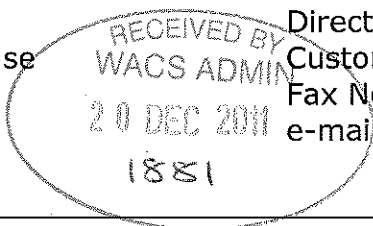




4/05 Kite Wing
Temple Quay House
2 The Square
Bristol
BS1 6PN



Direct Line: 0117 372 8889
Customer Services: 0117 372 6372
Fax No: 0117 372 6241
e-mail: john.greenslade@pins.gov.uk

James Perkins
North Yorkshire County Council
County Hall
Northallerton
North Yorkshire
DL7 8AD

Your Ref: HAR/2005/07/DMMO

Our Ref: FPS/P2745/14A/2

Date: 19 DEC 2011

Dear Sir

WILDLIFE AND COUNTRYSIDE ACT 1981 SECTION S14

North Yorkshire County Council

Council's refusal to modify the Definitive Map to upgrade Footpath 16 to a Bridleway at
Horseman's Well, Felliscliffe

I enclose herewith a copy of the Inspector's decision on this Appeal.

For your information, you will also find enclosed two leaflets entitled *Our Complaints
Procedure* and *Challenging the Decision in the High Court*.

Please note that this decision can only be challenged by applying to the Administrative Court
for a judicial review.

If you have any queries about the enclosed decision, please contact the Quality Assurance
Unit at the following address:

Quality Assurance Unit
The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol
BS1 6PN

Tel: 0117 372 8252

http://www.planning-inspectorate.gov.uk/pins/agency_info/complaints/complaints_dealing.htm

An electronic version of the decision will shortly appear on the Inspectorate's website.

Yours faithfully

John Greenslade
(Rights of Way Section)
APPdesp la



INVESTOR IN PEOPLE





Appeal Decision

by Susan Doran BA Hons MIPROW

an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs

Decision date: 19 DEC 2011

Appeal Ref: FPS/P2745/14A/2 (formerly NATROW/P2745/529A/10/54)

- 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 North Yorkshire County Council not to make an Order under Section 53(2) of that Act.
- The Application dated 1 December 2005 was refused by North Yorkshire County Council on 17 August 2010.
- The Appellant claims that the appeal routes, Footpaths 4 (part) and 16, from west of "Horseman's Well" to Swincliffe Road in the Parish of Felliscliffe, should be upgraded on the definitive map and statement for the area to bridleways.

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 an 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. The Application was made to upgrade Footpath 16 to a bridleway. However, the application route shown on the accompanying plan included part of Footpath 4, thus forming a longer continuous route. North Yorkshire County Council ("the Council") investigated the whole route, and the appeal has been accepted on the same basis. I shall therefore consider the route shown on the application plan.
4. The Council rejected the application as it considered no new evidence had been produced that had not previously been put before the surveying authority, West Riding County Council ("WRCC"), in the preparation of the Definitive Map and Statement in the 1950s. The Appellant argues there is cogent and substantial new evidence that was not considered when the Definitive Map was being drawn up, sufficient to tip the balance in favour of bridleway rights.
5. The Appeal is submitted by the South Pennine Packhorse Trails Trust on behalf of the Appellant, the Harrogate Bridleways Association.
6. My role is to determine the Appeal against the Council's refusal to make an order. Therefore, in reaching my decision I shall review the evidence considered by the Council when it reached its conclusion that the application should be refused.

Main issues

7. The application was made under Section 53(2) of the 1981 Act which requires the surveying authority to keep their Definitive Map and Statement under continuous review, and to modify them upon the occurrence of specific events cited in Section 53(3).
8. Section 53(3)(c)(ii) of the 1981 Act specifies that an Order should be made on the discovery of evidence 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"*.
9. The Appellant relies on documentary evidence. Section 32 of the Highways Act 1980 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.
10. The test to be satisfied is on the balance of probability.
11. The submissions also refer to Section 53(3)(c)(iii) of the 1981 Act, that is the discovery of evidence which (when considered with all other relevant evidence available) shows that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification. However, the application stated it was made to upgrade footpaths to bridleways, that is, to change their status. The application was not made to delete a way, which requires consideration of the relevant guidance and case law for those circumstances, or to amend the particulars, which I take to be such matters as the width and limitations of a way. It follows that the appropriate test is as set out above (paragraph 8), and this is the test I shall apply.
12. Section 53(3)(c) of the 1981 Act requires the 'discovery of evidence'¹. Thus there must be the finding of some information which was previously unknown. This can be information which may or may not have existed at the time when the Definitive Map was first drawn up. All other evidence available, including any that was considered previously, may then be considered alongside the evidence discovered. But the evidence, when taken together, must be sufficient for any modification to be justified.

Reasons

13. The 'new' evidence discovered by the Appellant comprises the 1770 pre-inclosure Survey of the Forest of Knaresborough, an 1834 edition of Greenwood's County Map, Hobson's 1844 County Map and a c1900 Touring Cycling and Driving Map by Mounsey.
14. The Council now accepts that the 1770 Survey was not considered by WRCC when the Definitive Map was being prepared².

¹ Reference is made in the submissions to *Mayhew v Secretary of State for the Environment* [1993], *Burrows v Secretary of State for the Environment, Food and Rural Affairs* [2004], *Kotarski v Secretary of State for the Environment, Food and Rural Affairs* and another [2010]

² Further to an objection in 1953 by the landowner, Sir C W Aykroyd, to the recording of the route as a Bridleway in the Draft Survey, at a subsequent Hearing on 27 September 1956 it was recommended the path be re-designated as a Footpath. Documentation relating to the determination of the objection details the evidence available to WRCC in relation to the appeal route.

15. Both the Council and Appellant agree that the 1770 Survey was prepared as part of the inclosure process. The Survey shows ancient enclosures and a network of lanes and tracks which the Appellant asserts, with few exceptions, corresponds to the modern day public road network. The appeal route is shown as part of a continuous feature, apparently part of this network, between existing ancient enclosures, and is named Long Lane. The Council does not dispute this. However, the Survey sheds no light on the status of the ways shown, but does indicate the appeal route pre-existed the enclosure process suggesting it was a through route of some antiquity.
16. An 1818 edition of Greenwood's Map was considered by WRCC at the time. The 1834 edition submitted by the Appellant is, "Corrected to the present period", although there is no suggestion of any change in relation to the appeal route. It continues to be shown as a 'cross road', the significance of this being, the Appellant argues, that the map does not purport to show footpaths, the inference being that the appeal route carries higher rights. Hobson's 1844 Map also shows the appeal route as a cross road, part of the road network. The c1900 Touring Map, it is argued, only includes those roads suitable for cycling and driving. All the maps are said to depict the modern road network quite accurately, and to reflect the highways formalised under the Inclosure process.
17. The Council maintains that whilst these small scale maps demonstrate the existence of the appeal route, they provide no clear evidence of its status. Yet the Council also comments that "these documents demonstrate that higher rights exist, but are not precise enough to determine if those rights are of bridleway status or higher", implying they show a status higher than that of a footpath.
18. It is the Council's view that neither the 1770 Survey nor the small scale maps add anything that was not already before the surveying authority in 1956. From the information available to me, I consider that the documents discovered by the Appellant were not previously taken into account. Although they may be similar to documents that were considered, they show consistency in the manner in which the appeal route was depicted. The 1770 Survey supports its existence as a pre-inclosure route, which formed part of a pre-existing network of ways (many presently public roads). The small scale maps depict it as part of a wider network of ways after the inclosure process, over a period of some 60 or more years, and infer it was probably a public way enjoying a higher status than footpath.
19. In addition to the evidence described above, the Appellant highlights errors in the information recorded in 1956 in relation to the Inclosure Award and Ordnance Survey ("OS") maps considered by WRCC, which they say may have led to a misinterpretation of the evidence.
20. The appeal route was not awarded as a public route in the 1778 Forest of Knaresborough Inclosure Award and Plan – the earlier 1770 Survey demonstrates it was a pre-existing feature. Notes of the evidence available to WRCC in its consideration of the objection to recording the route as a bridleway refer to the depiction of the appeal route on the Inclosure Plan, and that it was named "Long Lane". The notes go on to refer to Long Lane Road³, a public carriage road set out in the Award which, "is described as leading to an Allotment on Long Lane". However, the Award itself describes, "Long Lane Road beginning at Skipton Road and leading northward to an antient Lane

³ A route to the south of the appeal route

which leads to Long Lane". The term 'ancient lane' appears throughout the Award document provided, and it is to the ancient lanes that the newly set out public carriage roads connect. The Inclosure Plan shows the appeal route as an enclosed lane open to the road network at both ends. Long Lane Road and the "antient lane" are not shown to connect to Long Lane, the route shown ending at an allotment. However, the implication is that the public carriageway set out together with the ancient lane to which it connected was to link with a pre-existing route, the status of which, more likely than not, was higher than that of a footpath. The Appellant further comments that lesser rights of way which were set out in the Inclosure Award do not appear, for example, on Greenwood's Map.

21. The 1st Edition 6-inch and the 1-inch OS maps, considered in 1956, were said to show the route was annotated 'FP' or footpath, which the Appellant states is not the case.
22. The 1853 1st Edition 6-inch map it is argued shows the appeal route at least as a minor road and named 'Long Lane' alongside the route of paths 15 (part)⁴, 4 (part) and 16. The 1858 1-inch map is argued to be a small scale travelling map which shows the appeal route as a road in the same manner as other public roads. Both these maps were considered in 1956. However, neither it would seem indicated the way was annotated as stated.
23. OS maps for 1896, 1905, 1908 and 1940 were not considered at the time. The Council argues that they provide no additional evidence. However, over time the maps show the gradual removal of boundaries along one or other side of the appeal route suggesting its decline in importance and probably its use. The 1940 War Edition map shows the appeal route as a single pecked line which could represent either a bridleway or footpath.
24. Taken together, I agree with the Appellant that the OS mapping shows a consistency with the earlier small scale maps and with the inclosure and pre-inclosure evidence of the appeal route. These maps provide a reliable record of the physical features of the appeal route, though they do not provide conclusive evidence as to status.
25. Much emphasis is placed by the Appellant on a link between the appeal route and the course of the Roman road Watling Street. A 1777 Map of West Yorkshire by E Bowen shows Watling Street running east-west across Felliscliffe and this line, the Appellant argues, approximates to the route of paths 15 (part), 4 (part) and 16. Attention is drawn to the description of White Wall Lane, a public carriage road set out in the 1778 Inclosure Award which meets Long Lane at a cross roads and which is described as, "...beginning at Skipton Road near White Wall Corner and leading northward to an antient Lane where the old Causeway of Watling Street appears" implying a link with the Roman road. An 1882 History of Harrogate by W Grainge⁵ places the Roman road on a course along Long Lane. If so, this could lend support to use of the way over a long period of time subsequent to the end of the Roman occupation. However, later historians seem less certain of its route⁶, such that it may or may not be the case that Watling Street and the appeal route are one and the same.

⁴ Recorded as a public bridleway to which the appeal route connects at its south-western end

⁵ Available to the surveying authority when the status of the appeal route was in question during the Definitive Map process

⁶ Roads and Trackways of The Yorkshire Dales by G Wright

26. In addition to documentary evidence, witness statements from local inhabitants and those connected with the land were available to WRCC when it reached its decision. Such evidence was both of bridleway rights and solely of footpath rights. The Parish Council had claimed it as a bridleway as part of the rights of way survey. There was no evidence of its maintenance at public expense. Notwithstanding the recollections of the owners, occupiers or tenants in the mid 1950s regarding the use or non-use of the appeal route in the latter part of the 19th and the first half of the 20th centuries, the Appellant argues that they have no effect on a highway already dedicated. I agree this would be the case, on the basis of "once a highway, always a highway" (subject to there being no legal amendment) if the evidence supports the pre-existence of higher rights.
27. I conclude the evidence adduced by the Appellant is new, has not been considered previously and amounts to the discovery of evidence for the purposes of Section 53(3)(c). The issue is whether it is sufficient, when considered with the other evidence available, to satisfy the test (paragraph 8).
28. In considering the weight to attach to the evidence adduced by the Appellant, I find no item is in itself sufficient to demonstrate the existence of public bridleway rights over the appeal route. The 1770 Survey confirms that prior to the inclosure process it was a pre-existing route which appears to have formed an open ended through route across pre-existing enclosed land, and probably carried rights higher than those on foot. The depiction of the appeal route on the small scale maps provides supporting evidence for the physical existence of the route over a long period and which may be inferred was a way of a higher status than a public footpath. The latter was unlikely to be recorded on maps of this scale. The OS map evidence also supports the physical existence of the way and that it was not considered by those surveying it to be a footpath. It also demonstrates that the physical features of the appeal route changed in more recent times suggesting a decline in its significance to the local highway network. None of the documentary evidence is inconsistent with the existence of public rights higher than footpath status.
29. When taken as a whole, I consider there is a synergy between the documentary evidence which is sufficient to tip the balance of probability in favour of the existence of public rights higher than those on foot.

Conclusion

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

Formal Decision

31. In accordance with paragraph 4(2) of Schedule 14 to the 1981 Act, North Yorkshire 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 North Yorkshire County Council to upgrade the appeal route from footpaths to bridleways as proposed in the application dated 1 December 2005. 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.

S Doran

Inspector