



# 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: 03 NOVEMBER 2020**

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## **Appeal Ref: FPS/U1050/14A/12**

- 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 Derbyshire County Council not to make an Order under section 53(2) of that Act.
- The Application dated 15 June 2018 was refused by Derbyshire County Council on 25 March 2020.
- The Appellant claims that Footpath 41, Cromford, a route running from Restricted Byway 50 to Lea Road at Lea Bridge, should be upgraded to bridleway status.

**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 showing the claimed route.

## **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.

## **Reason**

7. The application is supported by both documentary evidence and evidence of use which might give rise to a presumption of statutory dedication under the provisions of the 1980 Act or an inference of dedication at common law. I deal with the main elements of each type of evidence separately below.

### ***Documentary Evidence***

8. Burdett's Map (1762-67) shows a route approximating to that claimed as a 'Cross Road'. The council suggest that, because of the age of the map and its lack of accuracy when compared to modern mapping, the route shown might be that of the current metalled road between Cromford Bridge and Lea Bridge. It is also pointed out that Burdett included some public bridleroads and private access roads in the 'Cross Road' category.
9. In my view the alignment shown on Burdett's map seems more likely to relate to the claimed route than the current metalled road, but I agree that this map cannot be taken as a reliable indicator of the status of the route.
10. The Matlock Manor Inclosure Award (1784) included a route named as Castle Top Road described as a private carriage and public drift road. This route appears to terminate at the Cross Road shown on Burdett's map. This would suggest that the Cross Road must have been regarded as carrying public bridleway rights at least, otherwise the awarded route would have been a cul de sac.
11. In the Matlock Tithe Map and Apportionment (1848-50) most of the claimed route is shown in private ownership in a manner not consistent with it carrying vehicular rights but not precluding the existence of public bridleway rights.
12. A Quarter Sessions Order (1854-57) diverted a route described as Castle Top Road. This route appears to correspond to the section of the Cross Road shown on Burdett's map to the north-west of Point A. The Order does not specify the status of the route to be diverted but its description as a 'road' is indicative of it carrying public vehicular or bridleway rights. It is suggested by the applicant that the continuation of this 'road' to the south-east, the application route, must have carried similar rights. This is now also accepted by the council as being most likely.
13. The Ordnance Survey 1:2500 map (1899) shows the route annotated 'B.R.' for bridleway. This is not in itself an indication of the official status of the route but of how it appeared to the surveyor. It does possibly reflect continued use of the route as a bridleway by the public.
14. In the survey carried out under the 1910 Finance Act the claimed route crosses 4 taxable land holdings. In 3 of these no deduction was recorded in respect of public rights of way.
15. In the survey completed in 1952 by Matlock Urban District Council as part of the process of preparing the first definitive map the claimed route was described as 'CRF' indicating a public carriage or cart road mainly used as a footpath. This should have been recorded in the definitive map as 'RUPP', a road used as a public path and later reclassified as a byway, bridleway or footpath. In this case the route was recorded as a footpath but there is no record of the basis for this and other CRFs were dealt with differently.

16. A number of other documents were referred to by the applicant as being supportive of the claim that the route is a bridleway and it is now accepted by the council that some of these could be seen as supporting the reputation of the route as a bridleway.

*Conclusions regarding the Documentary Evidence*

17. Overall, it is my view that on the balance of probability the documentary evidence, particularly that provided by Burdett's map, the Inclosure Award and the Quarter Sessions records, is sufficient to show that the claimed route should be recorded as a bridleway but not as a vehicular route.

**Statutory Dedication**

18. Thirty two User Evidence Forms (UEFs) completed by people claiming to have used the route on horseback were submitted in support of the application. These described use of the route from 1958 until 2015.
19. The frequency of use claimed varied, but I note that the majority of those completing UEFs stated that they used it less than once a month. A few also referred to having received permission to use it.
20. It is not clear when use of the route was brought into question and accordingly what is the appropriate 20 year period of use that should be considered in respect of statutory dedication. Several users indicated that a locked gate at the northern end of the route effectively prevented their continued use of the route in around 2013. Many users also referred to a locked gate at the southern end of the route but stated that this could be by-passed on horseback. References to this gate suggest that it may have been in place for a long time, possibly since the 1960s, but it is not known whether it was intended to prevent use of the route by horseriders or only use by vehicles. In addition, a number of users stated that they had been challenged when using the route and informed that it was not a bridleway. Such challenges were reported to have taken place in the 1960s or 70s and in 1985/86 when some users ceased to use the route as a result. The council has taken the view that challenges were sufficient to bring public bridleway use into question in 1985.
21. One owner of land crossed by the claimed route, the Woodland Trust, gave notice under Section 31(6) of the 1980 Act in 1994 that there were no ways over their land other than those marked in green on an attached plan. However, there are no routes marked in green on the copy of the plan that I have seen and the claimed route is shown marked in purple as a footpath. The applicant suggest that this might mean that the notice may not preclude the dedication of bridleway rights over the route.

*Conclusions regarding statutory dedication*

22. Whilst there does appear to have been a reasonable amount of public use of the claimed route as a bridleway over a long period, it is difficult to assess whether there was sufficient uninterrupted use during any specific 20 year period prior to an event which brought use into question, to raise the presumption that it is in fact a bridleway. There is in addition some doubt as to whether actions of landowners during any such period might have been enough to indicate their lack of intention to dedicate it as a bridleway.
23. Overall, it is my view that the user evidence that is available might be sufficient to suggest that the claimed route is a bridleway but that this would

need to be tested further before it could be concluded that bridleway rights actually subsist.

### **Common Law**

24. 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.
25. In this case, the evidence indicates that the public have used the claimed route over a lengthy period, but it does not appear that landowners have acted in such a way as to indicate their intention to dedicate it as a bridleway. On the contrary, there is some evidence that they have sought to prevent bridleway use.

### **Other Matters**

26. A number of other matters have been raised by supporters and opposers of the application. These include the desirability of the route being open to horse riders so as to avoid the necessity of riding on a dangerous stretch of road, the possible abuse of the route by motorcyclists, the unsuitability of the route for horse riders and possible environmental damage from bridleway use. I understand all these concerns but, as they relate to matters outside the criteria set out in the relevant legislation, I can give them no weight in reaching my decision.

### **Conclusion**

27. 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 route is a bridleway. I also note that the council has reconsidered its position with regard to this application in the light of evidence not previously considered, notably the Quarter Sessions records, and now considers that it would be appropriate to make an order to upgrade the claimed route. The appeal should therefore be allowed.

### **Formal Decision**

28. The appeal is allowed and in accordance with paragraph 4(2) of Schedule 14 to the 1981 Act Derbyshire 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 upgrade Footpath 41 Cromford to bridleway status. This decision is made without prejudice to any decision that may be given by the Secretary of State in accordance with his powers under Schedule 15 of the 1981 Act.
29. Under normal circumstances the authority would be directed to make the necessary order within 3 months of this direction. However, as a result of the present situation of restrictions following the Covid-19 outbreak, exceptional circumstances have arisen and I therefore direct that the order should be made within 12 months of the date of this direction.

*Barney Grimshaw*

Inspector



