



Order Decision

Inquiry opened on 18 September 2019

by **Mark Yates BA(Hons) MIPROW**

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

Decision date: 12 December 2019

Order Ref: ROW/3217055

- This Order was made on 7 June 2018 under Section 53(2) of the Wildlife and Countryside Act 1981 ("the 1981 Act") and is known as the North Somerset District Council (Footpath AX 16/31 to Bridleway AX 16/31 Wrington Road to Cleeve Hill Road Congresbury) Definitive Map and Statement Modification Order No. 6 2018.
- North Somerset District Council ("the Council") was directed to make an Order to modify the definitive map and statement by upgrading Footpath AX 16/31 to bridleway status.
- There were eleven objections to this Order outstanding at the commencement of the inquiry.

Summary of Decision: The Order is not confirmed.

Procedural Matters

1. I held a public inquiry into the Order on 18-20 September 2019 and undertook both unaccompanied and accompanied visits to the site.
2. An application for an award of costs was made at the inquiry and this will be the subject of a separate decision.
3. The first Order made by the Council was deemed to be fatally flawed and had to be re-made. Whilst it is the second Order that is before me, I shall have regard to all the representations relating to the proposal to upgrade the footpath to bridleway status.
4. The points referred to below correspond to those delineated on the Order Map.

Main Issues

5. The Order relies on the occurrence of an event specified in Section 53(3)(c)(ii) of the 1981 Act. Therefore, for me to confirm the Order, I must be satisfied that the evidence shows on the balance of probabilities 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.
 6. In considering the above test, I shall assess whether the documentary evidence is sufficient to support the dedication of higher public rights over the route claimed ("the claimed route") at some point in the past. Dedication at common law requires consideration of three issues: whether the owners of the land in question had the capacity to dedicate a highway, whether there was express or implied dedication by the landowners and whether there was acceptance of the dedication by the public.
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Reasons

Background matters

7. A previous application to upgrade the claimed route to bridleway status was considered by an Inspector following a public inquiry held in May 1995. This application relied mainly on user evidence and the decision of the Inspector was to not confirm the Order. It is not my role to review the Inspector's decision. The user evidence previously considered is now relied upon in support of the assertion that the public have accepted the dedication of a bridleway (see below).
8. A second application, relying on documentary evidence, was submitted in 1996 by the former Woodspring Bridleways Association¹ ("the applicant"). The Council was directed to make an Order following a successful appeal to the Secretary of State for Environment, Food and Rural Affairs. The appointed Inspector found that the evidence was supportive of the express dedication of a bridleway. I am not bound by the decision of the second Inspector at the appeal stage who found that an Order should be made. In reaching my decision, I have had the benefit of hearing evidence from the parties and visiting the site.
9. Representatives of the Council and the present landowners, Mr and Mrs Kingston ("the landowners"), appeared at the inquiry in opposition to the confirmation of the Order. The case in support was made by Mrs Gawthorpe on behalf of the applicant. Additional people spoke in support or opposition to the Order.
10. I share the concerns of Mrs Gawthorpe regarding the evidence of Mrs Kingston. It was apparent that her evidence relied significantly on submissions contained in the statement of case prepared by her legal representative. Various matters contained in Mrs Kingston's evidence were clearly outside of the scope of her expertise or personal knowledge. Although the submissions made in the statement of case may have value, I do not find that any weight can be ascribed to the endorsement of certain matters by Mrs Kingston.

Consideration of the documentary evidence

Early map evidence

11. There are some signs of a track in the locality of point A, which is most evident from looking at the small-scale Ordnance Survey ("OS") map of 1811. This map indicates that a track physically existed from point A to an area of woodland. In contrast, the 1818 Sturges map appears to show a section of track in the locality of the eastern end of the claimed route.
12. The Congresbury and Yatton tithe map of 1839 shows a track near to the western end of the claimed route that leads to plots 1696 and 1693. The first plot is described in the tithe apportionment as a quarry and the second as an arable field. The woodland crossed by the eastern part of the claimed route is stated in the apportionment to have been in the ownership of the trustees of the Hospital of Queen Elizabeth Bristol.

¹ Now known as the Axbridge Bridleways Association

13. There is no evidence to support the existence of a highway in this locality prior to the diversion outlined below. Nor do the early maps show a feature that corresponds to any significant extent to the claimed route.

Diversion

14. On 17 August 1877, the owner of the property known as Woodlands (William Long the younger) gave notice to the surveyor of highways of his intention to seek a diversion of a section of the highway called '*Rocky Lane*'. This way is described as proceeding between the Yatton and Wrington Road and the place called Woolmers. The diversion related to a section of the way that passed through the Woodlands plot. It was proposed to divert the way around this plot. The description of Rocky Lane and the section to be diverted are recited within the various notices provided. A plan shows the extent of the proposed diversion.
15. The various documents provided are supportive of it being proposed to divert a section of highway in order to make the way more commodious for the public. Two justices of the peace certified that they had seen the new highway and it had been made and put into good condition and repair. This part of the claimed route has subsequently followed an alignment that generally corresponds to the proposed diversion. From looking at the diversion map, I take the view that the structures represented on the existing and proposed routes are likely to be indicative of gates. This is supported by the references to gates in the description of the existing highway. Although the presence of gates could make a way less convenient, they do not provide any clarification regarding the status of a route.
16. It is generally accepted that the diversion would have been undertaken by reference to the 1835 Highways Act. The definition of a highway in this Act is stated to encompass "*all Roads, Bridges (not being County Bridges), Carriageways, Cartways, Horseways, Bridleways, Footways, Causeways, Churchways and Pavements*". This means that the use of the word '*highway*' by itself does not provide any indication of the extent of the public rights that were considered to exist at the time.
17. There are some references in the documents to the laying out of the '*new road*'. The diversion is also set out in the Quarter Session records under the heading of '*Roads*'. This contrasts with a section relating to the stopping up of public footpaths and halter paths². The use of the word '*road*' could therefore be suggestive of a vehicular highway. In addition, the stated purpose of the diversion was to make the gradient less steep and this may be more indicative of a route used by vehicular traffic.
18. However, I am mindful there is evidence that the initial section of the claimed route had served as a means of access to a quarry. It is also evident that ochre mining took place in the woodland nearby. Additionally, the highway is described as terminating at Woolmers. These factors may mean that there was a need for the new route to be built to a sufficient standard to accommodate private rights of access for vehicular traffic in conjunction with lower public rights.
19. The lack of a surviving Order would ordinarily impact on the weight given to the diversion documents. However, the records indicate that it passed through

² A path over which a horse was led

the required legal process. I take the view that the available documents are supportive to a greater extent of the diversion of a highway that was used by vehicular traffic. Nonetheless, it cannot be ruled out that the new road was built to a certain standard to accommodate vehicular traffic in connection with the quarry or the mining operations in the woodland.

20. I also consider it significant that this highway is consistently described as proceeding between the Yatton and Wroughton Road and Woolmers³. Whilst a highway leading to Woolmers may not have served an obvious public purpose, such anomalies do sometimes exist. The highway is clearly described terminating at this location and I see no merit in the assertions by the applicant to the contrary. It is apparent that Woolmers was located neither at the parish boundary nor the ownership boundary. This means that the diversion documents cannot be taken to provide support for the existence of a highway of any status beyond this point.

Later maps

21. The 1888 OS map indicates that a through route physically existed between points A and F, but this map does not provide any clarification regarding the status of the route. As outlined above, the diversion only related to a highway as far as Woolmers. In terms of the presence of a thickened line on OS mapping, this provides support for the existence of a metalled surface.
22. Reference was made in support of the application to the depiction of the claimed route on three editions of a road atlas produced by W and A K Johnson Limited between 1940 and 1966, but no reliance was placed on these maps at the inquiry. I do not consider that the depiction of the claimed route on these maps provides any further assistance in determining the status of the route. It is also apparent that the 1929 handover map does not record the claimed route as a publicly maintained highway.

1910 Finance Act evidence

23. The claimed route is shown proceeding through various hereditaments on the Finance Act map. This is not supportive of the route being a recognised vehicular highway. Nor was any deduction claimed for a public right of way through these hereditaments in the accompanying field books. The western part of the claimed route is stated to have been in the ownership of Mr W. Long with the eastern part falling within the ownership of the Bristol Municipal Charities ("BMC"). This evidence contrasts with the earlier diversion pursued by Mr Long in relation to a section of the claimed route.

1925 Agreement

24. An agreement of 2 March 1925 was made between BMC and the new owner of the remainder of the land crossed by the claimed route (Mr Harvey). It outlines that an issue had arisen regarding the rights of the trustees over the private roads and paths belonging to Mr Harvey. This is also evident from the BMC minutes for the period prior to the completion of the agreement. BMC was granted the right to use the routes marked blue on the map attached to the agreement, some of which linked with the claimed route.
25. It is possible that the claimed route was not included in the agreement because it was already viewed as an all-purpose highway. However, this is not stated in

³ The property called Woolmers is located to the east of point D