LOGO

|  |
| --- |
| **Appeal Decision**  **by A Behn Dip MS MIPROW** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 23 November 2022** |

|  |
| --- |
| **Appeal Ref: FPS/H4315/14A/1** |
|  |
| |  | | --- | | * 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 St Helens Borough Council not to make an order under Section 53(2) of that Act. | | * By application dated 9 November 2020, (received by St Helens Borough Council on the 12 November 2020) Deborah King claimed that Footpath 201 leading from Blundells Lane, Rainhill, to Hall Lane should be upgraded on the definitive map and statement for the area to bridleway status. | | * The application was refused by St Helens Borough Council and the appellant was formally notified of the decision on 2 December 2021.   **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) on the basis of the papers submitted. In this case, I am satisfied I can reach a decision without visiting the site.
2. The appellant, Deborah King, requests that the Secretary of State directs St Helens Borough Council (SHBC) to make a definitive map modification order to upgrade Footpath 201 (FP201) to a bridleway.
3. In its report dated 2 December 2021, after assessing the evidence, SHBC concluded that there was insufficient evidence to show that FP201 should be upgraded to a bridleway.
4. I have found it convenient to refer to the points marked on the map provided by the appellant and a copy is attached.
5. In addition to the submissions from the appellant and SHBC which included a number of comments from local users, representations were made on behalf of Rainhill Civic Society, Blundells Hill Golf Club, Cowburn Land, Mr Kedge and Mr Clarke. I have considered all of these documents in forming my conclusions.

Main issues

1. 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.
2. The application is supported by both user and documentary evidence which might give rise to a presumption of statutory dedication under the provisions of the Highways Act 1980 (the 1980 Act) or an inference of dedication at common law. The main elements of each type of evidence are examined below.
3. Section 31 of the 1980 Act 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. This presumption may be rebutted if there is sufficient evidence that there was no intention on the part of the landowner during this period to dedicate the route as a public right of way.
4. Alternatively, if the case is not made out under statute, the documentary and user evidence should be considered under the common law. The issues to be addressed would be whether, during any relevant period, the owners of the land in question had the capacity to dedicate a public right of way; whether there was express or implied dedication by the owners, and whether there is evidence of acceptance of the claimed right by the public.
5. As regards the documentary evidence submitted, section 32 of the 1980 Act requires that I take into consideration any map, plan or history of the locality, or other relevant document provided as evidence, giving it such weight as is appropriate, to assist in determining whether a way has been dedicated a highway of the status claimed.

**Reasoning**

***Statutory Dedication***

1. The date on which use of the route was brought into question has been requested as the application date, in the absence of a formal calling into question. Therefore, the relevant period for this purpose is 2000-2020.
2. Seven user evidence forms were submitted with the application to upgrade FP201 to bridleway, with a further three user evidence forms being included in the applicants’ statement of case. The users described use of the route from 1955 to 2020.
3. The frequency of use varied significantly, being relatively sparse before the mid 1980’s, with heaviest use taking place between 1984-1995, thereafter becoming much less frequent in recent years.
4. Earliest use was on the original route of Cronton Lane to meet up with Penny Lane, prior to the construction of the M62 motorway. Following this, use was solely on the current route of FP201, A-B-C on the map.
5. All users stated that they used the route openly, without seeking permission and without challenge or interruption.
6. A photograph from geograph.co.uk referenced ‘SJ4989: Cronton Lane (taken 13 years ago)’ documented FP201 as an old cart track and showed a photograph of a cyclist using the lane. It is unclear on what date this photograph was taken.
7. The photograph from Geograph clearly shows a cyclist using the FP201. Although SHBC submit that there is insufficient evidence that the cyclist is on FP201, a photograph submitted by the appellant at the same location shows remarkably similar surroundings and markers to the profile of the Geograph photograph. A photograph taken on 8 February 2021 by SHBC also bears similarity to the same location. It is of note that Blundells Hill Golf Club expressed the difficulties they faced in keeping the public to the path, ‘particularly teenagers on bikes. Mr Kedge also commented that cyclists were churning the ground in the narrower sections of the route and one of the SHBC photographs attached to the inspection survey of FP201 in July 2019 appears to show a cyclist using the route.
8. One user had recollection of a bridleway sign being in existence at some point in her period of use between 1990-2020 and another user recollected an incident whereby she had accidentally strayed from the route on horseback due to heavy snow and was redirected to Cronton Lane by an employee of the golf course.
9. The objectors that were frequent users of FP201 stated that they had never seen horses on the route and that they had also not observed evidence that they had used the route, in the form of hoof prints or horse droppings. I do not doubt this to be true, but the absence of this type of evidence is not necessarily proof that equestrian use did not take place.
10. David Kelly of SHBC also stated that on his scheduled inspections of the route and visits to check site notices, he had also seen no evidence of equestrian use, however these visits were mostly in 2021, which is outside of the relevant period of 2000-2020.
11. Evidence, both written and photographic, show there are concrete rings and tubular fencing on the footpath presenting a width restriction to the route. It is generally held that the rings were placed there to prevent vehicular and possibly other use, but it is not certain who placed them there and exactly when. The tubular fencing has a sign attached by Blundells Hill Golf club stating it is a public footpath, although no details have been provided as to when this sign was erected. The user evidence forms indicate that these width restrictions did not obstruct their use.
12. No other evidence has been provided to show that any landowner took action to demonstrate a lack of intention to dedicate higher public rights over the route.
13. With regard to the user evidence, although some objectors refute the use stated, the weight of this evidence is not sufficient for me to disregard the user evidence submitted. Nonetheless the evidence is supportive of the more significant use occurring prior to the commencement of the relevant period. Overall, I do not find on balance that the evidence of use during the relevant period is sufficient to support the dedication of a public bridleway under section 31 of the 1980 Act

***Common Law***

*Documentary Evidence*

1. It does not appear that SHBC considered the documentary evidence when determining the application, and so I have examined this evidence below.
2. Yates’ Map (1786) shows the original line of Cronton Lane route as a ‘cross road’ on its Key. At this time cross roads were mostly minor roads that crossed the countryside. Hennets’ Map (1828) with its Key depicts the same.
3. Greenwood’s Map (1818) which is considered accurate and detailed for its time, also illustrates the lane as a cross road.
4. The Tithe Map for the Township of Rainhill in the Parish of Prescot (1840) was also provided in evidence. Cronton Lane is again shown as a carriageway but without the accompanying documentation, is of less weight than it otherwise would be.
5. The Ordnance Survey Map published in 1892 appears to illustrate the lane as a road and is coloured sienna, which post 1880, were often used to indicate what were thought to be public roads. The Ordnance Survey Maps from 1850, 1880, 1894 and 1896 also depict Cronton Lane as a main road or unmetalled road.
6. Rainhill Farm Estates Sales Documents 1920 advertise the farm having long road frontages to Blundells Lane, Cronton Lane and Hall Lane. This evidence could be indicative of Cronton Lane being a public road, but it could equally have been a private road which served adjoining properties.
7. Bartholomew’s Half-Inch Map of 1904 depicts the route as an inferior road and not to be recommended to cyclists.
8. Cronton Lane is shown in the Council’s List of Streets as a track not maintainable at public expense, albeit the section south of the motorway is shown as maintainable at public expense.
9. The M62 Lancashire to Yorkshire Motorway (Tarbock to Croft Section Side Roads) Order 1970 was submitted and shows B-D being stopped up and replaced with B-C. Reference is made to Cronton Lane and below the track on the site plan ‘F.P Cronton No 2’ is referenced on the site plans indicating that the route was clearly regarded as a footpath at that time.
10. A selection of Liverpool A-Z maps shows Cronton Lane as a rural lane / track and Rainhill’s Past in Pictures references Cronton Lane as an ancient right of way.
11. Various Land Registry titles submitted showing Cronton Lane, appear to show that the lane is unregistered. The INSPIRE database derived from Land Registry shows Cronton Lane as excluded from any registered land parcels, which is commonly the case with ancient highway.
12. From the evidence presented in this case it is clear that the original line of Cronton Lane was a well-defined lane, as early as 1786, whether a cross road, minor road, rural lane, or track. On their own, each document holds very limited weight in ascertaining bridleway status, but the significant number of different commercial maps submitted does support the submission that the way possibly held higher rights than its current footpath status.
13. In itself this is not sufficient to confirm the existence of a public bridleway, although the 1840 Tithe Map, which is considered a reliable record, holding more weight, does also correlate with the other maps in showing a road of some minor status.
14. On the basis of the papers before me, the evidence is suggestive of higher rights historically.

*User evidence*

1. I have concluded that the user evidence is insufficient to raise a presumption of dedication under statute for this route as a bridleway, within the specific timeframe of 2000-2020. However, this would not prevent a case alternatively being made for dedication at common law, for which there is no fixed time period.
2. In this case, the user evidence indicates that people have used the route in question for cycling or horse riding, as well as walking, over a lengthy period, with the most concentrated equestrian use between 1984-1994.
3. From the evidence provided, the route appears to be on unregistered land. At some point concrete rings and a small rusty stile were placed across part of the route, it is unknown by whom, but assumed by objectors to be the SHBC, presumably to prevent unwanted use. It is unclear as to what use the restrictions were intended to prevent, however they do not seem to have inhibited use of the route by cyclists or equestrians. There is also a photo of a sign by Blundells Golf Club stating public footpath, but it is not specified when this sign was erected.
4. Overall, there is no significant evidence of action being taken by any landowner in specific response to use by equestrians, during the lengthy period covered by the user evidence prior to 2020.

*Common Law conclusions*

1. From the documentary evidence presented in this case it is clear that a well-defined lane following the original line of FP201 has been in existence since the late 1700’s as shown by the commercial maps presented as evidence. The maps submitted all support the applicant’s submission that in the past, FP201 was a carriageway of some description. On their own, the commercial maps are not sufficient to confirm the existence of a public right of bridleway status, albeit the Tithe Map could also indicate a highway of at least that status.
2. Conversely, The Side Roads Order of 1970 that realigned the route to its current position illustrates that at that time, Cronton Lane was regarded as a highway at footpath status only.
3. Although the user evidence is refuted by some, there is not sufficiently robust contradictory evidence to disregard the claims of equestrian use and moreover there also appears to be some evidence of use of the route by cyclists.
4. Although the user evidence is indicative of equestrian usage being more significant between 1984-1995, the evidence also covers a number of years both before and after this period. This combined with the accumulated historical evidence is supportive of the existence of higher public rights having been dedicated over the route.
5. Having regard to these and all other matters raised in the written representations, I conclude the available evidence marginally shows, that on the balance of probabilities, FP201 should be of a higher status.

**Other Matters**

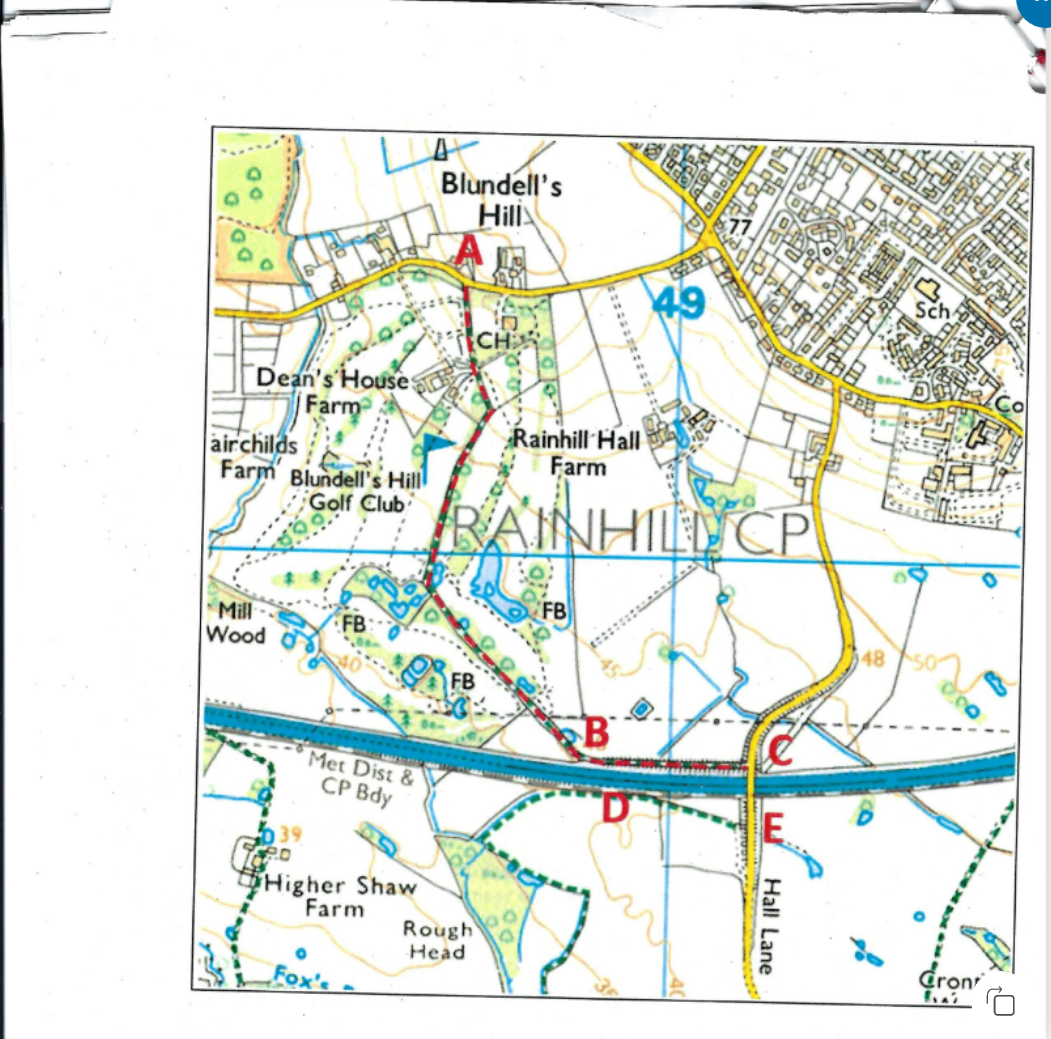
1. A number of matters have been raised by numerous opposers of the application. These mostly relate to the desirability, suitability, financial burden, safety, and environmental concerns likely to arise if the route were to be upgraded. Whilst I recognise all of the above as very genuine concerns, the legal criteria (as set out in the Main Issues section above) on which this case must be determined does not allow consideration of such matters. Although the Rainhill Civic Society felt that this conflicted with their right to freedom of expression and was contrary to human rights, I am unable to take inapplicable matters into consideration.
2. I note from objectors’ comments that there could be a potential for use by equestrians to constitute a public nuisance in relation to pedestrian users, albeit evidence has not been provided to show that this is currently the case.

Formal Decision

1. The appeal is allowed and in accordance with Paragraph 4(2) of Schedule 14 to the 1981 Act, St Helens Borough Council is directed to make an order under Section 53(2) and Schedule 15 of the Act within 3 months of this direction, to modify the definitive map and statement for the area to upgrade Footpath 201 to bridleway status.
2. This decision is made without prejudice to any decision that may be issued by the Secretary of State in accordance with his powers under Schedule 15 of the 1981 Act.

A Behn

**Inspector**

****