
Appeal Decision

by Barney Grimshaw BA DPA MRTPI (Rtd)

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

Decision date: 14 April 2020

Appeal Ref: FPS/Y3940/14A/11

- 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 Wiltshire Council not to make an Order under section 53(2) of that Act.
- The Application dated 8 March 2017 was refused by Wiltshire Council on 14 June 2018.
- The Appellant claims that a route running from footpath Westbury 15 to Station Road, Westbury should be added to the definitive map as a footpath.

Summary of Decision: The appeal is allowed in part.

Preliminary Matters

1. I have been directed by the Secretary of State for Environment, Food and Rural Affairs to determine this 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. I attach a copy of a map showing the claimed route on which I have annotated several points (A-E) for reference purposes.

Main issues

4. Section 53(3)(c)(i) of the 1981 Act states that an order should be made on the discovery by the authority of evidence which, when considered with all other relevant evidence available, shows that a right of way which is not shown on the map and statement subsists or is reasonably alleged to subsist over land to which the map relates.
5. Some of the evidence in this case relates to usage of the claimed route. In respect of this, the requirements of Section 31 of the Highways Act 1980 (the 1980 Act) are relevant. This states that where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually 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.
6. Common law also requires me to consider whether the use of the route and the actions of the landowner have been of such a nature that the dedication of the route by the landowners as a public right of way can be inferred.

Reasons

Documentary Evidence

7. The documentary evidence that is available indicates that the southern part of the appeal route has existed since around 1915 when an engine shed was constructed, possibly as a diversion of a footpath that existed before that date and is referred to in a book on the history of the site¹.
8. The northern part of the route, known as Station Approach, appears to have existed since the time of the opening of the station in 1848.
9. A spur to the claimed route, a ramp between Station Road and Station Approach (Points B-C) has been included as a publicly maintainable highway in the council's highway records since 1974.
10. Great Western Railway (GWR) records from the time of the construction of the engine shed and from a survey in 1933 show the appeal route as a footpath linked to the public rights of way network. Plans related to proposed railway construction dated 1929 and 1930 also show the route. However, although these documents confirm the existence of a footpath at the dates they were prepared, they do not indicate whether there were any public rights over it.
11. Similarly, Ordnance Survey (OS) maps of 1924 and 1926 show the route but do not indicate its status.
12. The majority of the claimed route (A-B-D-E) has never been recorded as a public highway of any sort.

Conclusions regarding the Documentary Evidence

13. The existence of the claimed route since 1848 (A-B-D) and 1915 (D-E) is well documented but none of the available evidence indicates the existence of public rights over the route.
14. Accordingly, the determination of this appeal depends entirely on the evidence of public use of the claimed route that is available and whether this indicates that a public footpath can be presumed to have been dedicated in accordance with the provisions of the 1980 Act (statutory dedication) or inferred to have been dedicated at common law.

Statutory Dedication

15. Thirteen User Evidence Forms (UEFs) were submitted in support of the application describing use of the claimed route from 1936 until 2016 when the route was obstructed by a fence and bund.
16. On behalf of Network Rail, it is argued that a provision of the British Transport Commission Act 1949² (the 1949 Act) prevents the acquisition of rights of way over any road or footpath forming an access to a station as does the appeal route. However, it is pointed out by the appellant that the British Transport Commission was abolished in 1962 and it is argued that as a result this provision ceased to apply from that date. In my view this is not the case, the 1949 Act was amended by the Transport Act 1962 to make clear that the

¹ Westbury Ironworks, 1988 – RJ Cogswell

² Section 57

provision related to property of the successor body, the British Railways Board, or any of its successors.

17. Whilst it seems clear that part of the appeal route forms an access to the station (Points A-D), the situation with the southern part of the route (Points D-E) is less clear. It appears from the UEFs that some people sometimes used this section to gain access to the station, but people also used it as part of a through route between Footpath 15 and Station Road. It is therefore not necessarily the case that the provisions of the 1949 Act apply to this section.
18. It is also possible that public rights over the whole route could have been established before 1949 so long as public use of the path was not incompatible with the statutory purpose of the railway company. I see no reason why such use would be incompatible but evidence of public use of the route before 1949 is very limited and not sufficient to raise a presumption that the route was dedicated as a public right of way.
19. In any event, section A-D of the claimed route, Station Approach, appears to have been specifically constructed by the railway company as the access to the station. In these circumstances it is arguable that use of it by the public was by invitation or permission of the company and not 'as of right' as required under the 1980 Act.
20. Section B-C of the claimed route is regarded as part of the highway, Station Road, by the highway authority and is included in the 1974 Highway Record. As such it already carries public rights and it would not be appropriate for it to be added to the definitive map.
21. Section D-E of the claimed route runs across the station car park and the access road to sidings and then along a 'cinder track' to join Footpath 15. It would appear that the cinder track section was constructed around the time of the building of the engine shed (1915), probably by the railway company. However, it is not known whether the path was constructed specifically as a means of access to the station.
22. The UEFs indicate that at least 6 people used the route throughout the 20 year period ending in 2016 when it was obstructed and a further 4 for some of that period. Almost all of these people claimed to have used the whole route at least sometimes although a few had also used the section D-E to get to the station.
23. I have seen no evidence of action taken by the landowner before 2016 which would indicate a lack of intention to dedicate it as a public right of way.

Conclusions regarding statutory dedication

24. Part of the claimed footpath has existed since around 1848 (Station Approach, A-B-D), part since around 1915 (D-E) and part since before 1974 (B-C).
25. Section B-C is part of the adopted highway which it would not be appropriate to also record on the definitive map. Section A-B-D was constructed specifically as the access to the station and its use since 1949 could not give rise to public rights being established over it in accordance with the provisions of the 1949 Act. There is very little substantive evidence of its use before 1949 and, in any event such use was effectively by permission rather than 'as of right'.
26. With regard to the section D-E the situation is less clear. It is not known whether this was constructed to provide a second access to the station and the

user evidence indicates that a significant number of people used it for other purposes in the 20 year period before it was obstructed in 2016. In these circumstances it is not in my view clear that the provisions of the 1949 Act apply to this section and it is reasonable to allege that a public footpath subsists over this section.

Common Law

27. 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.
28. In this case, the evidence indicates that the public have used the claimed route over a lengthy period. However, parts of the route could not have acquired public rights as a result for reasons given above. As far as the remaining section is concerned (D-E) there appears to be no substantive evidence that the landowner intended to dedicate the route as a public right of way or to provide it as a secondary access to the station. In these circumstances, it would not be reasonable to infer that this section has been dedicated as a public footpath at common law.

Conclusion

29. Having regard to these and all other matters raised in the written representations I conclude that the evidence that is available shows that on the balance of probabilities it is reasonable to allege that part of the claimed route is a public footpath. The appeal should therefore be allowed in part.

Formal Decision

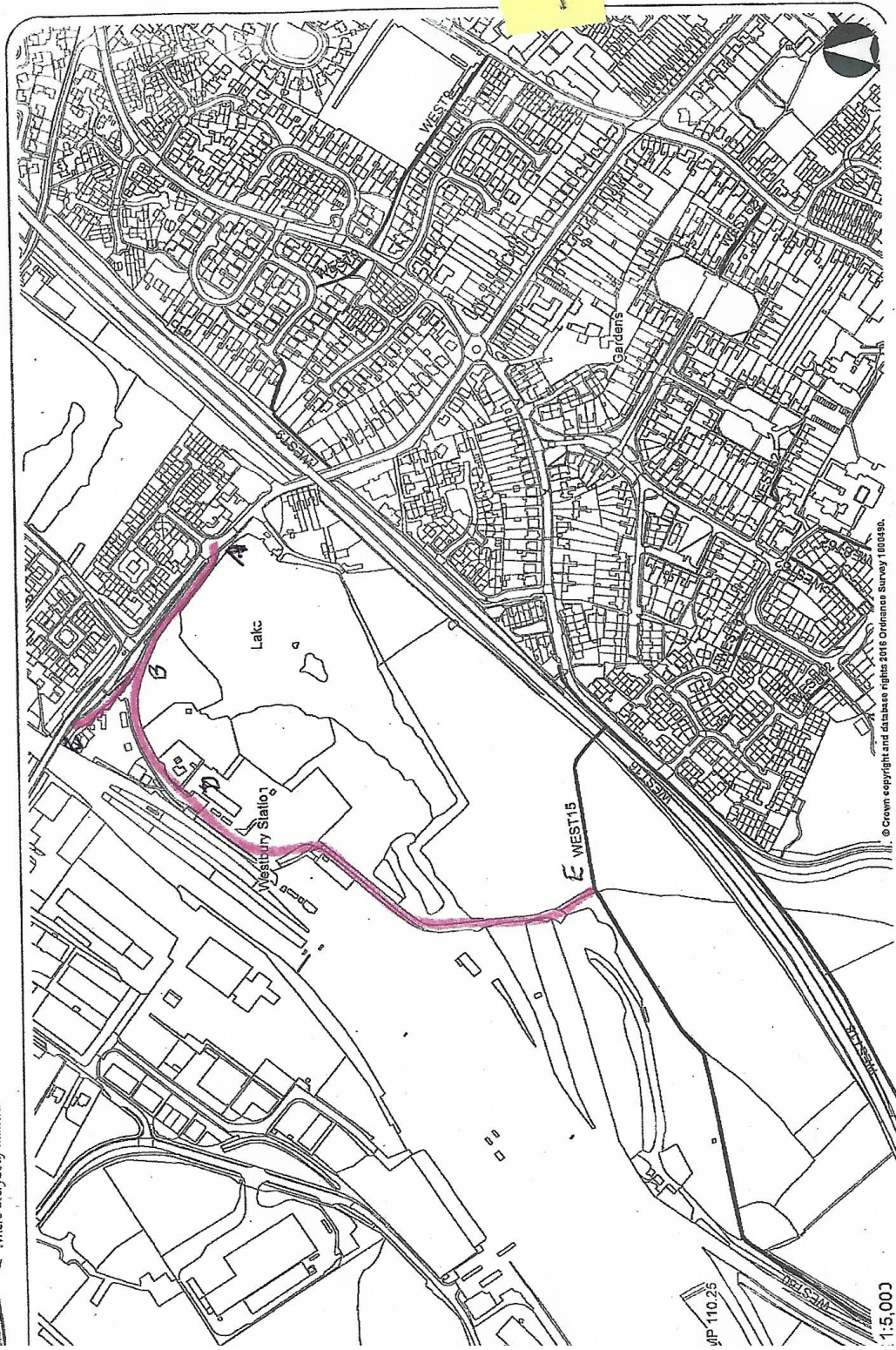
30. The appeal is allowed in part and in accordance with paragraph 4(2) of Schedule 14 to the 1981 Act Wiltshire Council is directed to make an order under section 53(2) and Schedule 15 of the Act to modify the definitive map and statement to add a public footpath, running between Points D and E on the attached map. This decision is made without prejudice to any decision that may be given by the Secretary of State in accordance with his powers under Schedule 15 of the 1981 Act.
31. Under normal circumstances the authority would be directed to make the necessary order within 3 months of this direction. However, as a result of the present situation of restrictions following the Covid-19 outbreak, exceptional circumstances have arisen and I therefore direct that the order should be made within 12 months of the date of this direction.

Barney Grimshaw

Inspector

Application to Add Public Footpath -
Westbury Station

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