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| **Appeal Decision** |
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| **by A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practicing)** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date:01 March 2024** |

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| **Appeal Ref: ROW/3314115** |
| * The appeal is made under Section 53(5) and paragraph 4(1) of Schedule 14 of the Wildlife and Countryside Act 1981 (the 1981 Act) against the decision of Cornwall Council (the Council) not to make an Order under section 53(2) of that Act. |
| * The Application dated 25 October 2019 was refused by the Council on 7 November 2022. |
| * The Appellants claim that the definitive map and statement (the DMS) for the area should be modified by the addition of a Bridleway.   **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 an appeal under Section 53(5) and Paragraph 4(1) of   
   Schedule 14 of the 1981 Act.
2. I have not visited the site. However, I am satisfied I can make my decision without the need to visit the site. The appeal is based on user and documentary evidence and has been determined on the papers submitted.
3. The appeal is made against the Council’s decision not to make an order in respect of the application to add a bridleway to the DMS from a point on the existing Bridleway 33 Altarnun, to a point located on existing Bridleway 32 Altarnun (the Application Route).
4. A copy of a map showing the Application Route was provided by the Council. However, that map incorrectly showed that the Application Route would connect with “Bridleway 2 Altarnun”. Following a request for confirmation of this matter, the Council has advised that the annotation on the original copy map is incorrect and that the annotation which refers to “Bridleway 2 Altarnun” should be read as “Bridleway 32 Altarnun”. The Council has provided a corrected plan showing the annotation “Bridleway 32 Altarnun” which is attached to this Decision for reference.

The Main Issue

1. The Application was made under Section 53(2) of the 1981 Act which requires the surveying authority to keep the DMS under continuous review, and to modify them upon the occurrence of specific events cited in Section 53(3) of the 1981 Act.
2. Section 53(3)(c)(i) of the 1981 Act provides that a modification order should be made on the discovery of evidence which, when considered with all other relevant evidence available, shows that a right of way which is not shown on the DMS subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path.
3. As set out in the case of *R v Secretary of State ex parte Norton and Bagshaw [1994] 68 P & CR 402,* an Order to add a route should be made if either of two tests is met:

A: Does a right of way subsist on the balance of probabilities?

B: Is it reasonable to allege that a right of way subsists? For this possibility to exist, it will be necessary to show that a reasonable person, having considered all the relevant evidence available, could reasonably allege that a right of way subsists.

1. As noted above, the appeal relies on user and documentary evidence. In terms of the documentary evidence, Section 32 of the Highways Act 1980 (the 1980 Act) requires a court or tribunal to take into consideration any map, plan or history of the locality, or other relevant document, which is tendered in evidence, giving it such weight as is appropriate, before determining whether or not a way has been dedicated as a highway.
2. Under Section 31 of the 1980 Act, for a claim that a right of way exists based on user evidence, the evidence must demonstrate that use has occurred over a claimed route for a period of at least twenty years prior to the date at which the public’s right to do so was brought into question. If user evidence is sufficient to raise the presumption that the route was dedicated to the public, that presumption is rebuttable if there is sufficient evidence to show that during the relevant twenty year period, there was no intention on behalf of the landowner to dedicate the route to the public.
3. In addition to the above, there is also a common law test for the dedication of a public right of way for which no minimum or fixed user period is required. Dedication may be presumed if there is sufficient evidence, from which it could reasonably be inferred, that the landowner has dedicated a right of way and the public has accepted that dedication.
4. The main issue in this appeal is whether on the balance of probabilities a bridleway subsists along the Application Route or is reasonably alleged to subsist.

Reasons

***Documentary Evidence***

*Greenwood Maps*

1. The provided copy extracts of Greenwood Maps dated 1827 and 1829, show a number of clearly defined tracks within the area. Whilst they show a track that appears to approximate with the Application Route, and which could coincide with it at certain locations, overall the alignment shown differs from that claimed.

*Ordnance Survey (OS) Maps*

1. I have been provided with a series of OS maps, dated from 1813, for the area. The 1813 OS map shows a defined trackway in the area and on a very similar alignment to the track as shown on the later Greenwoods Maps as described above. Both the Six Inch and Twenty Five Inch OS maps from 1883 show trackways that largely correspond with the alignment of the existing Bridleway 33 Altarnun located south of the claimed route. However, there are unconnected sections of tracks that appear to correspond to parts of the claimed route at specific locations. Both the 1895 OS map and extract from the 1906-1908 Six Inch County Series OS Map again show what appears to be a trackway corresponding with the south eastern section of Bridleway 33 Altarnun, but with the 1895 OS map depicting an unconnected trackway that appears to be on a similar alignment to the northern section of the claimed route.
2. The 1946 OS map again appears to show a track on the alignment of the south eastern section of Bridleway 33 Altarnun, with a further trackway which corresponds with the alignment of the northern section of the claimed bridleway. Those trackways are depicted as double pecked lines and appear to be connected by a feature that is shown bounded by solid lines. The extract of the 1950 OS map similarly appears to show a track that corresponds with the south eastern section of Bridleway 33 Altarnun, but with no corresponding feature that would align with the northern section of the claimed route.
3. OS maps from 1964 and 1967 no longer depict a feature that would correspond with the south eastern section of Bridleway 33 Altarnun. However, both these maps show a different trackway, initially enclosed on both sides, which, the evidence before me indicates, corresponds with a new access road to Trezelland. The alignment of that access road corresponds with the alignment of the southern section of the claimed route. Neither the 1964 nor the 1967 OS maps depict a feature that would correspond with the northern section of the claimed bridleway. The provided extract from the current OS map shows the access road into Trezelland, and reintroduces the south eastern section of Bridleway 33 Altarnun that does not appear on the above described 1964 and 1967 OS Maps.
4. Further to the above, the submissions before me confirm that an OS map dated 1881 – 1882 was submitted in support of the application. However, it is not possible to discern any features shown on the provided copy of that document.

*Definitive Map Process*

1. The parish survey records from 1951 describe public rights of way that correspond with the existing Bridleway 32 Altarnun and Bridleway 33 Altarnun, but do not record any details for the claimed route. Similarly, the Draft Provisional Map (1951), the First Definitive Map (1967) and the current Definitive Map again all show the existing bridleways 32 and 33 Altarnun, but do not record any route that would correspond with the claimed bridleway.

*The Fowey Valley Walk Guide*

1. In support of the application, an undated copy of an extract from a walking guide has been provided which includes a sketch map. That map depicts a route described for walking and which indicates the route of a path that appears to correspond with the south eastern section of existing Bridleway 33 Altarnun, but which also appears to show the central section of the claimed bridleway located to the northeast of Trezelland.

*Photographs*

1. I have been provided with copies of aerial photographs dated 1946, 2000, 2005, 2016, 2019 and 2022. The earliest of these photographs is not very clear. However, the later images clearly show features that correspond with the southern section of the claimed route over the access track into Trezelland. Those images also clearly show field boundaries. However, it is not possible to discern whether, where there are changes in the appearance on the ground, if such features correspond with any part of the northern section of the claimed route or whether those changes in appearance correspond with other features or changes in land levels.
2. In addition to the above, the Appellants have provided a survey of the topography of the claimed route and details of features which the Appellants observed whilst conducting that survey. The survey includes a series of ground level photographs showing the ground conditions over the claimed route, as well as showing the position of gates and various way marker posts. Further ground level photographs showing various way marker posts were submitted in support of User Evidence Forms, with details being provided showing the location of those features.

*Conclusions on Documentary Evidence*

1. Whilst the Greenwoods Maps show well defined tracks within the area, none of those tracks are aligned with the entire claimed route, with the position of the claimed route coinciding with the defined tracks shown on the Greenwoods Maps at a limited number of specific locations. OS maps provide good evidence of features that were present on the ground at the time of their survey, but do not indicate the status of the routes shown. In this instance, whilst the OS maps show parts of the claimed route as physical features, they do not show the claimed route as a continuous feature. As such, the OS maps do not suggest the physical existence of a long standing continuous route in this area.
2. The Definitive Map records show that a number of public rights of way for this area were included in the Parish Survey. However, the Parish Survey did not include any details for the claimed route. Nonetheless, the current DMS is only definitive in what it actually shows, and the lack of inclusion of a route on the Definitive Map is not evidence that a public right of way does not or cannot exist.
3. Whilst the extract sketch map from the walking guide does appear to show part of the claimed bridleway northeast of Trezelland as a feature depicted by pecked lines, the extract before me is undated and does not show a continuous route that would align with the entire claimed bridleway.
4. The aerial photographs as a whole show only faint areas of what appears to be worn ground close to some of the field boundaries, but do not clearly show a continuous route on the alignment of the claimed route. Furthermore, where the photographs show faint areas of ground where use may have occurred, the aerial photographs do not provide evidence whether any such use was public or by those who work the land in this area.
5. The details from the survey conducted by the Applicants show features on the ground at the time of that survey. However, whilst the information provides details of features such as vehicle or cart tracks present on the ground at the time of the survey, these records do not provide substantive evidence as to whether a bridleway subsists over the claimed route.
6. Furthermore, in terms of the photographs provided of various wooden way-marker posts, there is no substantive evidence before me as to when such posts were erected, and it is noted that those wooden posts are only present in respect of the central section of the claimed bridleway, and which would correspond with part of the path as depicted in the Fowey Valley Walk Guide described above. It also appears that the metal bridleway post, located on the access road into Trezelland, is adjacent to a gate which provides access onto the existing Bridleway 33 Altarnun. I therefore find on the balance of probability that that sign does not direct users along the access road, but rather provides a direction for use of the existing recorded bridleway.
7. Overall, I find that, on the balance of probability, the documentary evidence on its own is not sufficient to show that the claimed bridleway has historically existed. I shall turn next to consider the user evidence.

***Section 31 of the 1980 Act***

*When the right to use the claimed route was first brought into question*

1. As noted above, before consideration of the user evidence submitted in support of the Application, it is necessary to determine when the alleged right of way was brought into question, and so that the statutory period of twenty years can be calculated up to that date in accordance with section 31(2) of the 1980 Act.
2. In refusing to make an order, the Council concluded that there was no clear evidence of physical barriers, verbal restraint, warning notices and no direct action taken by landowners that would have brought into question the right of the public to use the way in this instance. As such, the Council determined that, in the absence of an earlier relevant event, under the provisions of sections 31(7A) and 31(7B) of the 1980 Act, it was the date of the Application which called use of the way into question.
3. In terms of the evidence that is before me, no other events have been identified that may have brought into question the right of the public to use the way. Consequently, I am satisfied that, on the balance of probability, that use of the way was brought into question when the application was made to add the claimed route to the DMS in 2019. As such, in respect of Section 31(2) of the 1980 Act, the relevant twenty-year period is from 1999 to 2019.

*Evidence of Use*

1. The application was supported by six User Evidence Forms (UEFs), with a further twelve UEFs being provided later in 2020. One person reported use between 2002 and 2020, on foot only. Use of the claimed route on horseback was reported by seventeen users between the period 1978 to 2019, with six of those also reporting use of the claimed route on foot.
2. Two of those who reported use on horseback, also state that they had permission of the landowners, with a further user also reporting that they were exercising private rights and that they had been given permission to attach a “rope closure” to a gate located on the claimed route.
3. Of those fourteen users who did not state that use was with permission or was as part of exercising a private right, four UEFs report use on horseback over the entire relevant period and with nine users reported use during the first ten years of the relevant period.
4. In terms of frequency of use, two users report use on horseback fortnightly, with three further users providing that use was approximately twenty times per year. One user provides that use on foot and on horseback was at “All Times” but offers no further explanation of the frequency of use. Amongst the remaining of those fourteen users who did not state that use was with permission or was as part of exercising a private right, reported use was approximately monthly.
5. A significant number of those who completed UEFs mention a closure notice relating to the nearby existing Bridleway 33 Altarnun, as well as reporting seeing a bridleway way marker on the claimed route. Eight users reported that they had seen landowners whilst using the claimed route on horseback.

*Conclusions on Evidence of Use*

1. In terms of reported use on horseback, in my view the number of users and frequency of their individual use is quite low. However, I recognise that the Application Route is located within a very sparsely populated rural area and that, therefore, the number of individual users would be likely to be low.
2. Land over which part of the claimed route is located came into new ownership in 2014, with that landowner stating that they had given permission to a number of horse riders and friends. However, no details of when or to whom such permission was given has been provided. There is nothing further in the evidence before me to suggest that landowners took sufficient steps to indicate that they did not wish to dedicate a public right of way over the claimed route during the relevant twenty-year period prior to the date when use of the route was brought into question. Nonetheless, the aforementioned landowner who submitted a Landowner Evidence Form, also commented that the claimed right of way had been enjoyed historically by many horse riders, including a friend who had used it for fifty years.
3. In this instance, there is credible evidence of use from fourteen people who claim to have used the claimed route. There appear to be some conflicts between the landowner’s comments regarding permission being given to riders when seen, and the evidence of use submitted by the claimants, and which confirms that those fourteen people, who claim to have used the route, had not received permission from landowners. Furthermore, whilst the landowner has commented that they do not believe the claimed route is a public right of way, that landowner also suggests that the route has been used historically and, prior to their taking ownership, that landowner recalls that at least one person had used the route on horseback for fifty years.
4. Consequently, I find that the evidence provided in support of the claimed route is credible, although in some areas further evidence may be necessary to fully confirm important details that would assist in resolving the above-described conflicts in the landowner’s and claimants’ evidence.
5. There is credible evidence in support of the claim, but no incontrovertible evidence that a bridleway cannot exist, with the abovementioned landowner indicating that use on horseback may go back as far as the 1970s. Furthermore, there is no evidence before me to suggest that landowners took sufficient steps to indicate that they did not wish to dedicate a public right of way over the claimed route during the relevant twenty-year period.
6. For the above reasons, I find that a bridleway has been reasonably alleged to subsist over the claimed route. In light of the tests as outlined in paragraph 7 above, the threshold needed in order to make an Order has, in my view, been reached. I therefore conclude that the evidence is sufficient to justify an Order being made. Given these conclusions, it has not been necessary for me to consider the position at common law.

**Other Matters**

1. The Applicants have provided details of another application previously decided by Cornwall Council, as well as providing details of Appeal and Order Decisions. However, while I have noted the information provided in those regards, I do not have the full details of the relevant applications, nor details of the location of claimed routes to which they relate, and so cannot be certain that the circumstances that led to those applications being confirmed are comparable to the matters that are before me. In any event, I have considered this Appeal based on its own merits.
2. I also note the submissions regarding the present obstruction on the existing Bridleway 33 Altarnun and the desirability of providing unobstructed, safe connecting routes for horse riders within the area. However, consideration of the desirability, privacy, health and safety, security or otherwise of routes are not matters that the 1981 Act allows me to take into account.

**Conclusion**

1. Having regard to these and all other matters raised in the written representations, the Appeal should be allowed.

**Formal Decision**

1. In accordance with paragraph 4(2) of Schedule 14 to the 1981 Act, the Council is directed to make an order under section 53(2) and Schedule 15 of the 1981 Act not later than three months from the date of this decision to modify the definitive map and statement to add a footpath as set out in the application dated 25 October 2019. This decision is made without prejudice to any decision that may be given by the Secretary of State in accordance with their powers under Schedule 15 of the 1981 Act.

Mr A Spencer-Peet

INSPECTOR

