

|  |
| --- |
| **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: 24 June 2022** |

|  |
| --- |
| **Appeal Ref: FPS/X2600/14A/9** |
| * 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 Norfolk County Council not to make an Order under section 53(2) of that Act.
 |
| * The Application dated 5 September 2016 was refused by Norfolk County Council on 16 November 2021.
 |
| * The Appellant claims that a route running from Mundesley Road towards the cliff top in the parish of Paston should be added to the definitive map as a Restricted Byway.
 |
| **Summary of Decision: The appeal is allowed.**  |
|  |

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 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. The claimed route runs from the C634 Mundesley Road in a generally east north-easterly direction for approximately 1140m towards the cliff top but ends before reaching the cliff. Most of the route no longer exists on the ground and is believed to have been ploughed out and subsumed into a large agricultural field in the 1960s although the entrance from Mundesley Road is still visible.
2. No evidence of use of the claimed route has been submitted. The determination of the appeal therefore depends entirely on the documentary evidence available.

***Documentary Evidence***

*Early Maps*

1. It is suggested by the appellant that Faden’s Map (1797) may show the claimed route as a ‘cross road’. However, it is stated on behalf of the Council that the route shown is more likely to be ‘Yarmouth Lane’ which runs further to the north. However, the map also shows what appears to be the commencement of the claimed route, suggesting that it may have existed at the time.
2. A map, dated 1812, used in connection with the Witton, Bacton, Edingthorpe and Paston Enclosure Award (1827) shows the claimed route. However, the route was not within the area allotted in the award and it therefore makes no reference to the status of the route. The route is depicted with 3 branches which appear to be accesses to fields and terminates some distance from the cliff top.
3. Bryant’s Map (1826) does not show the route although it seems to have existed before the map was published. The Council suggests that its omission may reflect the view that it was not regarded as a public route.

*Ordnance Survey (OS) Maps*

1. A reprint of the 1837 OS map shows the claimed route with a branch on the south side. The route again ends some distance (approximately 170m) from the cliff top.
2. The 1885 and 1905 OS maps also show the route but without a branch to the south. Again, the route ends short of the cliff top but, as a result of coastal erosion, less far away (roughly 115m).
3. A 1970 map confirms that the route no longer existed at that time save for the entrance from Mundesley Road.
4. OS maps are regarded as providing good evidence of features that existed on the ground at the time they were surveyed but they did not indicate the status of routes shown.

*Tithe Map and Apportionment*

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 map and apportionment for the parish of Paston (1841) include the claimed route described as a ‘Public Road’ named as ‘Hemp Lane’. An additional *‘Enlarged Plan of Field Lands’,* dated 1842, also shows Hemp Lane coloured in the same manner as a route *‘Sow Hill Lane’* which is an acknowledged public road today. The Council points out that, although many of the routes listed in the apportionment as ‘Public Roads’ are known to be public highways some private routes are also included. Also, the map used can only be regarded as conclusive in respect of the matters relevant to the apportionment of tithes which did not include the status of routes. It is also noted that a branch on the south side of the claimed route which appears to be an access track to fields is shown in the same way as the claimed route.
3. Although not conclusive, the apparent exclusion of the route from liability for tithe as it was regarded as a public road is of some significance.

*The 1910 Finance Act*

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. In this case the claimed route is uncoloured on the valuation map indicating that it was not subject to tax. This is the manner in which public vehicular roads were dealt with. However, the Council points out that land on either side of the route was in different ownerships and the route would have been shared for access to fields. Such ‘occupation roads’ could also be exempt from the tax.

*Other Documentary Evidence*

1. The Ministry of Food Farm Survey (1941-42) shows the route uncoloured indicating that it occupied land which was not within an agricultural holding and could not be put into agricultural production. Both public and private tracks would probably have been shown in this manner.
2. A book, *“Exploring Paston Country”,* published in 2009 and written by Lucy Care, a local resident and founder of the Paston Heritage Society, appears to include reference to the claimed route. It is named as Hemp Lane by reference to the tithe map and the author states that *“Villagers who remember the old paths have told me that the usual Sunday walk in the village was up Hemp Lane to the coast path where the fathers would cut steps in the cliff each spring so the families could climb down to the beach…The lanes were also used for farm purposes.”* This would suggest that the claimed route was used by members of the public, at least on foot, and that such use continued beyond the end of the route to reach the cliff. However, it is not known whether this use took place with or without the permission of landowners.
3. A Bartholomew’s map (1903) shows the claimed route as an *‘Inferior road’,* that is a road not recommended to cyclists. This map included a disclaimer to the effect that routes shown were not necessarily public and the Council states that the map includes other routes deemed to be private today.
4. An aerial photograph dated 1945 shows the route running between hedged boundaries. The route is not visible on a later 1988 photograph.

*Conclusions regarding the Documentary Evidence*

1. The claimed route existed from the early 19th century and possibly earlier until the 1960s.
2. None of the available evidence is conclusive regarding the status of the route and it could be argued that it is consistent with the route being a private occupation road, with or without some form of public right over it, or a public vehicular route.
3. The fact that the route has consistently been shown as terminating in a cul de sac some distance from the cliff top at a point where there appears to be no feature to which the public would have reason to visit is suggestive of it being a private route. However, other evidence such as the tithe records, the Lucy Care book and the Finance Act records tend to suggest a public route of some sort.
4. Overall, taking account of all of the available evidence, I conclude that it is reasonable to allege that the claimed route was a public vehicular route. Also, as no evidence of any public rights over the route having been formally extinguished has been put forward, such rights still subsist, subject to the provisions of the 2006 Act (see below).

The 2006 Act

1. As mentioned before, this act extinguished rights of way for MPVs subject to certain exceptions.
2. 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.

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 Norfolk 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 5 September 2016. 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

