



Order Decision

Hearing held on 26 July 2022

by Barney Grimshaw BA DPA MRTPI(Rtd)

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

Decision date: 19 August 2022

Order Ref: ROW/3235114M

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Public Footpath 25.114/9 Back Lane, Wrelton Modification Order 2012.
- The Order is dated 10 April 2012 and proposes to modify the Definitive Map and Statement for the area by adding a footpath running between Cropton Lane and Cliff Road, Wrelton, as shown on the Order Map and described in the Order Schedule.
- In accordance with Paragraph 8(2) of Schedule 15 to the 1981 Act I have given notice of my proposal to confirm the Order with modifications to alter the status of the route to be added to Restricted Byway.

Summary of Decision: The Order is confirmed as made.

Procedural Matters

1. I made a site inspection on Tuesday 14 September 2021 accompanied by 3 of the objectors and an officer of North Yorkshire County Council, the Order Making Authority (OMA), and was able to walk the whole of the Order route.
2. Following advertisement of the notice and deposit of the associated documents relating to the proposed modifications, one objection, two representations of support and one other representation were received within the statutory period specified.
3. I subsequently held a public hearing on 26 July 2022. At the hearing, some documentary evidence that had not been considered previously was available along with the opportunity for parties to clarify their interpretation of the evidence. I have therefore found it appropriate to consider all of the available evidence in making this decision.
4. 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.

The Main Issues

5. 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.

6. Some of the evidence in this case relates to usage of the route. In respect of this, the requirements of Section 31 of the Highways Act 1980 (the 1980 Act) are relevant. This states that where it can be shown that a way over land has been 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.
7. Common law also requires me to consider whether the use of the path and the actions of the landowners have been of such a nature that the dedication of the path by the landowners can be inferred.
8. As I previously concluded that the Order route was a possible unrecorded vehicular route, it is also necessary to have regard to the provisions of Section 67 of the Natural Environment and Rural Communities Act 2006 (the 2006 Act) which extinguished rights of way for mechanically propelled vehicles (MPVs) subject to certain exceptions.

Reasons

9. Both documentary and user evidence has been submitted in this case. I consider the different types of evidence separately.

Documentary Evidence

Early maps

10. Greenwood's map of 1817 does not show the Order route. This could be an error or may indicate that it did not exist at the time of the survey or was not considered significant enough for inclusion.
11. The earliest record of the route discovered is the Ordnance Survey (OS) 6" map surveyed between 1848 and 1850 and published in 1854. This shows the route as an enclosed track running southwards from Cropton Lane to Point D and continuing as an unenclosed track from there to the verge of Cliff Road where a pump is indicated. The route is shown open at its junction with Cropton Lane but crossed by solid lines, which might indicate gates at Points D and F. An Estate Plan of Wrelton said to date from the 1850s shows what appears to be the northern end of the Order route open to Cropton Lane as a stub.
12. An OS 1" map of 1858 shows the Order route as a through route running between Cropton Lane and Cliff Road. This map would not have included footpaths, so the route must have been considered to have been some sort of road although not necessarily public.
13. The OS 25" map published in 1892 shows the route in a similar manner to the 1854 map between Points A and D. South of D, it appears to then continue as a narrower enclosed track approximately to Point E and then narrow further as a route unenclosed on the western side and crossed by a solid line at its junction with the verge of Cliff Road. Towards the southern end the route is braced to adjacent holdings at two points.
14. The OS 1" map of 1898 shows the route in the category of '*Metalled Roads, Third Class, Fenced*'.

15. The OS 6" map of 1913 shows the route as an open enclosed track between points A and E but, south of E, the route appears possibly closed at one point, as does a map of 1952.
16. However, the OS 25" map of 1954 shows the route terminating before reaching Cliff Road.
17. From 1888, OS maps included a disclaimer stating that routes shown were not necessarily public. Subsequent instructions given to OS surveyors are somewhat confusing. They seem to have been told not to investigate the public status of routes but also not to show routes unless they were in obvious use by the public. Accordingly, the depiction of routes on OS maps cannot be taken as conclusive evidence of public rights but they can be helpful, especially when considered with other evidence.
18. It was argued by some objectors that, because the OS showed the route as a through route linking two known public highways and it was not within any known private ownership, it would most likely have been used by the public. In addition, it was argued that the nature of the route, it being generally 3m or more in width and mainly separated from adjoining fields by stone walls or fences/hedges, would suggest use could have been with horses or other livestock and with wheeled vehicles.
19. On the other hand, it was suggested that, as the route would not have provided a better or shorter link to any particular destination, there would have been no reason for it to be used other than for access to fields on either side.

The 1910 Finance Act

20. Under this Act a survey of all land was undertaken in order to assess the value of land so that a tax could be imposed on any increase in value when the land was subsequently sold. Landowners with public rights of way on their land could claim a reduction in the taxable value of the land and accordingly survey records can be helpful in identifying the existence of public rights.
21. In this case, the evidence that has been submitted is incomplete and somewhat confusing. The majority of the Order route (roughly Points A-D) appears to be separated from adjacent holdings and given the hereditament number 470. It is said that in the field book, this hereditament is grouped with other public lanes and described as '*Lane*'. Unfortunately, the copy I have seen is not sufficiently legible or complete for any further information to be gained. However, I note that hereditament 470 appears to be coloured green on the map whereas other public roads in the area are uncoloured. The southern part of the route appears to be included within adjacent holdings regarding which no information was made available to me.
22. Accordingly, it is difficult to draw conclusions from the information available. The northern part of the route may have been excluded for tax purposes, which might indicate that it was a public road or simply that it occupied land which was not regarded as beneficial to any specific owner. The southernmost section appears to have been within specific ownership, but it is not known whether any deduction for public rights over it was claimed.

Other Documentary Evidence

23. The Cropton Inclosure Award 1766 is referred to in support of the Order route being a public road. It is claimed that the route mirrors a nearby route that was awarded but I have seen no substantive evidence of this. I also note that awarded public roads were to be 12 yards (11m) wide which is considerably wider than the Order route. In addition, I have seen no evidence of the existence of the Order route before around 1850.
24. It was suggested by one party that the route could have formed part of the Mitchelson Estate which was put into settlement in 1801 and remained so until the early 20th century. However, this was disputed and I have seen no substantive evidence that the route formed part of the Estate. I have therefore not given weight to this matter.
25. A Land Registry search undertaken by a supporter of the Order as proposed to be modified is said to show that the land on either side of Order route is registered and thus owned, but the route itself is not registered. However, on the copy of the plan I have seen, this would only appear to apply to part of the route.

Conclusions regarding Documentary Evidence

26. Early maps show that the Order route has existed since before 1850. From then until the end of the 19th century it appears to have provided a through route between Cropton Lane and Cliff Road, albeit probably gated at its southern end and other points. However, by 1913, it appears to have become obstructed towards the southern end and by 1954 it seems to clearly terminate before linking with Cliff Road in the south.
27. During the second half of the 19th century the route existed on the ground as an enclosed track largely separated from adjoining land and of a width that would have permitted use by horses and probably horse drawn vehicles. Although it was said not to have been in any private ownership, this is not supported by the evidence of the OS 25" map published in 1892 or the Finance Act map, at least as far as the southern part of the route is concerned. The evidence is consistent with the route having been some sort of private access track used by several adjoining owners over which the public may or may not have acquired some rights.
28. Overall, when all the documentary evidence that is now available is viewed together, it does not provide sufficient support, on the balance of probability, to justify my previous conclusion that the Order route was a public vehicular route or, indeed, a public route of any sort.

Evidence of Use

29. No new evidence of use of the Order route was submitted following the publication of my interim decision.
30. Nevertheless, I have reviewed all the available user evidence and concluded again that the claimed use in the 20 year periods ending in either 1999 or 2007 was sufficient to raise the presumption that the Order route had been dedicated as a public footpath.

31. Some objectors claim that to their knowledge there was in fact little public use of the route, at least after 1999 and before then the route would have been unattractive, difficult to use other than for access purposes and possibly obstructed.
32. On the other hand, the evidence of those claiming to have used the route is that their use was not interrupted or obstructed and continued throughout the relevant periods.
33. As there is no known owner of the Order route, it cannot be said that the landowner has taken any action to indicate a lack of intent to dedicate it as a public right of way, nor can actions of others be regarded as having been taken on behalf of the owner.

Conclusion regarding Presumed Dedication

34. It has not been possible for the evidence of use to be tested in cross examination and there is some inconsistency between the evidence of users and that of others who claim that the route was not always available. However, the quantity of user evidence adduced still leads me to conclude that, on the balance of probability, the Order route can be presumed to have been dedicated as a public footpath in accordance with the provisions of the 1980 Act.

Other Evidence

35. It was suggested that the fact that the route is named, Back Lane, is indicative of it being a public route as most private routes tend not to be named. However, whilst it is known locally by this name, which would appear to be descriptive of its location, I have seen no evidence of any more formal naming of the route.
36. The route has not to date been recorded on the definitive map as a public right of way of any sort and has not been shown as a route available for public use on other maps and leaflets illustrating local walks.
37. On my visit I was able to see stone boundary walls along parts of the route but in other areas it was apparent that boundaries may have been altered over time and new fences and hedges put in place. The route was also partially obstructed by fencing/gates at 2 points but passable on foot by the use of stiles. There was also a significant amount of overgrowth of vegetation towards the southern end of the route.

Common Law

38. 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.
39. In this case, the evidence suggests that the public has used the Order route over a long period on foot and no owner of the route has taken action to indicate a lack of intention to dedicate it as a public footpath. It may therefore have been reasonable to infer that public footpath rights over the route have been acquired at common law. However, in the light of my conclusions regarding the documentary evidence and the evidence of users, it is not

necessary to pursue this matter further at this stage. There is also a limited amount of evidence of use of the route by the public with horses and wheeled vehicles, but this is not sufficient for it to be inferred that any higher rights have been acquired at common law.

The 2006 Act

40. As mentioned before, this act extinguished rights of way for MPVs subject to certain exceptions. However, as I no longer conclude that any public vehicular rights subsist over the route, this Act is not relevant.

Other Matters

41. As stated in my interim decision, a number of concerns were raised by objectors which related to matters outside the criteria set out in the relevant legislation and consequently to which I was not able to afford any weight in reaching my decision.
42. Some concern was also expressed regarding the possible effect of recording public rights over the route on any existing use of it for access to adjoining properties. However, the addition of the route to the definitive map as a public right of way will have no effect on any current authorised private use of it.
43. It was pointed out that the form of the Order does not comply with the relevant legislation in as much as the official seal of the County Council appears after the Schedule rather than after the Order and before the Schedule. However, it is my view that this has not caused any party to be misled or prejudiced anyone's interests. This being the case, it does not mean that the Order cannot be determined.
44. It was also suggested that the current route of Holly Close may not coincide with the route shown on older OS maps. This is possible, although it is very difficult to compare maps from different periods with any precision. In any event, in the light of my conclusions regarding the historic documentary evidence and more modern evidence of public use, this matter may be academic. I have no information regarding the date of construction of the Holly Close properties or whether this involved some variation in the route used by the public, accordingly, I have no basis upon which to suggest that the alignment of the Order route should be modified.

Conclusions

45. It is my view that, on the balance of probabilities, the evidence of public use that is available, indicates that the Order route should now be recorded as a public footpath.
46. Having regard to these and all other matters raised, I conclude that the Order should be confirmed.

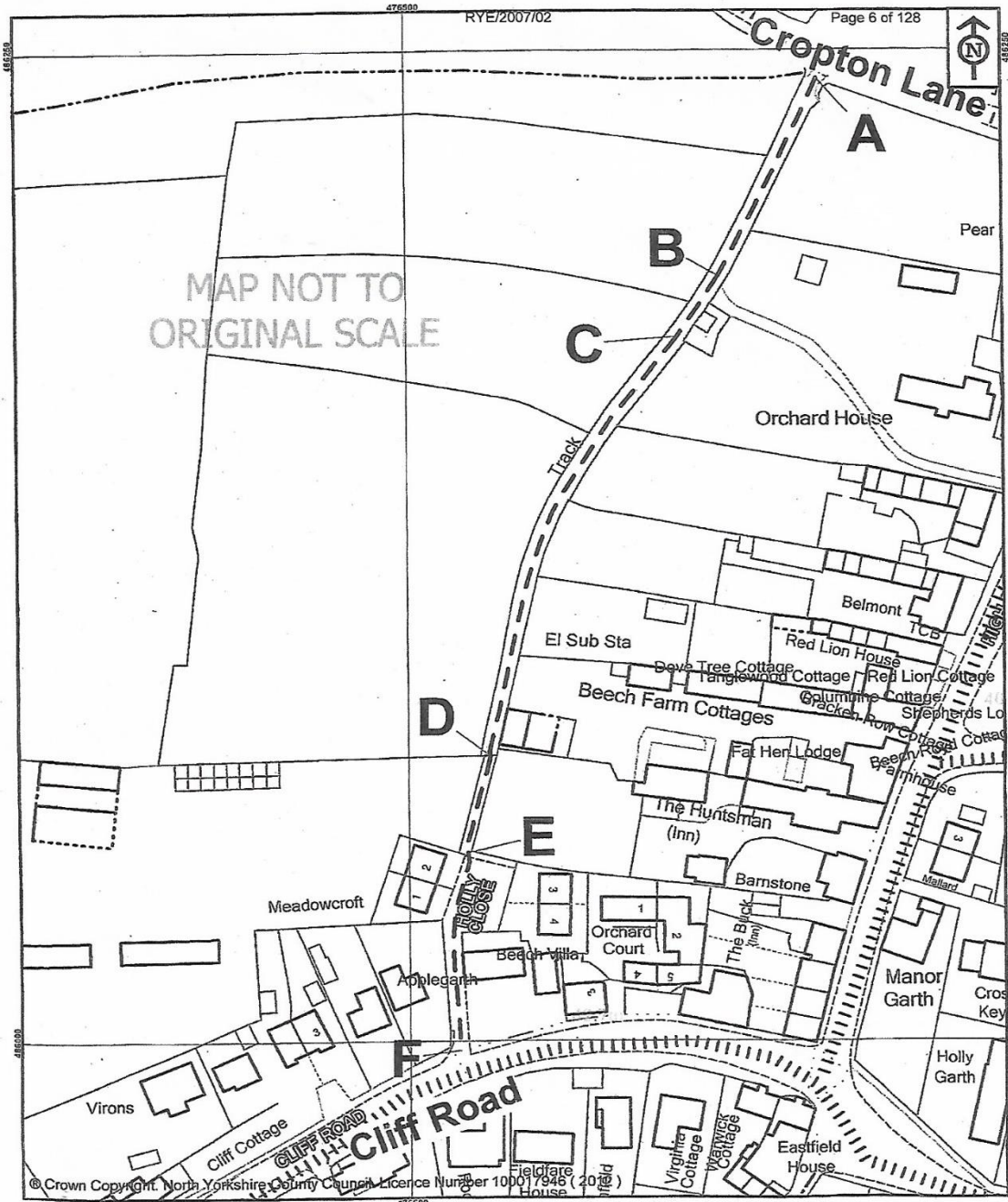
Formal Decision

47. I confirm the Order as made


Barney Grimshaw

Inspector

COPY - MAP NOT TO ORIGINAL SCALE



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 <p>North Yorkshire County Council Public Rights of Way Waste and Countryside Services</p>	<p>Key: Footpath to be recorded ———— Other footpaths ———— Other bridleways ———— Maintained Highways </p>	<p>North Yorkshire County Council Wildlife and Countryside Act 1981 Section 53 PUBLIC FOOTPATH 25.114/9 BACK LANE, WRELTON MODIFICATION ORDER 2012</p>
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