



Order Decision

Hearing held on 13 January 2010

by **Adrian I'Anson** Solicitor

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

The Planning Inspectorate
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Decision date:
25 March 2010

Order Ref: FPS/D0840/7/1

- This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as The County of Cornwall (Addition of a Bridleway from Bridleway No. 14 Sithney to County Road in the Parish of Crowan) Modification Order 2008.
- The Order is dated 22 September 2008 and proposes to modify the Definitive Map and Statement for the area by adding a bridleway as shown in the Order plan and described in the Order Schedule.
- There was one objection outstanding when Cornwall Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: I have not confirmed the Order.

Procedural Matters

1. The parties agreed that as there were no issues relating to the physical characteristics of the Order route, an accompanied site visit would not be necessary. Therefore, I did not hold one.

The Main Issues

2. The Order was made as a consequence of an event set out in section 53(3)(c)(i) of the 1981 Act which provides that the Definitive Map and Statement should be modified where evidence has been discovered which shows that, when considered with all other relevant evidence available, a public right of way which is not currently shown in it subsists or is reasonably alleged to subsist over the land in question. I must be satisfied that the right of way subsists.
 3. The case in support of the Order relies solely on the evidence of use of the way concerned. Section 31 of the Highways Act 1980 ('the 1980 Act') states that where a way, which is of a character capable of giving rise to a presumption of dedication at common law, has been enjoyed by the public as of right and without interruption for a full period of 20 years, that 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 is brought into question, either by a notice or otherwise.
 4. I have also been asked to consider whether dedication of the way has taken place at common law. This requires me to examine whether the use of the path by the public and the actions of the landowners or previous landowners
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(whoever they may have been) have been of such a nature that dedication of a bridleway can be shown to have occurred expressly or, alternatively, whether dedication can be inferred. No prescribed period of use is required at common law. The length of time required to allow such an inference to be drawn will depend on all the circumstances.

5. Section 32 of 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. A public inquiry is such a tribunal.
6. The test I must apply, either at common law or under statute, is the balance of probabilities.

Reasons

The claim of use on the statutory basis

7. All the parties agreed that the date when the right of the public to use the way was brought into question, was the date of the application for this Order – namely, 2000. As a consequence, I accept that the statutory period of 20 years runs from 1980 to 2000.
8. The user evidence comprises thirteen user evidence forms. None of these individuals were interviewed by the Council or (save for Ms Elizabeth Williams) gave evidence at the hearing. The objector challenged the evidence of Mr Burley, Mr & Mrs Bowden, Mrs V J Williams, Mr E F Benney, Mr E B Wimbleton, Mr Williams and Mr M Atkinson on the basis that either they produced no map or were otherwise discounted by the Council because of lack of clarity of the route taken or because of the right claimed being private in status. The Council accepted these challenges. I also accept the validity of these challenges and, accordingly, ascribe little weight to this evidence. Of the remaining five statements, the objector claimed that the responses to the heading "*Description of Way*" referred to routes which need not have included the Order route. Whilst that may be the case, the accompanying plans give a clear indication of the route claimed. However, the failure to provide supporting interviews and the absence of four out of these five witnesses at the hearing, significantly reduces the weight that I can give to this evidence.
9. On the other hand, I heard clear and cogent evidence at the hearing from Ms E Williams who told me that she had ridden the Order route from 1998 to the present on a monthly basis. She had never been challenged or seen any signs challenging public use of the route.
10. Although I give considerable weight to the evidence of Ms Williams, it is not supported to any significant degree by the other evidence which I have analysed.
11. There was no evidence of any lack of intention by the land-owners to dedicate the route as a public bridleway.
12. Before concluding on the issue of sufficiency of use claimed, I need to deal with a matter that the Council referred to. They noted that whilst public rights were

brought into question in 2000, the forms of evidence were completed by no later than mid to late 1999. This leaves a short period of a few months during which there is no formal evidence of use, apart from that of Ms Williams. The Council state that there is no information to suggest that users did not continue to ride the route and that the 20 year statutory period was completed. However, that is an assumption that I can not make. In view of that, I must conclude that there is insufficient evidence on a balance of probabilities that there has been public use of the route by riders throughout the 20 year statutory period.

The claim of use on the common law basis

13. In considering the claim on this basis, there is no need to prove use throughout a prescribed period. Although this deals with the issue of the missing months referred to in the preceding paragraph, it does not assist as regards the sufficiency of the evidence.
14. At common law, evidence of a highway relies on being able to show that the way has been dedicated by the landowner and accepted by the public. This means that the claimed use must be sufficient. For the reasons given in paragraph 8, and despite the clear evidence of Ms Williams, I conclude that, on a balance of probabilities, use of the claimed route has been insufficient to amount to acceptance by the public. Hence, there can be no implied dedication of the Order route as a public bridleway at common law.

Other Matters

15. The Council raised another matter which I am now dealing with for completeness. That is the issue raised by the objector to the effect that the Order route fails to link with other bridleways to a public highway. The Council accept that westwards from the southern end of the Order route, there is a length of public footpath prior to the link with a public carriageway at Gansey Farm. Similarly, they accept that, eastwards, the link between the southern termination of the Order route and the public highway at Wheal Christopher is by public footpath.
16. The Council responded to the effect that my consideration is limited to the Order route and whether or not rights have been acquired over it such that it is deemed to have been dedicated as a public bridleway. They say that to do that, I do not need to consider the status of adjoining rights and that, in any event, the Definitive Map is conclusive only as to minimum rights.
17. I do not agree that my consideration is limited to the Order route in isolation as it can not be used in that way. In any event, the Council produced no evidence to indicate that the sections of public footpath might have acquired public rights for horse riders.
18. If the Order were confirmed, riders would be faced with the inconvenience of having to turn round and re-trace their steps at the point of transition between bridleway and footpath.
19. However, in the absence of any evidence, and in view of my decision at paragraph 14, the question of onward use in either direction does not arise.

Conclusion

20. Having regard to these, and all other matters raised in the written representations, I conclude that the Order should not be confirmed.

Formal Decision

21. The Order is not confirmed.

A F I'Anson

INSPECTOR

APPEARANCES

For the Council

Mrs V Davis

Legal Officer with the Council

Supporters of the Order

Ms L E T Jenkin

Crowan Parish Council

Mr I Paterson

Sithney Parish Council

Ms E Williams

Objectors to the Order

Mr D Thurnell-Read
who called

Mr M Hynard

DOCUMENTS

- 1 CC1 Letter dated 8 January 2010 from Cornwall Council to the Planning Inspectorate attaching a letter from the owner of Primrose Farm, Releath dated 28 December 2009.
- 2 DT-R1 Aerial view of Order route and surrounding area
- 3 EW1 Map showing the area surrounding Men-amber Farm and the detour ridden by Ms E Williams

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The County of Cornwall
(Addition of a Bridleway from Bridleway No 14
Sithney to County Road in the Parish of Crowan)
Modification Order 2008

MAP NOT TO
ORIGINAL SCALE

BM 150.83m

151.8m

149.9m

Trefusis

BS

B

Path (unm)

C

Bridleway No 14
Sithney

BS

Footpath No 14
SithneyScale BS
1:2,000

ED & Ward Bay

BS

Wheal Christopher Farm

Ten-amber Farm

Cattle Grid

The fact that this order map does not show a Public Right of Way does not mean that such rights may not be the subject of a current claim or be created and proved sometime in the future.

Where any plan annexed to an Order shows existing Rights of Way, their location and extent will have been taken from the Definitive Map of Public Rights of Way. The precise line of a Right of Way can only be determined by reference to the Definitive Map.

The County Council cannot accept responsibility for any error or inaccuracy that may arise from the reproduction to a different scale of information contained in the Definitive Map.

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WCA 407

Scale: 1:2,000

Map Sheet SW6532

KEY:

Bridleway to be added

Existing Bridleway

Existing Footpath

County C Class Road

OS Grid References:

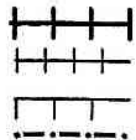
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B: SW 6528 3259

C: SW 6543 3267

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