
Order Decision

Site visit made on 28 February 2017

by Barney Grimshaw BA DPA MRTPI(Rtd)

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

Decision date: 08 March 2017

Order Ref: FPS/M1900/7/84

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as the Hertfordshire County Council (Barkway 5, 27 and Reed 24) Modification Order 2016.
- The Order is dated 19 February 2016 and proposes to modify the Definitive Map and Statement for the area by adding a bridleway running between Bridleway 9 Reed and the junction of Byway Open to All Traffic (BOAT) 2, Barkway and BOAT 10, Reed, and by specifying the width of Barkway Bridleway 5 and making consequential changes to the Statement in respect of linking rights of way, as shown on the Order Map and described in the Order Schedule.
- There were 2 objections outstanding when Hertfordshire County Council, submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed.

Procedural Matters

1. In writing this decision I have found it convenient to refer to points marked on the Order Map. I therefore attach a copy of this map.
2. In this decision I refer to the whole route between Points A and F as the Order route even though only the section D to F is proposed to be added as a previously unrecorded right of way.
3. I made an unaccompanied site inspection on Tuesday 28 February 2017 when I was able to walk most of the Order route. In the section between Points E and F there was no discernible route on the ground through Bush Wood and it was not possible to walk this section. However, it was possible to walk along the edge of the adjacent field to the east and view the line of the route from there.

The Main Issues

4. In respect of the bridleway proposed to be added, the requirement of Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 (the 1981 Act) is that the evidence discovered by the surveying authority, when considered with all other relevant evidence available, should show that a right of way that is not shown on the definitive map and statement subsists along the Order route.
5. In respect of the other modifications proposed, the requirement of Section 53(3)(c)(iii) of the 1981 Act is that the evidence should show that there is no public right of way over land shown in the map and statement as a highway of

any description, or that other particulars contained in the map and statement require modification.

Reasons

6. The Order came to be made following an application submitted on behalf of the British Horse Society in 2013 for section D-F of the Order route to be added to the definitive map as a Restricted Byway and for section A-D to be upgraded from bridleway to Restricted Byway status. After consideration of the evidence Hertfordshire County Council, the Order Making Authority (OMA) made the current Order and the applicant objected to it on the grounds that the route should be recorded as a Restricted Byway. The other objection is made on behalf of the landowner on the grounds that there is no public right of way between Points D and F.
7. No evidence has been submitted relating to recent use of the Order route by the public and the landowner, Mr Duke, has stated that no such use of section D to F has in fact taken place without his permission in the last 40 years. Accordingly, the question of whether the Order should be confirmed depends entirely on consideration of the available documentary evidence in this case.

Documentary Evidence

Early Commercial Maps

8. Dury and Andrews Map (1766) is a schematic map rather than an accurate scale map. However, it shows two roads running between Reed and Barkway with a single north-south link between them which may be the Order route (Points D-F).
9. Bryant's Map (1822) shows the Order route between points C and F and part of the route from Point A towards Point B in the manner of 'Lanes & Bridle Ways'. It does not indicate a link between the two sections.
10. These maps would appear to confirm the existence of all or most of the Order route from an early date but do not indicate whether the public had rights over it.

Inclosure Records

11. A private act of parliament authorising the inclosure of previously uninclosed land in Barkway and Reed was passed in 1801 and the inclosure award was subsequently made in 1808. The award and accompanying map include the Order route between Points A and B as the "*public Bridleway from Barkway to Reed*". Between Points B and F the Order route passes through old inclosures and was accordingly not included in the award, however, the route between Points E and F is shown on the inclosure map coloured yellow in the same manner as other public roads. It is also referred to as "*Stump Lane*" in the description of the parish boundary between Reed and Barkway. In addition, in the award of adjacent plots, the Route between Points E and F is referred to as a "*Lane exclusive of the old inclosures*".
12. These references in the award indicate that there was at the time a public bridleway linking Reed and Barkway part of which (A-B) was awarded on the current Order route. They also suggest that the remainder of the Order route also formed part of this bridleway.

The Finance Act 1910 Records

13. 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.
14. Inland Revenue plans provided by the applicant show the whole of the Order route uncoloured and running through Plot 178. However, there are red brace marks on each side of the route which are said by the OMA to indicate that it was not considered to be taxable land and did not form part of the of the adjacent plot. The accompanying field book records a deduction from value of £100 in respect of public rights of way or user for Plot 178 although it is not possible to tell from the records which rights of way are referred to.
15. The exclusion of routes from adjoining taxable hereditaments is often indicative of them being regarded as public vehicular highways but this is not always the case and sometimes private shared routes, possibly without any known owner and possibly also carrying lesser public rights are dealt with in this way. In the Fortune case¹ it was stated that Finance Act records are not definitive but should be considered along with other evidence particular to each case. Nevertheless, in this case it is my view that the Finance Act records are consistent with the Order route having been recognised as a public route of some sort at the time of the Finance Act survey.

Ordnance Survey (OS) Maps

16. The 1st edition 1:2500 scale OS map (1877) shows the whole of the Order route annotated '186'. The accompanying reference book for Reed describes parcel number 186 as 'Road'.
17. The 2nd edition map (1898) is similar in the manner in which the Order route is depicted. Close to Point F the annotation 'C.R.' is marked indicating 'Centre of Road'.
18. The 3rd edition map (1921) also shows the Order route but between points E and F the route is marked with scrub between 2 solid lines.
19. These maps confirm the existence of the route since at least 1877 but do not provide evidence of whether public rights subsisted over it. The manner in which the route between Points E and F is depicted in the 3rd edition map suggests that it may have become disused between 1898 and 1921 but, if it had already become a public right of way this would not affect its continued status as such unless it was formally extinguished.

Definitive Map Records

20. Parish surveys of public rights of way were carried out in Barkway and Reed in 1951 as part of the process of preparation of the first definitive map. In the survey for Barkway, the Order route between Points A and C was recorded as a

¹ Fortune v Wiltshire CC [2012]

bridleway as far as the parish boundary with Reed. The parish survey for Reed did not refer to the rest of the Order route between Points C and F. However, correspondence from JE Page of the Ramblers Association in January 1951 referring to an investigation of Bridleway Reed 10 includes the comment "*runs southwards along old lane (and ground evidence again supports it by old ditches and lower level) through Bush Wood and connects with Barkway BR 7 and 6*".

21. It is possible that the survey for Reed did not refer to the Order route between points C and F as the route through Bush Wood had by then been long disused, although the correspondence with the Ramblers Association suggests that traces of it were still discernible on the ground.
22. The first definitive map subsequently recorded the Order route between Points A and D as Barkway Bridleway 5, described in the statement as running to the parish boundary opposite Bush Wood. The route between Points D and F was not shown.
23. In a review of the definitive map in 1968 no change was made in respect of the Order route.

Conclusions regarding the Documentary Evidence

24. The documentary evidence that is available indicates that the Order route probably existed from at least 1766 but that part of it may have fallen into disuse by the early 20th century.
25. The inclosure records show that the route between Points A and B was awarded as a public bridleway which formed part of a public bridleway linking Barkway and Reed. These records and other map evidence, both earlier and later also suggest that the Order route was a through route linking the two settlements and was probably the public bridleway referred to.
26. Finance Act records indicating that the Order route was excluded from surrounding land for taxation purposes suggest that it was regarded as being a public highway of some sort and possibly a public vehicular route.
27. When the available evidence is considered overall, it is my view that on the balance of probability it indicates that the whole Order route is a public bridleway extending over the land which was excluded from surrounding land under the Finance Act. The evidence does not in my view preclude the possibility that some or all of the route may have acquired higher public rights but it is not sufficient to justify a conclusion that this was the case.

Other Matters

28. The current definitive statement does not specify the width of the Order route between Points A and D. It is regarded as good practice for statements to specify the width of rights of way so as to make clear the extent of public rights and avoid possible future problems with regard to enforcement or maintenance. The OMA has accordingly proposed the addition of the width of this section in the Order. The width proposed is that shown excluded for taxation purposes on the Finance Act map which is itself based on the 1898 OS map, as is also proposed for section D-F of the route. This consistent approach is both logical and appropriate in my view.

29. The Order also proposes that consequential amendments to the definitive statement for routes which join the Order route should be made. This is also sensible and appropriate in my view.
30. On behalf of the landowner it is suggested that, if the Order is confirmed, the width of the bridleway to be added should be based on the width alleged to be used and should be no greater than 6.5m. However, it is my view that it is likely that public rights extended over the whole area excluded for taxation purposes under the 1910 Finance Act and that it is therefore appropriate for this area to be recorded as part of the current public highway as proposed by the OMA.

Conclusions

31. Having regard to these and all other matters raised, I conclude that the Order should be confirmed.

Formal Decision

32. I confirm the Order.

Barney Grimshaw

Inspector

