



**Report to the
Secretary of State for
Environment, Food
and Rural Affairs**

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**by Barney Grimshaw BA DPA
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**an Inspector appointed by the Secretary of State
for Environment, Food and Rural Affairs**

Date: 17 April 2009

WILDLIFE AND COUNTRYSIDE ACT 1981

REPORT INTO AN APPEAL BY

MS CAROLINE JULIA BINGHAM

AGAINST THE DECISION OF

WILTSHIRE COUNTY COUNCIL

NOT TO MAKE AN ORDER UNDER SECTION 53(2)

IN RESPECT OF A CLAIMED BRIDLEWAY

FROM

THE SOUTH END OF FIGSBURY ROAD TO WINTERBOURNE BARRACKS, THE
WINTERBOURNES, WILTSHIRE

File Ref: NATROW/K3930/529A/08/38

REPORT TO THE SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS
Ref: NATROW/K3930/529A/08/38

Case Details

- This appeal is made by Ms Caroline Julia Bingham under Schedule 14 Paragraph 4(1) of the Wildlife and Countryside Act 1981 (the 1981 Act) against the decision of Wiltshire County Council (WCC) not to make a modification order under Section 53(2) of that Act.
- The application dated 7 October 2007 was refused by notice dated 21 May 2008.
- The appellant claims that the Definitive Map and Statement for the area should be modified by the addition of a bridleway running from the south end of Figsbury Road to Winterbourne Barracks, The Winterbournes, Wiltshire.

Recommendation: I recommend that the appeal be allowed and that Wiltshire Council be directed to make a Modification Order to add to the Definitive Map and Statement for the area a public bridleway running from Figsbury Road to Winterbourne Barracks, Wiltshire.

Preliminary Matters

1. I have been appointed to report to the Secretary of State for Environment, Food and Rural Affairs on the above mentioned appeal.
2. The relevant evidence in this case consists of a number of statements made by users of the claimed footpath, the owner of the land crossed by it and others. I have not visited the site, but I am satisfied that I can make a recommendation without the need to do so.
3. This report comprises a summary of the material points made in the submissions, an assessment of the evidence against the relevant criteria and my conclusions and recommendation.

Description of the Route

4. The route which is claimed commences at the south end of Figsbury Road, it then follows a metalled road through an arch under the railway line. The road then runs uphill in a north-easterly direction parallel to the railway to the perimeter fence of Winterbourne Barracks. It then turns south-eastwards to reach the perimeter track of the barracks, access to which is controlled by a lockable gate.

The Case for the Appellant

5. The claimed bridleway has been used by horse riders, cyclists and others for approximately 50 years. Nineteen people have submitted User Evidence Forms (UEFs) giving details of their use of the route and some have also described their use in letters. A total of 14 people have provided evidence of their use of the route on horseback.
6. In addition, riders from two livery yards in the area have used the claimed route for many years. Unfortunately, as horse owners rarely stay at the same yard for more than a few years it is difficult to assemble evidence covering a

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lengthy period. However, two people have provided lists of people they have known who have used the route with horses. The lists include 37 and 26 names respectively, although in many cases only riders' first names and the names of their horses are known.

7. No riders were ever obstructed before the erection of a field gate and kissing gate across the route in 2006 and none were challenged or saw notices stating that the route was not a right of way. A number of users say that they saw and/or were seen by the landowner when he was working in adjoining fields but were still not challenged.
8. Although there was a barrier across the route for many years before 2006, this had a gap alongside it which was approximately 1.5 metres (5 ft.) wide. Horses of all heights and widths had no difficulty passing this barrier.
9. The claimed route would technically be a cul de sac as it does not link with another right of way. However, it does link with a path on MOD land which is open to the public during the daytime and also some evenings and most weekends, except when military exercises are taking place. In any event, the British Horse Society has provided evidence of modification orders for other cul de sac bridleways being confirmed.

The Case for Wiltshire County Council and the Objector

10. WCC originally refused to make an order on the grounds that there was insufficient evidence available of public use of the route. However, in the light of further evidence submitted later, the council's Rights of Way Officer now accepts that it is reasonable to allege that public bridleway rights subsist over the claimed route.
11. No documentary evidence of public rights along the claimed route has been submitted or subsequently discovered.
12. Until 1982, the land crossed by the claimed route was owned by the Ministry of Defence (MOD) and therefore no public rights along it could be acquired before then under the 1980 Act (although they possibly still could have been under common law).
13. Public use of the route as a bridleway was called into question in 1986 when the current owner of the land erected a field gate and kissing gate across the whole width.
14. There is now enough direct evidence of use, supported by other evidence, to suggest that it is reasonable to allege that the route can be presumed to have been dedicated as a public bridleway between 1986 and 2006.
15. WCC considers that the actions of landowners during the same period have not been sufficient to rebut such a presumption of dedication. Although a barrier and sign are said to have been maintained across the route, the barrier had a gap alongside it and the sign was to some degree ambiguous. The current landowner states that the sign was deliberately left on the barrier to indicate that there was no intention to dedicate public rights. He also states that the barrier made it impossible for cars, motorbikes or horses to use the route and that he has not seen any using it.

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16. Although the proposed bridleway would be a cul de sac, it would terminate at a pleasant and interesting MOD track which could be regarded as a place of public resort. In any event, the fact that the route is a cul de sac does not affect the evidence of use or prevent the requirements of the 1981 Act being met.
17. Dedication of the route cannot be inferred at common law as there is no evidence of actions by landowners, either before or after 1986, to indicate that they intended to dedicate it as a public right of way.

Conclusions

Introduction

18. In considering the evidence and submissions, I take account of the relevant part of the 1981 Act.
19. Section 53(c)(i) of the 1981 Act specifies that a Definitive Map Modification Order should be made following the discovery by an authority of evidence which (when considered with all other relevant evidence available to them) shows that a right of way subsists or is reasonably alleged to subsist over land in the area to which the map relates.
20. It was made clear by the High Court in the case of *Norton & Bagshaw*¹, that this involves two tests:

Test A - Does a right of way subsist on the balance of probabilities? This requires clear evidence in favour of the appellant and no credible evidence to the contrary.

Test B - Is it reasonable to allege on the balance of probabilities that a right of way subsists? If there is a conflict of credible evidence, and no incontrovertible evidence that a way cannot reasonably be alleged to subsist, then the answer must be that it is reasonable to allege that it does.

21. In addition, if the dedication of the route as a highway is to be presumed, the user evidence must be considered against the requirements of Section 31 of the 1980 Act. Section 31(1) provides:

"Where a way over any land, other than a way of such character that use 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 to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it."

Section 31(2) adds:

22. *"The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice such as is mentioned in subsection (3) below or otherwise"*.

¹ R v SSE ex parte Mrs J Norton and Mr R Bagshaw [1994]

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The Evidence

23. No documentary evidence of the existence of public rights along the claimed route has been discovered. The question of whether such rights have come into being therefore depends upon whether dedication of the route can be presumed to have occurred in accordance with the provisions of the 1980 Act or inferred at common law.
24. Until 1982, the land crossed by the claimed route was in the ownership of the MOD. During that period public rights could not be presumed to have been acquired over it under the 1980 Act as it was Crown Land held in trust for her majesty for the purposes of a government department, to which the relevant provisions of the Act did not apply.
25. It is generally accepted that public use of the claimed route as a bridleway was brought into question in 2006 when a field gate and kissing gate were erected across it. It is also accepted that the route was partially obstructed by a barrier before 2006. The current landowner and some others have stated that there was a sign attached to this barrier reading "MOD Property Keep Out". Neither this sign nor the barrier appears to have had any effect on people who used the route as a bridleway. It may be that as the land was no longer MOD property after 1982 and there was a gap next to the barrier, the sign was not considered relevant or it may have been thought to only seek to restrict vehicular traffic. In the circumstances, I take 2006 as the date when public use of the claimed route as a bridleway was brought into question. The period of 20 years use required before dedication of the route can be presumed under the 1980 Act therefore runs from 1986 to 2006 in this case.
26. I have seen evidence of use of 11 people who used the claimed route as a bridleway during the relevant 20 year period plus that of 3 others who only used it before 1986. Only 4 people claim to have used the route as a bridleway in 1986 and 1987 but in later years usage seems to have increased. The evidence also indicates that 14 people used the claimed route on foot during the relevant 20 year period with at least 8 of these using it in any particular year. Several people claimed to have used the route both on foot and on horseback.
27. The frequency of use claimed varied but many people stated that they used it weekly or more often. All those providing evidence stated that they had never been obstructed or challenged during the relevant 20 year period and had not seen any signs restricting their use. Most users stated that they also saw other people using the route, both riders and walkers (and in some cases cyclists and vehicles). Several people referred to there having been a barrier across the route but, as there was a gap alongside it, they were not obstructed by it.
28. There is also additional evidence of repute to the effect that the claimed route was regarded as a public bridleway. In particular, two people provided lists of other riders who used it and one long term resident of the area who lives close to the route has stated that it has been well used over a lengthy period by both horse riders and walkers.
29. On balance, it is my view that the available user evidence is enough to raise the presumption that the claimed route has been dedicated as a public footpath

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and as a public bridleway, if weight is given to the additional evidence of repute as well as to the actual evidence of use. However, this presumption can only be made subject to the proviso that there is not sufficient evidence that during the relevant 20 year period the landowner had no intention to dedicate it as a public right of way.

30. In this case there is little evidence of actions taken by the owners of the land crossed by the claimed route between 1986 and 2006 to indicate such a lack of intent. The current owner has stated that when his father purchased the land from the MOD in 1986 there was already a locked barrier in place near the railway bridge on which was attached a notice reading "MOD Property Keep Out" and that this barrier and sign remained in place until May 2006 when a new field gate and kissing gate were erected. There was a gap adjacent to the barrier to allow pedestrians to pass but he believed that this prevented horses from using the route.
31. However, the user evidence suggests that horse riders were not obstructed or deterred from using the route. The sign described did not specifically state that no public access was allowed and, in any event, after 1982 the land had ceased to be MOD property and the sign may well have seemed irrelevant. On balance I do not think that the fact that the subsequent owners left the sign in place can be regarded as sufficient evidence of their lack of intention to dedicate a public right of way to engage the proviso in Section 31 of the 1980 Act. It is therefore my view that it is reasonable to allege that the claimed route was dedicated as a public bridleway as a result of public use between 1986 and 2006.
32. 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.
33. In view of my previous conclusions regarding the user evidence presented in this case it may not be necessary to consider further the possibility that it might also be inferred that the claimed route was dedicated for public use at some time at common law. However, in this case there is relatively little evidence of public use before 1986 and no evidence of actions by landowners that would indicate their intention to dedicate public rights over the claimed route. It is therefore my view that it cannot be inferred at common law that any public rights have been dedicated over the route.
34. The claimed route is a cul de sac terminating at the perimeter track around Winterbourne Barracks at a point where there is a lockable gate bearing a sign which includes the wording:

"Perimeter track normal opening times for pedestrians

0700 -2100 during BST

0800 - 1700 at all other times

Liable to closure without warning

CLOSED TO THE PUBLIC"

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Although this track has been described as pleasant and interesting, I think its nature as part of a military establishment means it cannot necessarily be regarded as a place of public resort in the usually accepted sense. However, it is my view that the fact that the claimed route terminates neither at another public highway nor a place of public resort does not necessarily mean it is a route that could not give rise at common law to a presumption of dedication arising. Therefore, given that the other requirements of Section 31 of the 1980 Act are satisfied, public rights could still have been acquired along the claimed route.

Other Matters

35. It was stated in support of the appeal that there is a great need for a bridleway along the claimed route as there are many horses and riders in the area, the route provides a useful link to other bridleways and would mean that riders could avoid riding along the busy A338 road. These concerns are understandable but, as they lie outside the criteria set out in the 1981 Act, I have given them no weight in reaching my conclusions.
36. The current landowner submitted a statutory deposit under Section 31(6) of the 1980 Act in September 2007. This supports his claim that it is not intended to dedicate public rights over the claimed route but, as it was submitted after the end of the relevant 20 year period, it does not affect my conclusions.

Overall Conclusion

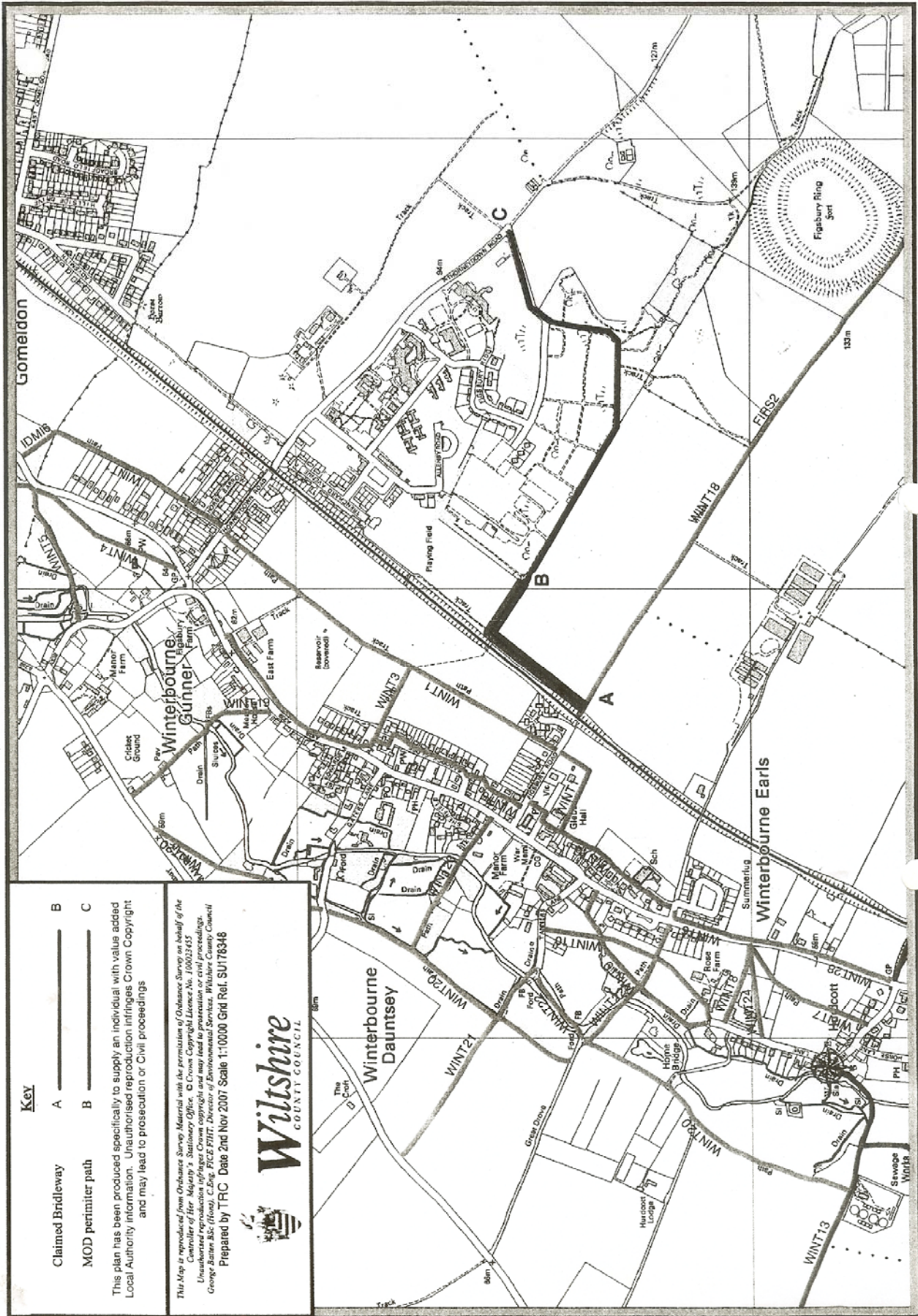
37. Overall, it is my view that the evidence that has been submitted in this appeal is sufficient to show that it is reasonable to allege that a public bridleway subsists over the claimed route. Therefore, on this basis, an Order should be made.

Recommendation

38. I recommend that the appeal be allowed and that Wiltshire Council be directed to make a Modification Order to add to the Definitive Map and Statement for the area a public bridleway running from Figsbury Road to Winterbourne Barracks, The Winterbournes, Wiltshire.

Barney Grimshaw

INSPECTOR



Key

Claimed Bridleway A ———— B
 MOD perimeter path B ———— C

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Wiltshire
 COUNTY COUNCIL