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| **Order Decision** |
| Site visit made on 27 September 2023 |
| **by Gareth W Thomas BSc(Hons) MSc(Dist) DMS MRTPI** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 26 October 2023** |

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| **Order Ref: ROW/3297710** |
| * This Order dated 28 July 2021 is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as The Hampshire (Test Valley Borough No 69) (Parish of Abbotts Ann) Definitive Map Modification Order 2021. |
| * The Order is dated 28 July 2021 and proposes to modify the Definitive Map and Statement for the area by adding a Bridleway, as set out in the Order plan and described in the Order Schedule. |
| * There was one objection outstanding when Hampshire County Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs. |
| **Summary of Decision: The Order is proposed for confirmation subject to modifications set out below in the Formal Decision** |
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Procedural Matters

1. No party requested an inquiry or hearing into the Order. I have therefore considered this case on the basis of the written representations submitted to me. I made an unaccompanied site visit on 27 September 2023.

The Main Issues

1. The main issue here is whether the evidence is sufficient to show that, in the past, the Order route has been used in such a way that a public rights of way can be presumed to have been established.
2. If confirmed, the effect of the Order would be to add a section of Public Bridleway with a variable width of 3.5m to 6m from U60 Manor Close to C65 Duck Street as shown A to B on the Order map.
3. The Order has been made under section 53(3)(c)(i) of the 1981 Act. Therefore, consideration needs to be given to whether the discovered evidence shows on the balance of probabilities that the definitive map and statement should be modified on the grounds that a right of way which is not shown in the map and statement subsists.
4. When considering the documentary evidence adduced, the relevant statutory provision for the dedication of a public right of way is found in section 31 of the Highways Act 1980 (‘the 1980 Act’) (“statutory dedication”). This requires consideration of whether there has been use of a way by the public, as of right, without force, secrecy or permission and without interruption, for a period 20 years prior to its status being brought into question and, if so, whether there is evidence that any landowner had demonstrated a lack of intention during this period to dedicate a public right of way.
5. Alternatively, an implication of dedication can arise at common law if there is evidence from which it may be inferred that a landowner has dedicated a right of way and that the public has accepted the dedication.

**Reasons**

***Consideration of the documentary evidence***

1. I have noted that the OMA has placed no reliance on the documentary evidence provided although have highlighted certain documents that add some weight. Similarly, the applicant appears also to place greater weight on user evidence. However, despite acknowledging the respective stances of the applicant and OMA, it is necessary for me to consider a number of documents that might lend support or otherwise to the user evidence.
2. Although the claimed route is shown on the Taylor’s Map of Hampshire 1759 as a physical feature in the manner of other primary carriageways in the locality as well as connecting to other routes that are now recorded as public highways, maps of this period, usually visitor maps, may not have identified highways having public status or distinguished between private and public roads. The same is true of the Paterson’s British Itinerary 1785.
3. Tithe maps were concerned with identifying land on which a tithe was due to the church and officially recorded the boundaries of all areas on which the tithe-charge was appointed. Their purpose was not to identify highways. However, as statutory documents involving the status of land ownership, they were required to have a high degree of accuracy. Although the enclosed northern section of the claimed route is shown on the Abbotts Ann Tithe Map 1842, the accompanying award records the apportionment as ‘parsonage field and barn’, indicating that the route was not considered to be a public highway at that time.
4. The route is shown in its entirety on the Map of the Rice Estate 1844, in part as a continuous line with the remainder as a dashed line, which indicated the possibility that it was a through route linking other public highways. It does not however indicate public status.
5. The route is not recorded in the Maps of Roads within the Parish of Abbotts Ann - Andover Highway District 1850-1900 which showed the names of parish roads and former turnpike roads.
6. Although the depiction of a way on an Ordnance Survey (OS) map is not, in isolation, evidence of the existence of a highway, the inclusion of a route on OS maps can provide useful evidence in helping to determine the status of a route when combined with other evidence. They are though surveys of land and are indicative as what is on the ground at the given time of the survey and as noted by the surveyor. The claimed route is shown on the first edition of the OS County Series Map 1873 and the corresponding description records the route as ‘road’. However, it is an accepted principle that OS maps do not identify public status as such despite the accuracy of a route’s depiction.
7. The 1910 Finance Act map appears to show the Order route enclosed within specific taxable landholdings which indicate that it was not held within land held by a ratings authority. Discounts from the valuation could be claimed for land crossed by footpaths or bridleways but there is no available further evidence that there were deductions recorded for rights of way in the field book for this hereditament. Whilst a landowner might be expected to claim a deduction in value, this was not an obligation and no information has been offered here. However, the absence of any deduction for hereditament 155 and 156 would not be conclusive evidence that the Order route is not a public right of way despite the claimed route being shown in a way that is consistent with public carriageway status.
8. The de Paravaivini letters 1980 and 1981 claim that there were gates at each end which were occasionally locked although the gates appeared to fall into disrepair from the 1950s. Due to the time at which this apparently occurred, it would be difficult to call such use into question or demonstrate a lack of intention to dedicate in this early period. Consequently, this has no bearing on the status of the Order route.
9. Photographs submitted showing the route in 1900 and 1981 appear to depict the route; however, despite showing the use, it’s status remains inconclusive from these. The route is again shown on the Bartholomew’s commercial map 1902 but with a statement that the surface is not recommended to cyclists. Bartholomew Maps normally carry a disclaimer that the representation of a road or footpath is no evidence of the existence of a right of way.
10. Whilst the Abbotts Ann Footpath Map dated 2000 records the Order route as a track and the Test Valley Borough Council’s Conservation Area Appraisal describing it as an historically important route into the village, this evidence does not prescribe highway status.
11. A solicitor’s letter from 2000 detailing a local search that was undertaken on 5 March 1979 claimed that the Order route was designated as ‘prospectively maintainable highway’, which the solicitor believed that the public have all rights over it as they would have over any other highway despite it being not maintained by the local highway authority. However, I agree with the OMA that a route recorded on the List of Streets held by the County Council does not confirm that there are any public rights of way over the route.
12. I am not satisfied on balance that the above documents, as well as the limited pieces of evidence, are of such weight to conclude that the claimed route was dedicated as a public highway at some point in the past. I therefore now turn to consider below the user evidence that has been provided.

***User evidence***

*When the status of the claimed route was first brought into question*

1. The OMA explains that that there does not appear to be an identifiable date as to whether the use of the claimed route has been effectively challenged. There have been no actions that would have triggered an application for an Order the Definitive Map and Statement. Accordingly, the date that the use of the route was brought into question is the date of the application with the relevant twenty-year statutory dedication period being between 1995 and 2015.

*Evidence of use by the public*

1. The OMA explains that the application is supported by 89 local residents collected via user evidence forms which purport that the route has been used on a reasonably regular basis over periods of more than 96 years. The principal use of the route has been for recreational use during this period with two persons using the route to access farming land and another to a field where horses were being kept. All the users maintain that they have used the route on foot with 11 users claiming that they used the route on a bicycle, 8 on horseback and 5 users reported as having used the route in a vehicle.
2. From my reading of the user forms, the evidence of regular recreational use appears convincing, particularly during the relevant 20-year period. It also supports what I observed during my site visit; clearly, the claimed route appears well-trodden, is distinctive and connects well to existing rights of way at either end that both enjoy full public highway status. The observations on the ground would also support those who recalled this route being gravelled as remnants remain although very largely grassed over by now. The claimed route is linear in nature and appears as a well-established and relatively wide path and capable of being used by the public at large.
3. It is noted that a few photographs appear to indicate carriage drivers following part of the claimed route by pony and trap. This is supported by the later written statements of a local person having used the route for these purposes since 1994. Although the photographic evidence is a snapshot in time, the evidence of two local residents claiming that the Order route has been regularly used by carriage drivers is convincing and has not raised concerns from the OMA.
4. It is suggested that, at one time, gates were in place and locked each evening or on specific days of the year. There are also recollections of occasional use by vehicles associated with agriculture or a local equine business; however, this does not lead me to conclude that the claimed route enjoyed the status above that of a bridleway or restricted byway. The important consideration here is that these uses appear to be occasional or irregular and limited to local farm traffic and those associated with the equine facility rather than the public at large.

*Whether any landowner demonstrated a lack of intention to dedicate the bridleway*

1. The landowner suggested that the Higher Level Stewardship Scheme Agreement of around 2010 may have incorporated the Order route as a permissive right of way. However, having checked the relevant records, the OMA confirmed that this related to a different route nearby. The OMA sought to clarify this with the landowner but no response was received. As there is no evidence to the contrary, this uncertainty means that I cannot place any weight on the landowner’s assertions.
2. The landowner has pointed out that a dog walker was approached in 2014 and explained that the claimed route was not a right of way. Whilst this may be so, the weight of evidence gleaned from the user forms suggests that people have used this route without interference during the relevant period. This single event would not be an effective challenge to the use of this highway by the public at large. Even if it was deemed to be effective and the relevant date changed to 2014 to coincide with the challenge, the user evidence in support of the Order would remain convincing.
3. The landowner confirm that section 31(6) had been invoked through the submission of a combined landowner deposit in 2015, which would have the effect of negating the intention of the owner or successors in title to dedicate an additional way as a highway. The OMA points out that for such declaration to be properly recorded, applicants have to submit both a statement and a declaration. The OMA confirm that their records show only a statement having been submitted and without the declaration, this is not effective in preventing the Order route from enjoying public status. As above in paragraph 25, while the dates that rights were brought into question may alter slightly, this would not affect conclusions made under statute or common law principles.
4. The landowner points to the fact that The Land Registry Title for the ownership of land across which the claimed route passes does not include any rights of way. Although this may well be so, Land Registry Titles do not legally have to record public rights of way and thus any omission does not have any bearing on this matter. It is accepted in law that this certainty can only be provided by what is shown on the definitive map and statement.
5. Overall, I conclude on balance that the evidence is not supportive of any landowner taking sufficient action to communicate to the public that there was a lack of intention to dedicate a bridleway over the claimed route during the relevant period.

**Conclusion**

1. On the balance of probability, whilst the documentary evidence shows that there has been a route physically existing in the landscape over a long period, the substantial user evidence demonstrates that it has been in continued public use for at least the relevant 20-year period. I have carefully considered the views of the landowner and the latest opinion of the OMA and consider that the user evidence of use by vehicles, including carriages, and bicycles would raise the presumption that the appropriate status would be that of a restricted byway. I have also concluded that no landowner took sufficient action to demonstrate to the public that there was a lack of intention to dedicate this section as a restricted byway during the relevant period.
2. In the light of the submissions of the parties, I am persuaded that the user evidence is, on the balance of probabilities, supportive of the claimed route being of a different status of highway and furthermore, of yet a different status than what was shown on the Order. By virtue of the Natural Environment and Rural Communities Act 2006, the public rights for mechanically propelled vehicles are extinguished and the appropriate status for the route is a restricted byway.
3. Having regard to these and all other matters raised in the written representations, I conclude that the Order should be confirmed with modifications.

**Formal Decision**

1. I propose to confirm the Order subject to the following modifications:

* Delete reference to public bridleway throughout the Order and replace this with the words restricted byway.

1. Since the confirmed Order would show as a highway of one description a way which is shown in the Order as a highway of another description, I am required by virtue of Paragraph 8(2) of Schedule 15 to the 1981 Act to give notice of the proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modifications. A letter will be sent to interested persons about the advertisement procedure.

Gareth W Thomas

INSPECTOR

