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# Appeal Decision

by Peter Millman BA

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

Decision date: 11 October 2012

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## Appeal Ref: FPS/G3300/14A/5

- This Appeal is made under Section 53(5) and Paragraph 4(1) of Schedule 14 to the Wildlife and Countryside Act 1981 against the decision of Somerset County Council not to make an order under s53(2) of that Act.
- The application, dated 4 April 2003, was refused by Somerset County Council on 23 March 2012.
- The Trails Trust claims that an order should be made to show as a bridleway on the County Council's Definitive Map and Statement a route currently shown as a footpath, leading from the public highway in the Hamlet of Upper Vobster along a green track and then an old railway path to the Newbury Cement Works. It then follows a perimeter path around the southern side of the Works before continuing to Dark Lane in the Parish of Coleford.

**Summary of Decision: The Appeal is allowed.**

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## 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 to the Wildlife and Countryside Act 1981 ("the 1981 Act").
2. I have not visited the site of the alleged bridleway but I am satisfied that I can make a decision without the need to do so.

## Main issues

3. Section 53(2)(b) of the 1981 Act gives surveying authorities (such as the County Council) the duty of making modification orders following certain events. The event in this case [Section 53(c)(ii)], would be *the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) 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*. The standard of proof is the balance of probabilities.
4. It is the appellant's case that the owners of the land crossed by the appeal route have expressly dedicated bridleway rights over it, and that the public, by using it on horseback, has accepted and thus completed the dedication. The County Council's case is that the evidence is insufficient to show that dedication and acceptance have taken place.

## **Reasons**

### ***Background***

5. The current status of the appeal route, as shown on the County Council's Definitive Map, is footpath. At the time of the application for an order in 2003 the footpath passed through the Newbury Cement Works, but shortly after the application was made the path was diverted around its southern perimeter. It is agreed by the Council that the application and appeal are to be treated as if they referred to the diverted route. In 2003/4 the Mendip Cross Trails Trust (now The Trails Trust) negotiated with the then known owners of the land crossed by the path with a view to their entering agreements with the County Council to create bridleway rights over the route. Works were carried out to bring the path up to bridleway standard. The County Council did not in the end enter into any creation agreements because of what it considered to be a problem with highway safety at the junction at Vobster Cross. Four landowners did, however, sign agreements dedicating public bridleway rights over the parts of the route owned by them.
6. The County Council considered the application for a modification order in 2011. In February an officer's report concluded that bridleway rights had been dedicated and accepted on the appeal route, and that an order should be made. A revised report by the same officer in November 2011, however, concluded that no dedication had taken place 'due to insufficient user evidence, landownership and dedication issues'.

### ***The evidence***

7. I shall consider whether the available evidence supports a conclusion that express dedication of bridleway rights has occurred, and if not, whether dedication may be inferred. I shall then consider, if I conclude that there has been dedication, whether the dedication has been accepted, and thus completed, by the public.

### ***Dedication***

8. In 2003, as now, the land over which the appeal route runs from its western end at Dark Lane in Coleford Parish as far as the parish boundary with Mells, was owned by Marnwood Properties Ltd. Mr and Mrs Morgan, whose company it is, signed a dedication form in July 2003. It states that the land shown pink on the plan attached to it is dedicated to the public to use as a bridleway. The copy of the plan actually shows the land owned by Marnwood Properties outlined in pink, but the bridleway is shown by a blue, rather than a pink line. The County Council argues that this discrepancy invalidates the dedication, but it does not seem to me that it does so, since the key to the plan describes the blue line as 'dedicated bridleway'. It is quite clear, reading the dedication and plan together, what is intended to be dedicated. There could be no scope for misunderstanding.
9. The dedication is stated to be made 'in consideration of the Council maintaining the said land as a bridleway'. The County Council argues that since it has not entered into any agreement to maintain the path the dedication is invalid. I consider that it invalidates the document as an express dedication of bridleway rights at the time, but that this does not mean that the document can have no weight at all as evidence of an intention to dedicate.

10. The County Council consulted Mr and Mrs Morgan on the application in October 2010. They confirmed to the County Council that they had no objection to the footpath being upgraded to bridleway where it crossed land in their ownership. It was a good idea, they wrote, to get horses off narrow busy roads in the country. Mrs Morgan confirmed that she had signed the dedication form in 2003 and stated that she thought it had 'gone through'. She was surprised that the status was still footpath. It seems likely that she was surprised because, following her signing the dedication agreement, works were undertaken, at least partly at the County Council's expense, to bring the route up to bridleway standard. It is difficult to see how, if on Mrs Morgan's signing the document the works were undertaken at the County Council's expense and riders started to use the route in acceptance of the dedication, it could be argued that the dedication and acceptance could be retrospectively invalidated at any time in the future at which the County Council decided it was not going to maintain the bridleway.
11. It seems to me additionally that, even if the original signed dedication were to be considered ineffective, the subsequent words of Mr and Mrs Morgan are very strong evidence of a continuing intention to dedicate public bridleway rights on their part of the appeal route regardless of whether the County Council maintained the path.
12. Two owners of land adjacent to the appeal route, Mr Ham and Mrs Eyles, who objected to it being upgraded, indicated to the County Council that they believed that they owned parts of the route which Land Registry documents, inspected by the County Council in 2011, show registered to Marnwood Properties. These adjacent owners did not provide documentary evidence of their title to this land, and I can therefore give their beliefs no weight.
13. The next section of the appeal route, running eastwards from the boundary between Coleford and Mells, was owned in 2003 by Mrs Cairns. She signed an unconditional dedication agreement in that year. The copy of the document which I have seen makes clear the line that was dedicated and what status she intended it to have. Although Mrs Cairns still owns a very short part of the path, she sold the land over which most of it runs to Mrs Stone in 2007 or 2008. In March 2008 a sign was erected on the appeal route at Mrs Stone's request. The first line of the sign reads 'MCTT Vobster Quarry Railway Public Bridleway'. Mrs Stone wrote at that time to MCTT 'it is a pleasure to see riders using this bridleway'. It seems to me that this is the clearest evidence that Mrs Stone acknowledged and accepted that bridleway rights had been dedicated across her land.
14. In May 2010 Mrs Stone sold her property to Mr Reynolds and Miss Goold. They were consulted by the County Council. They stated that they believed the appeal route to be a bridleway and that they were very much in favour of the application for a modification order to record it as such. Again, it seems to me, this is very strong evidence of an intention on their part that bridleway rights should exist over the appeal route. Even if the intention was not made expressly in written declarations by owners subsequent to Mrs Cairns, there can be little doubt about its existence.
15. The County Council argued that if acceptance of the route dedicated by Mrs Cairns could not be proved before she sold some of her land to Mrs Stone in 2007, then a fresh dedication agreement would be required. I do not accept that argument. The words and actions of Mrs Stone and then Mr Reynolds and

Miss Gould are powerful evidence of a continuing intention by successive landowners to dedicate bridleway rights to the public from 2003 until the present day.

16. Title to the final eastern section of the appeal route, where it turns north-east for a short stretch to meet the road, is not registered. The land on one side is registered to Mr How, and the land on the other side to Ms Wallace. She made an unconditional dedication of bridleway rights over her land in 2003, which she understands is still valid. Mr How made a similar dedication in February 2011. The appellant contacted Mr How in 2004 and 2005 requesting his agreement to dedicate bridleway rights over his land, but he did not respond at the time. Although the appellant states that he gave his oral agreement to dedication in 2006, there is no written confirmation of this. Mr How would, though, have been aware of any equestrian use of the appeal route from at least 2004, as he lives adjacent to it.
17. The County Council accepts that there is a legal presumption, which is rebuttable, that the landowners either side of a highway own its soil to the mid-line. The November 2011 report stated *This is insufficient to prove capacity to dedicate, as it is only a presumption which may be readily rebutted by evidence to the contrary.* It seems to me that this statement shows a lack of understanding of how such presumptions operate. They hold good in the absence of counter evidence, and here no counter evidence has been provided. I conclude that Mr How and Ms Wallace do own the soil to the mid point, and that they can, in the absence of other impediments, dedicate highway rights on part of the appeal route.
18. The County Council argues that a further impediment to their capacity to dedicate does apply. It states, *Also, one of the owners has a legal charge on their property but no evidence has been provided to show that the mortgagee has consented to the dedication.* It seems to me again that the County Council is wrong to claim that this statement shows that either Ms Wallace or Mr How does not have the capacity to dedicate. They clearly believed that they had the capacity to dedicate bridleway rights over their land. If the County Council denies that dedication by one of the two has taken place because of lack of capacity, then the Council must prove its assertion. Simply to assert that one of two properties is mortgaged, without specifying which property it is, or showing that the consent of a mortgagee is required or has not been given, is insufficient to show that Mr How lacks the capacity to dedicate, or that Ms Wallace lacks the capacity to dedicate. On the evidence before me, both Ms Wallace and Mr How have the capacity expressly to dedicate bridleway rights over their land, and both have done so.
19. The last remaining piece of land is what the County Council describes as *a small section of the route at point K... where there is no registered owner of the route or the adjoining land.* On the County Council's lettered plan of the route, the letters are not assigned to precise points. The County Council does not make it clear, by reference either to its plan of landownership or its plan of the route, exactly where this piece of disputed land is, or its extent. It has provided no evidence for changing what was stated about landownership in the February 2011 report, i.e. that *The land [i.e. the totality of the land] over which the claimed route runs is currently in four ownerships.* It seems to me, looking at the ownership plan (which did not change between February and November 2011), that there is probably no part of the route near point K which is not bounded on one or both sides by land the ownership of which is known.

I conclude, therefore, that the dedications of Mr How, Mrs Cairns or Ms Wallace would, in the absence of evidence to the contrary, probably be effective in relation to the land in this area.

20. I conclude, overall, that there has been dedication of bridleway rights over the whole of the appeal route. In some cases dedication has been express; in others there is very strong evidence from which it is to be inferred that dedication has taken place.

*Acceptance by the public*

21. The Council relies on user evidence forms and interviews with users to conclude that there is insufficient evidence of public use of the appeal route on horseback to show that any dedication to the public has been accepted. For reasons which I do not understand, it appears to have ignored the clear evidence of the owners of the land crossed by the route, adjacent owners and the relevant parish councils on this matter.
22. Mr Reynolds and Miss Goold, replying to County Council consultation in September 2010, stated that they saw several walkers, riders and cyclists on the appeal route every day. Their cottage is adjacent to it. Writing in June 2011, Miss Goold stated that the route was well-used both by walkers and riders, especially at weekends, the ratio being 10 walkers to 4 or 5 riders.
23. Ms Wallace lives adjacent to the route at its eastern end. She stated in August 2010 that the route had been used daily for walking, riding and cycling. She stated further that she had lived at her property for 24 years and for all that time the route had been used by walkers and riders.
24. Mrs Cairns wrote in 2011, on being consulted by the County Council, that the appeal route was well-used by walkers and that there was evidence of use by riders.
25. Mr Ham, an owner of land next to the appeal route who opposes upgrading to bridleway, wrote in 2011 that he had met horse riders on the one or two occasions each year when he used the appeal route. He recalled that in 2003 there had been complaints about horses churning up the surface. Mrs Eyles, another owner of land next to the route, who is also opposed to upgrading and has lived at her current address since 2004, wrote in June 2011 that she had seen horse riders and cyclists using the appeal route, although it was mostly used by walkers. She used the route for exercising her dogs, and on one occasion met 5 riders on a fairly short stretch of path.
26. Mells Parish Council replied to the County Council's consultation in October 2010 that a visual inspection confirmed that the footpath in Upper Vobster [the part of the appeal route in Mells Parish] had been used as a bridleway for some time.
27. The County Council's own report of November 2011 also notes, in describing the appeal route, that *There is evidence of use by horses*.
28. Thirteen completed user evidence forms were sent to the County Council. Officers interviewed 12 of the users. The evidence of some was, for good reasons, discounted, although it was accepted that the evidence of 6, including 2 who had only used the appeal route since 2005, was good. The County Council's conclusion on acceptance of possible dedications was that the user evidence was insufficient to demonstrate that the way had been used by the

public at large as a bridleway. The November 2011 report stated that *the lack of users is insufficient to bring to the attention of owners that the route has been used by horses...* This, in my view, is plainly wrong, and can only be accounted for by a mistaken belief that reports of use by landowners, adjacent landowners, parish councils and even its own officers cannot be taken into account. I accept that such reports do not differentiate between public and private use, but it seems extremely likely that where a route passes through land in several ownerships, a very large proportion of use will be public.

29. It seems to me that the evidence of use described in paragraphs 22 to 28 above shows without significant doubt that the appeal route has been in regular, continuous and reasonably frequent use by horse riders since 2003. This is clearly more than sufficient to show that acceptance of the dedications has occurred, even where one of the dedications was not made until February 2011.

#### *Nuisance*

30. In its report of November 2011 the County Council argued that *There is authority which suggests a landowner does not have the capacity to dedicate higher rights where they would interfere with existing rights.* I accept that if dedication led to equestrian use which interfered with pedestrian use such that a nuisance was caused, then the dedication might be invalidated.
31. Some objectors to the upgrading of the footpath to bridleway commented on the potential for conflict or interference between walkers and riders or riders and vehicles. Mr Ham, for example, wrote that he was not aware of any incidents on the claimed route involving horse/rider conflict, but had heard of several near misses. He stated that horses and traffic did not mix. Mrs Eyles wrote in 2011 that horses and walkers did not mix. Coleford Parish Council wrote in October 2010 that they were concerned about dual use of the section around the old concrete works. They claimed that it was too narrow and was 'an accident waiting to happen', but gave no details of incidents or accidents.
32. Despite these comments the County Council conceded in its report that there had been no reported accidents and that *there is no evidence at present of a conflict arising.* The County Council concluded only that the potential for conflict might call into question the landowners' capacity to dedicate. I accept that it might do so if it could be demonstrated that interference amounting to a nuisance was more likely than not to occur as a result of the dedication of public bridleway rights, but in my view the County Council has manifestly failed to show that it would do so. The appeal route appears to have been made up to bridleway standard with the co-operation of the County Council; it has been used by both horse riders and pedestrians for at least 9 years with no reports of accidents or serious conflict. I have seen no evidence that confirmation of an order to record the route as a bridleway would lead to a significant increase in its use by horses. I conclude that the relevant landowners' capacity to dedicate is not invalidated.

#### **Conclusion**

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

### **Formal Decision**

34. In accordance with paragraph 4(2) of Schedule 14 to the 1981 Act Somerset County Council is directed to make an order under section 53(2) and Schedule 15 of the 1981 Act to modify its Definitive Map and Statement by upgrading to bridleway footpath FR 4/56 in the parish of Coleford and footpath FR 10/9 in the parish of Mells. This decision is made without prejudice to any decisions that may be given by the Secretary of State in accordance with his powers under Schedule 15 of the 1981 Act.

*Peter Millman*

Inspector