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| **Appeal Decision** |
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| **by Nigel Farthing LLB** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 20 September 2024** |

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| **Order Ref: ROW/3326716** |
| * 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 (SCC) not to make orders under Section 53(2) of that Act. * By an application dated 13 October 2009 and a further application of 26 November 2009 Stephanie Wheeler on behalf of South Somerset Bridleways Association (the Appellant) claimed that evidence had been discovered which (when considered with all other relevant evidence available) shows that highways shown in the Definitive Map and Statement (DMS) as highways of a particular description ought to be there shown as highways of a different description. * The applications were refused by SCC on 27 March 2023 and the Appellant was formally notified of the decision on 21 June 2023. On 10 July 2023 the Appellant gave notice of appeal against the decision of SCC not to make an Order. * In writing this decision I have found it helpful to refer to points on the claimed routes marked on the appeal map. I therefore attach a copy. |
| **Summary of Decision: The Appeal is allowed.** |
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Procedural 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 reliable decision without visiting the site.
2. The Appellant requests that the Secretary of State direct SCC to make a definitive map modification order under Schedule 15 of the 1981 Act to record the routes which are the subject of this appeal as restricted byways.
3. In addition to the submissions from the Appellant and SCC, I have before me representations made by two individuals. I have considered all these documents in forming my conclusions.
4. This appeal concerns two routes which currently are each separately recorded as bridleways, but which effectively constitute a single route. These are identified by reference to the annotated points on the attached map. One of the appeal routes is known as Eggwood Lane and lies between the points A and F. The other route is known as Garstone Lane and lies between the points marked G and K. I shall refer to these routes as indicated and collectively as the appeal routes.

The Main Issues

1. The main issue in this case is whether, in accordance with section 53(3)(c)(ii) of the 1981 Act, evidence has been discovered which, when considered with all other available evidence, shows on a balance of probabilities, that the appeal routes have the status of restricted byways.
2. The application relies solely on historical documentary evidence to give rise to an inference that the appeal routes have been dedicated as vehicular highways. No reliance is placed upon evidence of actual use.
3. Section 32 of the Highways Act 1980 (the 1980 Act) requires me to take into consideration any map, plan or history of the locality or other relevant document provided, giving it such weight as is appropriate, before determining, on a balance of probabilities, whether or not a way has been dedicated as a highway of the appropriate status.
4. The appeal seeks to record the appeal routes as restricted byways. For such a finding to be made it would be necessary to conclude that the routes have the historic status of public vehicular highways and that the right to use them with mechanically propelled vehicles has been extinguished by the effect of the Natural Environment and Rural Communities Act 2006 (NERC) s. 67.

Reasons

Discovery of evidence

1. I have been provided by both the Appellant and SCC with a wealth of documentary material. Whilst some of this material may have been considered at the time the appeal routes were included in the first DMS, it is most unlikely that all the material was available at that time. Furthermore, the issue of discovery of evidence has not been raised by the parties. In the circumstances I am content that there has been a sufficient discovery of evidence to satisfy the requirements of section 53(30(c)(ii) of the 1981 Act.

Physical characteristics

1. I have not undertaken a site visit and therefore cannot give a description of the appeal routes from my own observation. I have read the descriptions given by the Appellant and by SCC and I have seen various photographs. There would seem to be no issue as to the physical characteristics of the routes and I am not aware that anything material to my decision turns on these matters.
2. Early mapping shows the western end of Eggwood Lane to have been on a different alignment to the appeal route. The alignment would appear to have altered in the early nineteenth century and since that date to have followed consistently the current route.
3. Both of the appeal routes are said to have the appearance of unmade farm tracks of varying width. Eggwood Lane runs from point A to Point F between the A356 and Sandy Hole and has a length of approximately 1.3 kilometres. Garstone Lane runs from point G (immediately opposite point F on Sandy Hole) to point K on Higher Street. It has a length of approximately 935 metres.

Documentary evidence

1. I have considered carefully all the documentary evidence before me. All parties accept that the appeal routes have, throughout the relevant period, had the physical characteristics of vehicular ways but there is no agreement whether any vehicular use was by reason of a public right, or whether as private vehicular occupation ways with lesser public rights. There is no evidence of actual historic use.
2. No single piece of evidence is conclusive as to the status of the appeal routes. Some evidence is suggestive of the appeal routes having the status of vehicular highways, some suggests that these were private occupation ways and much of the evidence is equally consistent with either proposition. My task is to assess all the evidence, attributing appropriate weight to each element, and to determine whether it is more probable than not that the appeal routes have the status of restricted byways.
3. The appeal routes are currently recorded on the DMS as bridleways. This is conclusive evidence that the routes enjoy that status, but without prejudice to the possibility of evidence being produced to demonstrate that higher rights exist. Accordingly, I do not start with any presumption that the DMS is correct; rather I am required to assess all the evidence de novo. That is not to say that I can ignore completely the currently recorded DMS status, as that is some evidence of the reputation of the appeal routes at the point in time when the First DMS was compiled, but it is only one piece of the jigsaw.

*Tithe Maps*

1. The appeal routes pass through two parishes and are shown on the Hinton St George Tithe Map (1838) and the Merriott Tithe Map (1843). Between the two maps the entirety of the appeal routes are shown and depicted between solid lines and unnumbered, indicating they were not chargeable to tithe. The map for the parish of Merriott depicts a number of small black triangles along the route which are thought to indicate field entrances. The appeal routes are shown connecting to public highways at each end and are depicted in the same manner as other routes which are accepted to be public highway.
2. The representation of the appeal routes on the tithe maps is strong evidence from the mid-nineteenth century of their existence as physical features with the capacity to carry vehicular traffic. The presence of the various gates strongly suggests that the appeal routes were used to access adjoining fields, presumably for agricultural purposes.
3. The purpose of tithe maps and apportionments was to identify land subject to tithe and to allocate a value to it. It was not their purpose to identify public roads, although these would usually be shown to be excluded from liability for tithe on the basis that they were not capable of supporting a tithable crop. Private occupation roads could be treated in the same manner for the same reason. Accordingly, the tithe maps are good evidence of the existence of the routes and their physical characteristics. They are however of limited value in determining status.

*Commercial Maps and private estate maps*

1. Greenwood’s Map (1882) shows the appeal routes as cross roads (with the western section of Eggwood Lane on the original alignment). This can be some evidence of public highway status, but the map contains numerous examples of routes shown as cross roads which are not today regarded as public vehicular highways and for this reason is of limited weight.
2. Bartholomew’s Map (1927) was produced as a practical route map which was particularly popular with cyclists. The appeal routes are shown as inferior roads, not to be recommended for use by cyclists. The map carries a disclaimer as to the status of routes depicted. I am required to have some regard to the evidence provided by this map as supporting public highway status, but the weight to be attached to it is very limited.
3. I have considered the Plan of Manors of Hinton St George (1796) and the Map of the Shooting Estate of Lord Poulet (1885). Both were produced for the private purposes of the landowner. Both show a section of the western end of Eggwood Lane, with the 1796 Map showing the route on its original alignment. The 1885 map shows only the section of the route A to B which is annotated ‘To Crewkerne’. These maps support the existence of the appeal routes as physical features at the relevant times but are of little value in determining status. The annotation ‘To Crewkerne’ could be suggestive of a public right of way to that town, but the map does not indicate the route to be taken, whether this included the appeal routes, nor the nature of any such right; the appeal routes already enjoy the status of bridleways.

*Ordnance Survey Maps*

1. The evidence includes a series of OS maps from 1809 to 1929. All depict the appeal routes in similar fashion save for the most westerly section of Eggwood Lane which is shown on the Old Series map on the original alignment.
2. The most detailed map is the 1887 25” County Series 1st Edition. This shows the appeal routes named as Eggwood Lane and Garstones Lane. The routes are shown of varying width between solid parallel lines. They differ from the highways to which they connect in that the appeal routes are not coloured and do not have a shaded casing line. At the junction of the appeal routes with the highway there is a dashed line, probably indicating a change of surface. The appeal routes are intersected by various dashed lines, probably indicating footpaths, some of which are annotated “FP”. On the 1898 -1900 Revised New Series Map the appeal routes are shown as ‘unmettaled roads’. On the subsequent 1919 OS Popular Edition the appeal routes are shown as ‘Minor Roads’.
3. OS maps are excellent evidence of the physical features depicted. They do not purport to distinguish between public and private rights and indeed since 1888 the maps have carried a disclaimer to this effect. The depiction of the appeal routes is equally consistent with their being either vehicular highway or private occupation roads. The fact that both appeal routes connect to recognised public roads leaves open the possibility of public vehicular status. The further fact that a number of footpaths connect into the appeal routes would, if the paths are public, suggest that the appeal routes have some public status, but that would be accommodated within their current designation as bridleways.

*OS Object Name Book 1885*

1. SCC assert that both appeal routes are described in the Object Name Book as ‘occupation roads’. The Appellant appears to take issue with this, suggesting in the case of Eggwood Lane, the correct description is that of a lane.
2. My interpretation of the Object Name Book is that Garstone Lane is described unequivocally as an occupation road. Eggwood Lane is shown in part on one sheet (89/5) with the remainder on another (88/8). The book relating to sheet 89/5 refers to Eggwood Lane as an occupation road whereas there is no such reference in the book relating to 88/8, which covers the major part of the route.
3. My understanding is that the same person wrote both entries. The description he gives in relation to sheet 89/5 is ‘*an occupation road starting from its junction with Garstone Lane and another road near Sockety Farm running in a westerly direction to the main road a little south Lopen’*. I interpret this as a description of the entirety of Eggwood Lane, notwithstanding that the sheet in question covered only a section of the lane. Accordingly, I am in little doubt that the author was describing the whole of Eggwood Lane as an occupation road.
4. The term ‘occupation road’ usually refers to a route, sometimes in one ownership and sometimes in multiple ownerships, capable of being used by vehicles, for the purpose of providing private access to adjoining land. An occupation road can be subject to lesser public rights of a footpath or bridleway.
5. The description in the Object Names Book of both appeal routes as ‘occupation roads’ is therefore suggestive of private vehicular status rather than public vehicular highway. Some weight should be given to this evidence as the attribution comes from a local person familiar with the local road network. I do not consider the use of the term ‘Lane’ to describe Eggwood Lane detracts from this conclusion. The route was known then, and now, as Eggwood Lane. The use of the term Lane is most likely to have been purely descriptive. Further and in any event, a lane is not synonymous with a vehicular highway. A bridleway or driftway could equally appropriately be described as a lane. SCC has provided examples of routes in the locality which are named Lanes, but which are private occupation roads.

*OS Boundary Sketch Map and Boundary Remark Book 1885*

1. The Appellant relies upon the OS Boundary Sketch map of 1885 and the OS Boundary Remark Book. The Appellant notes that the sketch map depicts Eggwood Lane in the same manner as the public road network to which it links.
2. My attention is also drawn to the fact that at the western end of Eggwood Lane, the parish boundary is shown to follow the Lane. The Appellant states ‘It was quite usual for a parish boundary to run alongside a public route’. I accept that public rights of way often follow parish boundaries, but I have been provided with no authority suggesting that a parish boundary cannot follow a lesser public right of way or an occupation road. I can attach little weight to this evidence.
3. The depiction of the appeal routes on the boundary sketch map in the same manner as the public highways to which they adjoin is consistent with the treatment of the routes on contemporary OS maps and supports, but does not add to that evidence.

*Finance Act 1910*

1. Although there may be some lack of clarity over a small section, I interpret the Finance Act map as excluding from valuation the entirety of the appeal routes.
2. The Appellant, having stated that ‘the most likely interpretation of the evidence from the 1910 Finance Act records should be that the route is a public vehicular highway’ goes on to comment that ‘the assessor’s decision [*not to recognise vehicular highway status*] varies from the **accepted interpretation**….’ (my emphasis). I accept that public vehicular highway status is the most common reason for exclusion, but I do not agree that this can be referred to as ‘the accepted interpretation’. To do so would be to give it the status of a presumption, which is unwarranted.
3. Whilst there are various reasons for excluding land from valuation, the most common reason was that the land in question was a public vehicular highway. In this case the appeal routes were capable of use with vehicles and doubtless were so used. Although this treatment of the appeal routes may give rise to a strong possibility that the routes were considered public highways, there is no presumption to that effect.
4. The Appellant lists various reasons for land being excepted from valuation but fails to include the generally accepted principle that where a route is owned in common, or of uncertain ownership, and is used by different landowners to access their adjoining lands it will often be excluded from valuation. In this case the evidence suggests that various land holdings were accessed from the appeal routes, and this could suggest an alternative reason for the routes to be excluded from duty.
5. I am required to assess the evidence on a balance of probabilities. I accept that the most likely explanation for the appeal routes being excluded from valuation is because they were considered to be public vehicular highway and therefore I must attach significant weight to this evidence, whilst recognising that an alternative explanation is available.

*Highway records*

1. The Highway records show that the relevant highway authority has not regarded the appeal routes to be publicly maintainable highway and there is no record of any public expense on actual repair. This contrasts with the treatment of the highways to which the appeal routes connect, which are identified as maintainable at public expense.
2. Had the appeal routes been identified as maintainable at public expense this would have been compelling evidence of public highway status. The fact that they are not so shown does not preclude the possibility of public vehicular status, but is not evidence supportive of that.
3. The Crewkerne Highway District Map (c.1862) is thought to be a record of publicly maintainable highways in that district in about 1862.The appeal routes are shown uncoloured, indicating that they were not maintainable at public expense. A vehicular highway in existence prior to 1835 would necessarily have been maintainable at public expense. The position was changed by section 23 of the Highways Act 1835.
4. The categorisation of the appeal routes as not publicly maintainable suggests that either the routes were public, but dedicated after 1835, or that they were not considered public vehicular highways. The Appellant relies upon some evidence that the appeal routes existed before 1835, but if that were correct, the Crewkerne Highway District Map would be inconsistent with the vehicular highway status sought.

*Ministry of Transport Road Maps c.1919*

1. These maps were produced by the OS and appear to have been a simplified map showing the road network in an uncluttered format. The appeal routes are depicted, and this is evidence that they were considered public vehicular routes at that time but as OS products these maps were presumably subject to the usual disclaimer as to public rights of way such that the weight that can be attached to this is limited.

*Ministry of Food National Farm Survey 1941- !943*

1. The purpose of the survey was to identify productive agricultural land. It was not the purpose to identify and record public highways. The appeal routes are shown excluded from the adjoining land holdings and the Appellant notes they are treated in the same manner as public carriageways. Roads were excluded from coloured land parcels because they were not part of a productive holding rather than because of their status. Little weight can attach to this evidence when determining the status of the routes.

*Definitive Map records*

1. The appeal routes were omitted from the draft map but following objection were included on the provisional map as bridleways. There is no evidence of any objection to the routes being recorded with that status, nor of any suggestion that the routes enjoyed any higher status.
2. There is no evidence that historical documentary record was investigated at the time the first DMS was compiled, and it is suggested that the recorded status reflects the public use of the routes in the mid-twentieth century. It would therefor follow that at that time the appeal routes were not used by the public with vehicles and did not have the reputation of vehicular highways.

*Land ownership*

1. The ownership of the appeal routes is unregistered at the Land Registry and is unknown. This could be suggestive of public vehicular status but is not inconsistent with an occupation road used in common by various landowners.

Conclusions on documentary evidence

1. No single piece of evidence is conclusive as to the status of the appeal routes. Much of the evidence is consistent with the routes being either a public vehicular highways or private occupation roads incorporating public bridleway rights.
2. Two conflicting pieces of evidence carry significant weight. The OS Object Name Book description of the routes as ‘occupation roads’ is compelling because it suggests a deliberate attribution of status, made by a person intimately familiar with the local road network. Against this the evidence of the Finance Act map gives rise to a strong suggestion of public vehicular status.
3. In order to resolve the conflict between the significant evidential elements it is necessary to assess and allocate the remaining pieces of evidence by reference to their relevance, weight and context.
4. The evidence that lends some weight to public vehicular status includes the representation of the appeal routes on the Tithe Maps, the commercial maps (especially Greenwood and Bartholomew) and the OS, all of which depict the routes in a similar fashion to accepted vehicular highways to which the appeal routes are connected. Whilst each individual map carries little weight, the quantity and consistency of this evidence adds to that weight. The fact that the ownership of the appeal routes is unknown and unregistered can be similarly suggestive of public highway status.
5. The evidence which lends some support to the OS Object Name Book attribution of the routes as private occupation roads includes the omission of the appeal routes from the Highway maintenance records (particularly the treatment of the appeal routes on the Crewkerne Highway District Map) and the fact that the routes were claimed only as bridleways for the first DMS.
6. The evidence is finely balanced. I am required to reach a conclusion on a balance of probabilities. In seeking to reconcile the evidence I have regard to the historical context. It is clear that over the past century the appeal routes have not been used by the public as vehicular highways and that their actual use and reputation over that period is accurately reflected in their recording as bridleways.
7. The evidence for the preceding century is much less clear cut. The impression given is that the appeal routes had a greater significance in the nineteenth century and before than they have had since. In the absence of the evidence of the OS Object Name Book, attributing the status of occupation roads, the consistency of most of the other evidence from that period would enable me to reach a conclusion that dedication as a vehicular highway could be inferred. I cannot however ignore the unambiguous evidence of the Object Name Book to which I have to attach significant weight, nor the disclaimer of public responsibility for maintenance.
8. I am left with a difficult exercise where I have to balance the weight of a single, but compelling piece of evidence against the general consistency of other evidential sources which individually carry less weight. On balance, I am persuaded that the evidence of the Finance Act map coupled with the consistency of the nineteenth century evidence is sufficient to tip the balance in favour of public vehicular highway status having been dedicated and thus in favour of allowing the appeal. In reaching this conclusion I am mindful of the fact that this is a Schedule 14 appeal and that the parties will have a further opportunity to argue the merits at the confirmation stage of the process.

**NERC**

1. The effect of NERC section 67, subject to certain exceptions, was to extinguish the right for mechanically propelled vehicles to use an existing public vehicular right of way which was not shown in a definitive map and statement, or was shown only as a footpath, bridleway or restricted byway.
2. The appeal routes are recorded on the DMS as bridleways and in consequence the provisions of section 67 are engaged.
3. It would seem to be common ground that none of the exceptions set out in section 67(2) to (8) apply and in consequence any right to use the appeal routes with mechanically propelled vehicles has been extinguished and the correct status of the routes, if confirmed, would be as restricted byways.

**Other Matters**

1. A representation was made that the appeal routes are not suitable for use by cyclists. Suitability is not a factor that can be taken into account, but in any event the appeal routes are currently recorded as bridleways and therefore available for use by cyclists.

**Overall Conclusion**

1. Having regard to these and all other matters raised in the written representations I conclude that the appeal should be allowed.

**Formal Decision**

1. 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 for the area by adding Restricted Byways between points A and F and points G and K as shown on the attached map.
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.

Nigel Farthing

Inspector

