The Planning Inspectorate

Appeal Decision

by Peter Millman BA

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

Decision date: 13 AUG 2012

Appeal Ref: FPS/R0335/14A/1

- 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 Bracknell Forest Council not to make an Order under s53(2) of that Act.
- The Application, dated 25 November 2010, was refused by Bracknell Forest Council on 20 March 2012.
- Mr D Ramm claims that an Order should be made to define the width of part of Footpath Crowthorne 8/Sandhurst 21 as varying between 7.3 and 8.8 metres.

Summary of Decision: The Appeal is refused.

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 path 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 Bracknell Forest Council) the duty of making modification orders following certain events. The event in this case would be (Section 53(c)(iii)), *the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows...* [that] *any other particulars contained in the map and statement require modification.* The 'other particulars' can include matters such as a description of the width of a path. The Definitive Statement for the Appeal route does not currently define its width.

Reasons

Background

4. The application from Mr Ramm asked for the Definitive Statement to be modified to read as follows: *A tree-lined public footpath between grid reference SU 85116322 and SU 85376317 with overall widths throughout varying between 7.3 metres and 8.8 metres as shown between A-B on the Order plan inclusive of the avenue of trees (being a lawful limitation on the basis that the way was dedicated subject to their existence).* Mr Ramm was prompted to make the application when a fence was erected in 2007, apparently within the

boundaries of the road along which the footpath runs. Old Ordnance Survey ("OS") plans showed a route with solid lines representing boundaries 7 to 8 metres apart, within which were a pair of pecked lines probably representing a track 2 metres or so wide. The question is whether public rights extend across the whole of the width between the solid lines shown on old plans, or only across a lesser width, such as the track shown by the pecked line within the wider boundaries.

Assessment of the evidence

5. The mapping evidence presented dates from 1871 onwards. The OS 1:2500 plan of that year shows that no path was recorded in the position of the current footpath. Had the path existed then, it would have run along the southern edge of two arable fields, crossed what the book of reference to the plan called a 'road', and then continued along another 'road' for about 100 metres, shown on the plan by a pair of solid parallel lines. Neither the plan nor the book of reference indicates whether any roads or paths shown were public.

6. Some time after 1871, but before the next 1:2500 plan of 1899, a fence was erected parallel to, and about 7 or 8 metres to the north of, the fence which had previously defined the southern edges of the two arable fields, apparently forming some sort of roadway, which continued into the second of the roads mentioned in the previous paragraph, the first one having by that date disappeared. Between the solid lines which defined this roadway the 1899 plan shows a pair of pecked lines. This suggests that within the wider boundaries there would have been some sort of track. A similar situation is shown on the 1:2500 plan of 1910, with the addition of symbols representing individual trees outside the track but within the wider boundary features. Normally, this combination of symbols would represent a 2 metre wide surfaced track within verges, on which there were a number of trees at intervals, all within wider boundaries about 7 or 8 metres apart.

7. None of this evidence from OS plans indicates or suggests the existence of any public rights before the fences were erected, or with reference to which they might have been erected.

8. There is no evidence of the existence of public rights on the Appeal route until it was included in a survey of public rights of way carried out under the 1949 National Parks and Access to the Countryside Act. The survey, dated May 1951, first describes the width of what it calls a 'footpath', leading from Owlsmoor Road. The relevant section reads 'Very variable. Leading off the Owlsmoor Rd, 8' [2.44 metres] wide and suitable for vehicles'. This description is consistent with what the earlier OS plans depict. The survey does not give a reason for ascribing public status to the route or for stating that it was suitable for vehicles.

9. The appellant invokes the 'hedge to hedge' presumption to argue that public rights must extend over the whole of the area between the wider boundaries and not just an 8 foot wide track within them.

10. It is my understanding that the first question to be asked when deciding the question of the extent of highway rights is whether the boundaries were erected in order to separate land enjoyed by the landowner from land over which the public exercised rights of way. In other words, does the evidence show that the landowner intended to fence against a highway? If that question is answered in the affirmative, then there is a presumption, which prevails

unless rebutted by evidence to the contrary, that the land between the boundary and the made-up or metalled surface of the highway has been dedicated to public use as a highway and accepted by the public as such. It is unnecessary to prove an intention to dedicate, or to prove acceptance by actual user. Both dedication and acceptance will be inferred.

11. In this case there is no evidence of the existence of public rights between the parallel boundary features on the line of part of the Appeal route in 1871, no evidence of their existence between the boundary features which surrounded the future line of the path in 1889, and in fact no evidence of the existence of public rights until 1951. There is no evidence which shows that the landowner intended to fence against any highway, and so the hedge to hedge presumption cannot arise here.

12. Although the surveyor in 1951 noted that the Appeal route was 8 feet wide, the resulting Definitive Statement for the path did not record a width. Because until 2007 it would have been possible for the public to have used a greater width than 8 feet (apart from where trees blocked the way) it is possible that use of a greater width could have resulted in the implied dedication by the landowner of a width greater than 8 feet. The appellant has produced some evidence, in completed user evidence forms, that use of a greater width has occurred. This evidence is, however, far from sufficient to persuade me that the public has used the whole width between the previously existing fences for such a time and in such a manner that it may be inferred that dedication of a greater width has occurred.

Other matters

13. Bracknell Forest Council has intimated that it intends to make an order to modify the Definitive Statement for the Appeal route to record it as having a minimum width of 2.44 metres (8 feet). I note that the 1951 survey recorded a width of 8 feet, not a minimum width of 8 feet. I note also that if a minimum width is specified in a definitive statement it leaves open the question of what the actual width is at any point, or what the maximum width is. It is often preferable, in the interests of avoiding uncertainty, to record a particular width.

Conclusion

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

Formal Decision

15. I refuse the appeal

Peter Millman

Inspector