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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: 25 July 2022** |

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| **Appeal Ref: FPS/G3300/14A/21R** |
| * 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 Somerset County Council not to make an Order under section 53(2) of that Act. |
| * The Application dated 1 October 2015 was refused by Somerset County Council on 31 January 2019. |
| * The Appellant claims that the appeal route should be added to the definitive map as a bridleway/Restricted Byway/Byway Open to All Traffic. |
| **Summary of Decision: The appeal is allowed with respect to the upgrading of the appeal route D-B-C to a public bridleway.** |
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Preliminary Matters

1. As the appeal route is currently recorded as public footpaths in the definitive map (Footpaths AX1/19 and AX1/20 in the parish of Axbridge and AX13/7 in the parish of Cheddar), the application is more appropriately described as one to upgrade existing footpaths rather than to add a new right of way.
2. A decision to dismiss this appeal was issued on 21 November 2019 (Appeal Ref: FPS/G3300/14A/21). This decision was subsequently challenged in the High Court, *Craggs v Secretary of State for the Environment, Food and Rural Affairs and others [2020] EWHC 3346 (Admin)* (the *Craggs* case) and resulted in the decision being quashed.
3. I have been directed by the Secretary of State for Environment, Food and Rural Affairs to re-determine this appeal under Section 53(5) and Paragraph 4(1) of Schedule 14 of the Wildlife and Countryside Act 1981 (the 1981 Act).
4. I have not visited the site, but I am satisfied I can make my decision without the need to do so.
5. I attach a copy of a map, prepared by Somerset County Council, the Order Making Authority (OMA), showing the claimed route for reference purposes. I have referred to points as annotated on this map throughout this decision.

Main issues

1. The issue upon which the previous decision was successfully challenged concerned the interpretation of the Shipham and Winscombe Inclosure Award 1799. This matter should now be considered again in the light of the High Court judgement.
2. In the previous decision it was concluded that the available evidence did not indicate the existence of public rights over the claimed route before the inclosure and did not show the subsequent dedication of any public rights other than as a footpath. These conclusions were not subject to challenge and it is therefore not now necessary to re-consider this evidence in any detail.

Reasons

1. The Inclosure Award Map shows the appeal route D-B-C as 2 named routes described in the Award as ‘private roads’ with widths of 24 and 10 feet (7.3 and 3.0m).
2. The Act which enabled the Award, the Shipham and Winscombe Inclosure Act 1797, empowered commissioners to set out and appoint *‘public carriage roads’* with a width of 40ft (12.2m). The Act also required the appointment of a surveyor to maintain the public carriage roads which meant that, in practice, the responsibility for maintenance fell on the parish. The Act also empowered the commissioners to set out *‘public Bridle Roads and Footways and private Roads and Ways’* but did not specify the width of these or how they were to be maintained*.*
3. The Award then stated that the private roads and ways to be set out should be for the use of the owners, tenants and occupiers of allotted land *“…and all and every other person and persons whomsoever having any occasion whatsoever to go travel pass and repass through upon and over the same roads and ways and every or any or either of them on foot or on horseback with horses cattle carts and other carriages loaded or unloaded at their and every of their free wills and pleasure…”.* These private roads and ways were to be maintained by the owners’ tenants.
4. It would thus appear that the commissioners intended that the ‘private roads’ they set out would be for general public use but without the need for them to be 40ft wide or maintained by the parish. In the previous decision and the judgement in the *Craggs* caseit was considered that such action would have exceeded the authority of the commissioners. Accordingly, it was decided that the Inclosure Award had not legitimately established a public right for all traffic on the claimed route.
5. However, in the *Craggs* case it was also decided that, although the commissioners could not legitimately award a private road for the use of the public in the way that they did, they were empowered to set out public bridleways without any specific requirement with regard to width or maintenance arrangements. It was further decided that the legitimate elements of the Award could reasonably be separated from the illegitimate elements in this case. Therefore, although the Award did not properly provide for a public vehicular road along the claimed route it could have established a public bridleway and it is clear that this (and more) was intended by the commissioners.
6. It has been argued that the claimed route may have existed before the Inclosure Award of 1799, primarily on the basis of a Day and Masters map of 1782. It is disputed by the OMA, whether this map shows the route D-B-C but accepted that the route A-B is shown. The depiction of the route on this map could be suggestive that it was more significant than a footpath although the map is not specific as to what rights subsisted over the route or whether they were public or private. In any event, it is not necessary to pursue this matter further at this stage. The Act of 1797, which enabled the Inclosure Award, made it unlawful for any roads or ways other than those set out in the Award to be used. Accordingly, the current status of the route depends on the interpretation of the Award subject to any subsequent changes.
7. No evidence has been discovered of any post Inclosure changes affecting rights over the claimed route other than a recent diversion order. This diverted part of Footpath AX13/7, from the line of the appeal route. However, as this diversion related only to public footpath rights over the route, any higher rights over it remain unaffected.

Conclusion

1. The route D-B-C was legitimately awarded as a public bridleway as a result of the Shipham and Winscombe Inclosure Award and this superseded any prior rights over the route.
2. Bridleway rights over this route have not subsequently been extinguished or diverted and therefore remain in place.
3. With regard to the route A-B, the available evidence is unclear as to whether higher rights then footpath subsist and is not sufficient to indicate that it is not correctly shown on the definitive map as a footpath.
4. 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 the claimed route D-B-C is a public bridleway. The appeal should therefore be allowed with regard to this route.

Formal Decision

1. The appeal is allowed in part and in accordance with paragraph 4(2) of Schedule 14 to the 1981 Act Somerset 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 to bridleway the route D-B-C, as proposed in the application dated 1 October 2015. 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

