
Appeal Decision

by Barney Grimshaw BA DPA MRTPI (Rtd)

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 24 August 2016

Appeal Ref: FPS/D3450/14A/3

- 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 Staffordshire County Council not to make an Order under section 53(2) of that Act.
- The Application dated 23 March 1990 was refused by Staffordshire County Council on 15 February 2016.
- The Appellant claims that Alton Footpath 13 and part of Alton Footpath 16 should be upgraded to bridleway status.

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).
2. I have not visited the site but I am satisfied I can make my decision without the need to do so.
3. I attach a copy of a map showing the claimed route for reference purposes. Also, for convenience I have referred to the two paths which together form the route included in the application simply as the claimed route.

Main issues

4. Section 53(3)(c)(ii) of the 1981 Act provides that an Order should be made to modify the Definitive Map and Statement if evidence is discovered 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.
5. Some of the evidence in this case relates to usage of the claimed route. In respect of this, the requirements of Section 31 of the Highways Act 1980 (the 1980 Act) are relevant. This 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.

6. Common law also requires me to consider whether the use of the paths and the actions of the landowner have been of such a nature that the dedication of the paths by the landowner as a bridleway can be inferred.

Reasons

7. Both documentary and user evidence has been submitted in this case and I deal with the different types of evidence separately.

Documentary Evidence

Inclosure Award

8. In the Inclosure Award for Alton, dated 1833, the council state that the claimed route was referred to as Rake Dale Road and described as an occupation road to be maintained by the occupiers of adjoining land. The award also refers to several public roads and the council states that the commissioners had the power to alter, divert or stop up both public and private highways.
9. I have seen a copy of part of the inclosure map but not the award itself or the Act of Parliament that enabled it. The council's description of the award's references to the claimed route is not disputed and appears to indicate that the route was awarded as a private highway rather than a public one. However, without careful study of both the award and the enabling act it cannot in my view be said with certainty that the route carried only private rights.

Tithe map

10. Under the Tithe Commutation Act 1836, tithes were converted to a fixed money rent. In most areas this required detailed surveys to be carried out in order to apportion the amount of tithe payable among the landowners of a parish. Tithe documents that were prepared had the sole purpose of identifying titheable or productive land. They are statutory documents which were in the public domain but were not produced to record public rights of way, although they can sometimes be helpful in determining the existence and status of routes.
11. The 1843 Alton Tithe Map shows the claimed route separate from adjacent land holdings and apparently not subject to tithe payment. This is consistent with the manner in which public roads would have been shown but also any other routes which constituted unproductive land including private occupation roads serving a number of properties. None of the routes shown have any notation on the map and are not mentioned in the accompanying apportionment.
12. As the tithe apportionment took place relatively soon after the inclosure award, it is my view that, if the route was only a private occupation road immediately after the inclosure, it is unlikely that additional public rights would have been established in the intervening period.

Early maps

13. Maps prepared by William Yates (1798), James Smith (1817) and Christopher Greenwood (1820) show a route similar to the claimed bridleway as a 'Cross Road'. Use of the term 'Cross Road' which describes a route providing a link between two other routes does not necessarily mean the route carried public rights. Early mapmakers may not have had a sound basis to determine the status of routes they surveyed and maps often show routes which were clearly private access ways with the same notation. Nevertheless, the consistent

depiction of a route which links other highways in this way is suggestive of the existence of public rights.

Ordnance Survey (OS) maps and documents

14. OS maps published in 1836, 1881 and 1922 show the claimed route but do not indicate its status. An OS Name Book, dated 1920, refers to Toothill Lane, which is described as "*An old public road extending from north of Rose Cottage, Alton, to a short distance west of Cedarhill*". The applicants argue that since Toothill Lane joins the claimed route it is likely that it too was regarded as a public road. On behalf of the council it is pointed out that the purpose of the Name Book was to ensure that places shown on maps were correctly named and spelt and that Toothill Lane is that part of existing Footpath 16 not included in the current claim.
15. In addition, the applicants draw attention to a descriptive manual relating to OS maps dated 1975 in which it is stated that in the 1:1250 and 1:2500 series maps spot heights and bench marks are shown 'along selected roads'. They point out that spot heights and bench marks are shown along the claimed route. However, although such marks were located along lines of levelling which often followed lines of communication this was not always the case and it cannot be assumed that the presence of a mark is indicative of public rights.

1910 Finance Act

16. The 1910 Finance Act imposed a tax on the incremental value of land which was payable each time it changed hands. In order to levy the tax a comprehensive survey of all land in the UK was undertaken between 1910 and 1920. This survey was carried out by the Board of Inland Revenue under statutory powers and it was a criminal offence for any false statement to be made for the purpose of reducing liability. The existence of public rights of way over land had the effect of reducing the value of the land and hence liability for the tax; they were therefore recorded in the survey.
17. In this case the Finance Act base map shows the claimed route separate from adjacent hereditaments and accordingly not liable for tax. This is the manner in which public roads would have been shown but also other routes with no known owner deriving benefit from the incremental value of the land.

Definitive map

18. In the survey of rights of way for Alton in October 1950, Footpaths 13 and 16 were both recorded as "C.R.B", meaning carriage roads mainly used as bridleways. This description was subsequently crossed out and substituted by "R.P", although it is not known when or by whom this alteration was made. The reason given for believing the routes to be public was that they were included in the Alton public footpath map of 1934. The council was not able to provide a copy of this map itself but I have seen a copy of the list said to be related to it.
19. In the first and subsequent definitive map the route was recorded as a "RUPP" (a road used as a public path). No evidence has been submitted of any objection having been raised to the inclusion of the route as a RUPP. Also, a letter, dated 28 March 1965, from Alton Parish Council to the County Planning Officer sought to clarify the type of user of certain RUPPs. In this, Paths 13 and 16 were described as public green lanes being used equally by pedestrians and horse riders. A hand written note on the letter reads "*These are all RP's therefore no alteration to make on maps*".

20. The route was reclassified to footpath in 1988, although the review which led to the reclassification was begun much earlier. It is argued by the applicants that this effective downgrading of the route without positive evidence was in error and should not have taken place. In particular the 1981 Act, Section 54, which required authorities to reclassify RUPPs, states that, if public bridleway rights have not been shown not to exist, then a route should be shown on the definitive map as a bridleway. They maintain that this was the situation in 1988. However, the passage of time means that, even if this was the case, the error cannot effectively be reversed administratively. Nevertheless, the fact that the route was originally believed to have been of a higher status than footpath must in my view carry some weight in the determination of its correct current status.
21. In 1979, planning permission was granted for the construction of an extension at Dale Farm which obstructed the route and it appears that from around 1980 users of the route diverted to an alternative route in the same ownership as they were entitled to do when meeting what was an unauthorised obstruction of the highway. In 1990. The route was formally diverted around the obstruction but, as stated above it had by then been reclassified as a footpath. The application therefore relates to the original obstructed route on the basis that bridleway rights that existed on that route before 1990 were not affected by the diversion relating only to footpath rights.

Conclusions regarding documentary evidence

22. The route has existed since the eighteenth century. In the 1833 inclosure the route was awarded as an occupation road but it is not certain that the route did not also carry public rights of some sort. Subsequent evidence is generally consistent with the route having been subject to either public or private rights but, as the route formed a link between other public roads and there is no evidence to suggest it was not accessible by the public, it seems likely that it would have been used by the public.
23. By 1950 and throughout the early stages of the definitive map process it seems clear that the route was considered to carry higher public rights than footpath by both the parish and county councils. There is no record of landowners objecting to the route being recorded as a RUPP although they would have had opportunities to do so. The later reclassification in 1988 does not appear to have been based on any positive evidence that higher rights did not subsist.
24. In these circumstances, it is my view that on the balance of probabilities bridleway rights subsist over the claimed route.

Statutory Dedication

Date when public use was brought into question

25. In 1990, the claimed route was obstructed by a locked gate at Dale Farm and horse riders were challenged by the landowner. These events clearly brought public use into question. There are also some reports of challenges having been made in 1989 and the reclassification of the route as a footpath in 1988 could also have brought public bridleway use into question. I have therefore considered 20 year periods ending in 1988, 1989 and 1990 with regard to the possibility that a statutory presumption of dedication as a bridleway might have been raised.

Evidence of public use

26. Eighteen User Evidence Forms (UEFs) were submitted in support of the application to upgrade the route. Thirteen people who had submitted UEFs were subsequently interviewed by the council and completed further forms. The UEFs and further forms describe use of the route from the 1960s until 1990. Three people who completed forms said that they used the route only on foot, two owned land served by the route and would have had private rights to use it and two people kept horses in fields adjacent to the route for part of the period in which they used the route and some of their use might therefore have been permissive.
27. If use of the route that may not have been 'as of right' as required by the provisions of the 1980 Act is disregarded, there remains evidence of use on horseback from between 5 and 10 people in each year between 1968 and 1990. Three people claim to have used it on a weekly basis, six on a monthly basis and five less often. Use of the route by horse riders was thus relatively infrequent and it is possible that periods of several days might often have passed when no horse rider used it. There is little difference in the evidence of use available whether the relevant period of use required to raise a presumption of dedication in accordance with the provisions of the 1980 Act is taken as ending in 1988, 1989 or 1990.
28. There is no specific evidence of action taken by landowners before 1988/89 which would have indicated their lack of intention to dedicate the route as a bridleway.

Conclusions regarding statutory dedication

29. On balance, the limited evidence of public use over periods of 20 years ending in 1988-90 is not sufficient in itself to raise the presumption that the route has been dedicated as a public bridleway in accordance with the provisions of the 1980 Act. However, the fact that the route was used as a bridleway during this period reinforces my previous conclusion that the route was thought to already be a bridleway.

Common Law

30. An inference that a way has been dedicated for public use may be drawn at common law where the actions of landowners (or lack of action) indicate that they intended a way to be dedicated as a highway and where the public have accepted it.
31. In this case, there is very little evidence of public bridleway use before 1968 and no specific evidence of action by landowners which would indicate their intention to dedicate a public bridleway. In these circumstances it would not be reasonable to infer dedication of the route at common law. However, in the light of my previous conclusions, this does not affect my decision.

Conclusion

32. Having regard to these and all other matters raised in the written representations I conclude that the evidence shows that the claimed route is a public bridleway and an order should be made to modify the definitive map and statement so as to record it as such.

Formal Decision

33. The appeal is allowed and in accordance with paragraph 4(2) of Schedule 14 to the 1981 Act Staffordshire 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 County of Staffordshire to upgrade Footpath 13 and part of Footpath 16, Alton, to bridleway, as proposed in the application dated 23 March 1990. This decision is made without prejudice to any decisions that may be given by the Secretary of State in accordance with her powers under Schedule 15 of the 1981 Act.

Barney Grimshaw

Inspector

