for the claimed route being a highway.
10. A circa 1800 sketch plan of roads in the neighbourhood of Beaminster is not particularly clear. It appears to depict other routes running north to south in this locality but not the claimed route. The provenance of this plan is unclear which lessens the weight that can be attached to it. However, I do not find that this plan provides support for the claimed route being viewed as one of the roads in Beaminster.
11. The map in connection with the Beaminster Inclosure Award of 1809 shows a route leading north eastwards to the edge of the land to be enclosed. This route is shown open-ended at its north-eastern end and annotated "*Meerhay*". It is described in the award as a public carriage road and highway with a width of 20 feet going to a place called Meerhay. The annotation on the map lies at the edge of the land to be enclosed and would have been located at a point to the south of the southern end of BOAT 89.
12. The landowners say that unless specific provision was made in the 1804 local Act, the general clauses contained in the Inclosure Consolidation Act 1801 ("the 1801 Act") would prevail. No provision is stated to have been made to vary Section 8 of the 1801 Act whereby public carriageways were to have a width of at least 30 feet. It is submitted that the provision in the award of a 20 feet wide carriage road was ultra vires. However, this does not prevent a finding that the way involved was dedicated at some other point in time. Moreover, this way lies to the south of the claimed route and the connecting BOAT 89.

¹ 20 January 2005

13. The Inclosure Commissioner was clearly of the view that a road continued beyond the land to be enclosed. No definitive view can be reached regarding the point where the road was considered to terminate in Meerhay. However, I find the submission of the landowners that the road would have terminated in the locality of the former manor house to be more persuasive than the appellant's view that it continued further northwards and encompassed the claimed route. The map evidence suggests that the settlement of Meerhay was concentrated in the locality of the manor house. Accordingly, there is real doubt regarding whether the road to Meerhay included any part of the claimed route.
14. The claimed route is shown by means of solid lines on the Ordnance Survey ("OS") map of 1811. OS maps assist in identifying the physical features present when the land was surveyed, but they provide no confirmation regarding the status of the roads or tracks shown. Nonetheless, the claimed route is shown as a through route between recognised highways.
15. The claimed route is shown as a cross road on the 1826 Greenwood map. This would generally be reflective of the existence of a highway running between two roads. However, the landowners draw attention to some private roads shown on the Greenwood map in the same way. This suggests the surveyor was concerned with the representation of all roads irrespective of their status. The fact that the claimed route is shown as a through route is suggestive of it being a highway rather than a private road but there is the potential for this to be indicative of bridleway status.
16. An 1843 tithe map shows the majority of the claimed route excluded from the taxable parcels of land. However, a section of the route around point C is shown within plot 844. The whole of the claimed route is shown coloured sienna and the Council says this colouring was used on the map in connection with other public routes. In contrast, the landowners draw attention to there being private routes marked in this way.
17. Highways were incidental to the tithe process and this will usually serve to limit the evidential weight of tithe maps. The exclusion of a route from the tithed parcels of land could be indicative of a public or private road as both would have impacted upon the productivity of the land being assessed. In this case, a section of the route falls within one of the tithed parcels of land. The depiction of the claimed route as a through route and the colouring used on the tithe map could again provide some support for it being a highway. However, there is the potential for this to be indicative of a bridleway.
18. OS mapping from the late nineteenth century and early part of the twentieth century shows the claimed route by a mixture of solid and pecked lines, which indicates that there were sections where it was unenclosed and others where it was enclosed on one or both sides. There are additional cycling and touring maps that appear to record the physical existence of the claimed route during the early part of the twentieth century.
19. The initials "B.R." appear on the OS maps in relation to the claimed route to denote a bridle road. I accept that this does not necessarily mean the route was a bridleway. It is likely to have reflected how it appeared to the surveyor and represented the physical nature of the claimed route or sections of it. In terms of the footbridge identified on the 1903 OS map near to the southern end of BOAT 89, it cannot be determined what features previously existed at

this point. Nor does the absence of any reference to the claimed route in the OS name book mean that it was not a public road.

20. Attention has been drawn to locations where solid lines shown across the route are indicative of the presence of gates. The number of potential gates in this case could have served to hinder or slow the passage of vehicular traffic. However, the presence of gates does not mean that a route was not a historical vehicular highway.
21. The exclusion of a route from the surrounding hereditaments on the maps produced in connection with the 1910 Finance Act can provide a good indication of highway status, most likely of a vehicular nature as footpaths and bridleways were usually dealt with by way of deductions in the accompanying field books. In this case, the majority of the claimed route is shown running through the hereditaments numbered 136 and 430. A deduction was claimed for "*public rights of way or user*" through the latter, but it is not possible to determine the way in question. The exclusion of only limited parts of the claimed route from the surrounding hereditaments means that this document provides little, if any, support for the route being a vehicular highway.
22. The fact that the claimed route was considered to be a bridleway when the original definitive map was compiled does not impact on any unrecorded higher public rights that may exist over it. A subsequent letter of 22 May 1973 from the clerk of Beaminster Parish Council outlines that they were having difficulty in obtaining the required evidence in support of the upgrade of the claimed route. The reference to use appears to relate to access in connection with properties that adjoin the route. It was requested that the county council adopt the claimed route. This letter provides no actual evidence of use by the public and seems to be concerned with the maintenance of the route.
23. The reservation of rights of access, private maintenance undertaken on the route during the twentieth century and an obligation on tenants to not allow additional paths to be dedicated also do not assist in determining whether the claimed route was a pre-existing vehicular highway.

Conclusions on the evidence

24. There is some historical map evidence that shows the claimed route as a thorough route between recognised highways. The connecting BOAT 89 also connects with the D11228 road, which means that it is not a vehicular cul de sac at its northern end. The depiction of the claimed route as a through route provides some support for it historically being part of the public road network but only limited weight can be given to this map evidence. It could also potentially be reflective of the route's current status.
25. The reference to the road continuing to Meerhay in the inclosure documents does not necessarily indicate that it continued over the claimed route. I have found there to be merit in the view that the road terminated in the locality of the former manor house. The Finance Act evidence does not provide support for the majority of the claimed route being a vehicular highway.
26. Overall, I do not find that the different pieces of documentary evidence, when considered together, show on the balance of probabilities that this bridleway ought to be recorded as a BOAT.

The 2006 Act

27. In light of my conclusion above, I do not need to decide whether the relevant exemption in the 2006 Act is applicable. However, due to the extensive submissions made on this matter, I briefly address it below.
28. The former Dorset County Council previously turned down five applications, including this one, on the ground that the map with the applications did not comply with paragraph 1(a) of Schedule 14. This matter is relevant for the purpose of determining whether the exemption contained in Section 67(3)(a) of the 2006 Act was engaged.
29. The appellant successfully challenged the decisions in the Court of Appeal and this appeal was upheld by the Supreme Court. The Supreme Court declared that the applications were compliant with paragraph 1 of Schedule 14 of the 1981 Act. Attempts to have this declaration varied have been unsuccessful. On this issue, it is asserted that it should have related solely to paragraph 1(a) of Schedule 14. A decision would then need to be made regarding whether the application was compliant in respect of the provision of evidence in accordance with paragraph 1(b) of Schedule 14.
30. The declaration clearly states that the application is compliant with paragraph 1 of Schedule 14, which is the matter to be decided in terms of the relevant exemption in the 2006 Act. Nonetheless, the information provided by the Council indicates that the application was received before the cut-off date and that all of the documents listed in the application form were supplied by the applicant. There may well be additional evidence that is later found to be relevant, but the Council does not consider that the applicant deliberately withheld any evidence.
31. From the written information provided it appears to me that the relevant exemption in the 2006 Act would have been applicable in this case.

Other Matters

32. A number of concerns have been raised regarding the impact of the claimed route being recorded as a BOAT in relation to issues such as safety, the environment, maintenance, congestion and the suitability of the route for vehicular traffic. However, none of these matters are relevant to the test that I need to apply, as set out in paragraph 5 above.

Overall Conclusion

33. Having regard to these and all other matters raised in the written representations I conclude that the appeal should be dismissed.

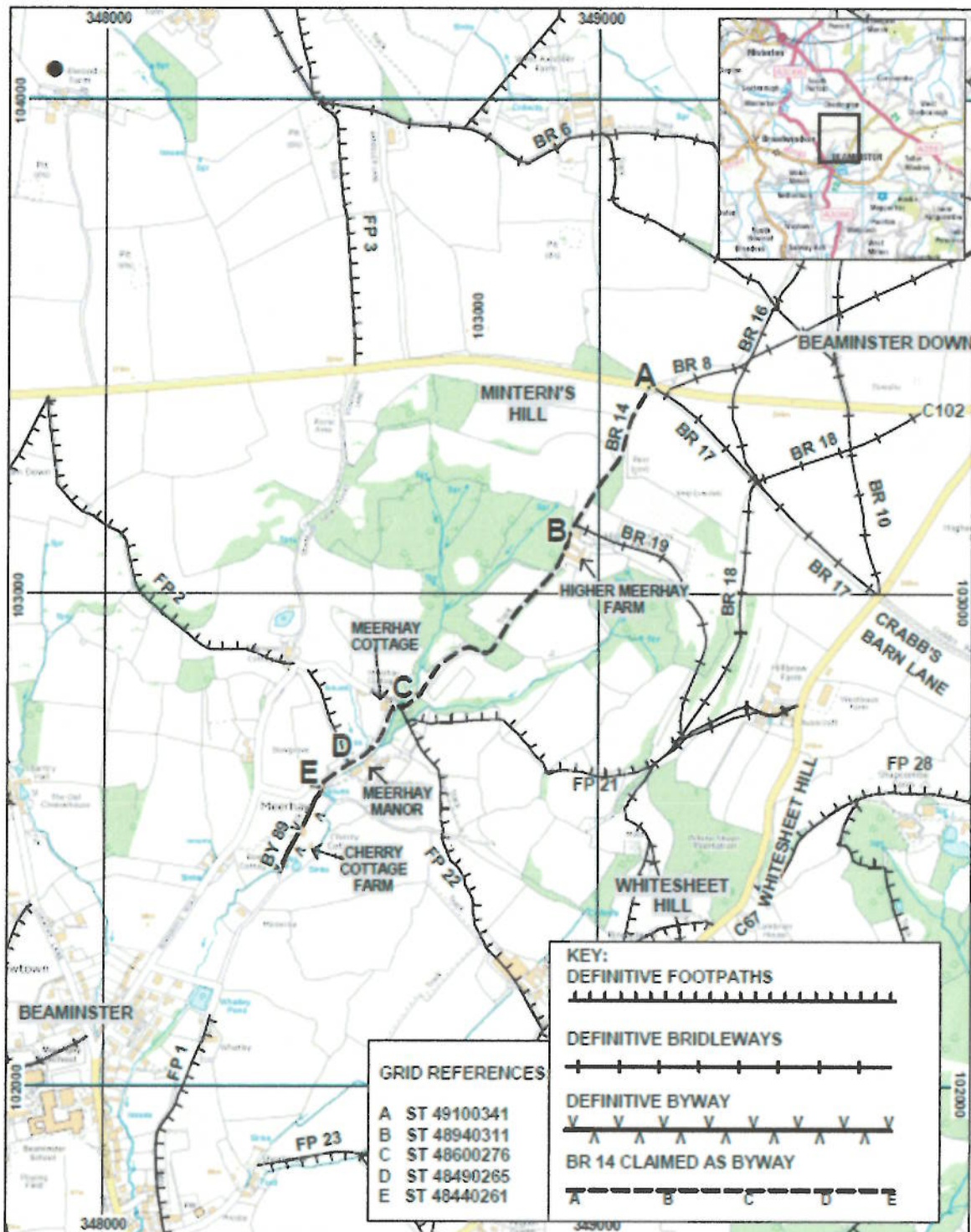
Formal Decision


34. I dismiss the appeal.

Mark Yates

Inspector

PLAN 18/12



<p>WILDLIFE AND COUNTRYSIDE ACT 1981 APPLICATION TO UPGRADE BR 14, BEAMINSTER TO BYWAY OPEN TO ALL TRAFFIC</p> <p>THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS</p>	<p>Ref: 18/12 Date: 23/07/2018 Scale 1:10000 Drawn By: AH Cent X: 348780 Cent Y: 102939</p>	<p>GEOGRAPHICAL INFORMATION SYSTEMS</p>  <p>Dorset County Council</p> <p><small>© Crown copyright and database right 2010 Ordnance Survey 100019300. This information is provided by Ordnance Survey as a public service. It is provided as a public service and is not intended to be used for any other purpose. The user must not reproduce or disseminate this information in any form. Aerial Photography © Ordnance Survey 2012. © Ordnance Survey 2010, 2009 & 2012.</small></p>
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