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| **Appeal Decision** |
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| **by Barney Grimshaw BA DPA MRTPI (Rtd)** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 11 May 2022** |

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| **Appeal Ref: FPS/Z1585/14A/22** |
| * 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 Essex County Council not to make an Order under section 53(2) of that Act. |
| * The Application dated 28 March 2019 was refused by Essex County Council on 4 November 2020. |
| * The Appellant claims that a route running from Shingle Hall Road to Severs Green should be added to the definitive map as a Restricted Byway. |
| **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 route for reference purposes.

Main issues

1. 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.
2. As the application concerns a possible unrecorded vehicular route, it is also necessary to have regard to the provisions of Section 67 of the Natural Environment and Rural Communities Act 2006 (the 2006 Act) which extinguished rights of way for mechanically propelled vehicles (MPVs) subject to certain exceptions.

Reasons

1. No evidence of use of the claimed route has been submitted. The determination of the appeal therefore depends entirely on the documentary evidence available.
2. The claimed route runs from the currently recorded public road, which terminates as a cul de sac at the site of the former Shingle Hall, northwards to Severs Green. It is argued on behalf of the applicant that Severs Green is itself a place of public resort for horse riders and others and that it is likely that a route continued northwards to join Epping Long Green which is a byway.
3. The public road which runs from Upland Road to the site of the former Shingle Hall is referred to as Shingle Hall Road by the appellant and I have referred to it in the same way, although I have not seen it so named on any map.

***Documentary Evidence***

*Early Commercial Maps*

1. The Chapman and Andre Atlas of 1777 shows the claimed route in the same manner as others which are public roads. However, no key to these maps has been submitted and it appears that some private routes are also shown in the same way.
2. A later map, Cruchley’s Road and Railway Map of Essex [1885], also shows the route in the same manner as other public roads but again there is no key and private roads also appear to be shown in the same way. Also, this map states that it is ‘improved from the Ordnance Survey’ but does not say on what basis and at this time Ordnance Survey maps included a disclaimer to the effect that routes shown were not necessarily public.
3. Some more recent commercial maps also show the route but again cannot be relied upon regarding the determination of its status. Overall, theses commercial maps show that the route has existed since at least the second half of the 18th century, but they do not indicate whether it is a public highway of any sort.

*Ordnance Survey (OS) Maps*

1. OS Surveyors Drawings (1799) and subsequent OS maps show the claimed route. Later maps show a line across the route where it enters Severs Green possibly indicating the presence of a gate.
2. On behalf of the applicant, it is argued that some weight should be given to the indication of a Guide Post (G.P.) at the southern end of Shingle Hall Road at its junction with Upland Road on the 1897 map. Under the 1835 Highways Act (the 1835 Act), it was required that a stone or post should be erected at points where two or more highways meet with an inscription of the name of the next market town, village, or other place to which the highways respectively lead. As such posts were to be erected by the parish surveyor of highways, who had no remit with regard to private roads, it is argued that the presence of this post indicates that the claimed route was a public highway which led to a more significant public destination than Shingle Hall, the current termination of the public road. It is suggested that the likely destination might have been Harlow. On behalf of the County Council, it is argued that the 1835 Act did not preclude the erection of Guide Posts at other locations nor posts indicating destinations other than market towns.
3. OS maps are regarded as good evidence of the existence of physical features on the ground at the time they were surveyed but not of the status of routes shown and several will have included a disclaimer specifically stating that routes shown were not necessarily public rights of way. However, these maps indicate the continued existence of the claimed route and the showing of the Guide Post is suggestive of the possibility that the route was a public highway even though it is not known what, if any, inscription was on the post.

*Tithe Map and Award*

1. Under the Tithe Commutation Act 1836, tithes were converted to a fixed money rent. In most areas this required detailed surveys to be carried out in order to apportion the amount of tithe payable among the landowners of a parish. Tithe documents that were prepared had the sole purpose of identifying titheable or productive land. They are statutory documents which were in the public domain and, although not produced to record public rights of way, they can sometimes be helpful in determining the existence and status of routes.
2. The Epping Tithe Map (1839) shows the claimed route in the same manner as other public roads. Opposite Shingle Hall, apportionment number 517 is recorded and the award describes this as a road used for pasture. North of the hall a line is shown across the route, possibly indicating a gate, and further north apportionment 516 is recorded, also described as road (pasture). The award also indicates that apportionments 516 and 517 were in private ownership, possibly suggesting that the road may have been private although not precluding the possibility of public rights over it.

*The Finance Act 1910*

1. This act imposed a tax on the incremental value of land which was payable each time it changed hands. In order to levy the tax a comprehensive survey of all land in the UK was undertaken between 1910 and 1920. This survey was carried out by the Board of Inland Revenue under statutory powers and it was a criminal offence for any false statement to be made for the purpose of reducing liability. The existence of public rights of way over land had the effect of reducing the value of the land and hence liability for the tax; they were therefore recorded in the survey.
2. Working copies of the records held in the Essex Record Office have been submitted. It was not possible to view original copies held as the National Archive was closed although they have been seen since the application was made. On the available records most of the claimed route appears uncoloured and excluded from adjoining hereditaments in the same way as public roads would be shown. However, the northernmost part of the route appears to be shaded and included within hereditament 1702. Also, the working copy of the map has a pencilled notation added on the route north of Shingle Hall stating that ‘lane to be included in 1702’. The basis for this annotation is not known and it is not clear what length of the lane should be included or why. The entry in the Valuation Book for hereditament 1702 describes it as Takeleys Farm and a deduction of £275 is recorded for public rights of way but with no details of the location or type of rights of way referred to.
3. On copies of the records held in the National Archive, shading of the route is unclear.
4. Overall, the available Finance Act records are somewhat confusing but suggest that part of the claimed route at least may have been regarded as a public road.

*The Definitive Map*

1. In 1951/52 parish surveys were carried out to form the basis of the first definitive map. In the survey for Epping Upland, the claimed route is not shown as a public right of way of any sort, although it appears on the base map used. What is now Footpath 21 is shown running adjacent and parallel to the route for part of its length. This might indicate that the route was not thought to be a public highway of any sort or, alternatively, that it was a public road and therefore not appropriately recorded on the definitive map.
2. The Draft and Provisional maps subsequently published attracted no objection to the omission of the claimed route and the first definitive map did not include it nor has it been included in subsequent versions. Footpath 21 continued to be shown running adjacent to the route.

*Highway Records*

1. A County Road Map of 1906 shows the claimed route as an ‘other road’ which would not have been publicly maintainable by the County Council, which was only responsible for major routes at that time. A subsequent map (1930) is somewhat unclear but does not appear to include the route as a publicly maintainable highway.
2. Current highway records include Shingle Hall Road as a public highway terminating at the site of the former Shingle Hall. The records do not provide any evidence as to why this was considered an appropriate terminus.

*Other Documents*

1. A document titled Survey of the Parish of Epping 1751 shows Shingle Hall Road and the whole of the claimed route coloured brown in the same manner as other public roads. However, it is pointed out by the County Council that the colouring on this document is not entirely consistent with the current public road network.
2. A plan of Copped Hall Estate 1868 shows the claimed route in the same manner as other public roads. The route was not part of the estate and the applicant suggests that its inclusion is therefore indicative of it having been considered a public road. On behalf of the County Council, it is argued that the depiction of the route simply indicated its existence. Similar arguments were put forward with regard to the inclusion of the route on a sale plan for the estate in 1869.
3. In a Sales Catalogue relating to Takeleys and Shingle Hall Farms (1900), part of Shingle Hall Road is shown coloured sepia as a public road although not the whole length that is recorded in current highway records. The remainder of the road and the claimed route appear to be included in the sale suggesting that they were regarded as private. It is difficult to see why a public road should terminate at the point shown in this document, but it may reflect in some way the fact that Shingle Hall itself is said to have been demolished in 1899.
4. An extract from British History Online : Epping includes a reference to Shingle Hall stating that *“The manor house which lay on the lane from Pinch Timber Farm to Severs Green was demolished in 1899…”*. This would appear to be a reference to the claimed route along with Shingle Hall Road forming a single continuous route.
5. Aerial photographs taken between 1947 and 2010 generally show the route as a clear surfaced track.

*Conclusions regarding the Documentary Evidence*

1. The claimed route has existed since before 1751 and has been consistently shown on the same alignment in a large number of documentary evidence. Most of the evidence that is available does not indicate the presence of public rights over the route but neither does it preclude the existence of such rights.
2. The termination of the publicly maintainable Shingle Hall Road as a cul de sac at a point with no apparent significance as a destination for public travellers is somewhat puzzling and could suggest the possibility of the road continuing along the claimed route.
3. Overall, when all the evidence is considered together, some of it is suggestive of the existence of public vehicular rights and none precludes this possibility, Accordingly, it is in my view reasonable to allege that such rights subsist over the claimed route.

**The 2006 Act**

1. As mentioned before, this act extinguished rights of way for MPVs subject to certain exceptions. In this case it would appear that none of the exceptions is applicable. Accordingly, any right of way for MPVs over the route have now been extinguished and, in the light of my conclusions regarding the documentary evidence, it is appropriate that the route be recorded as a Restricted Byway.

**Other Matters**

1. The appellant states that on Google Maps, part of the road from the Guide Post shown on the 1897 OS map is named as Lancaster Street. It is suggested that this might indicate an ancient highway of some sort. However, local landowners have stated that the route has never been known by this name and it is understood that Google has now removed the annotation.

Conclusion

1. Having regard to these and all other matters raised in the written representations I conclude that the evidence that is available shows that it is reasonable to allege that the claimed route is a Restricted Byway. The appeal should therefore be allowed.

Formal Decision

1. The appeal is allowed and in accordance with paragraph 4(2) of Schedule 14 to the 1981 Act Essex 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 a Restricted Byway, as proposed in the application dated 28 March 2019. This order to be made within 3 months of the date of this decision. 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.

Barney Grimshaw

Inspector

