

Planning Inspectorate Reference: ROW/3213248

The Cornwall Council (Upgrade of Footpath to Restricted Byway together with the Addition of Restricted Byways at Zelah in the Parish of St Allen) Modification Order 2017

Proof of Evidence

Date of Inquiry – 31 July 2019

1. My name is _____ and I am employed as a Senior Countryside Access Records Officer in the Environment Service at Cornwall Council. My duties include dealing with applications for Modification Orders under Section 53 of the Wildlife and Countryside Act 1981.

2. An application to modify the definitive map and statement was submitted in 2013 supported by 27 user evidence forms. Cornwall Council has investigated this evidence together with evidence it has discovered in the historical record.

3. Cornwall Council subsequently made an Order under section 53(2) of the Wildlife and Countryside Act 1981 on 28 March 2017. Notice of the making of the Order was served on 30 March 2017.

4. During the statutory period for objections and representations to the Order, the Council received objections from _____ and _____. There was also a representation to the order from _____ who is Clerk to St Allen Parish Council.

5. Cornwall Council has placed particular weight on evidence found in the records of the Finance Act 1910, the definitive map record, particularly those of Perranzabuloe Parish Council, supported by the tithe survey.

6. Finance Act records point to the fact that the claimed route was considered to be a public highway, because it was excluded from the surrounding hereditaments on the valuation map.

7. By recording section A-B on the Order map as a 'Cart Road used as a Footpath' (CRF) on their survey, Perranzabuloe Parish Council did not intend to record a cul-de-sac path, but considered St Allen Parish Council would include the remaining part of the Order route in the adjoining parish on the definitive map. This was made apparent in the schedule that accompanied the parish survey which indicated the path extended as far as the 'Zelah Trunk Road' which is what they identified the ultimate destination of the path to be.

8. On the tithe survey the claimed route between A-C and D-E followed a clearly defined lane bounded by adjacent fields on both sides depicted no

differently from other highways to which it links at this location that are now designated as carriageways on the list of streets except in respect of it being ascribed an apportionment number which describes the ways as 'Roads and Waste' in the apportionment records.

9. Together these give rise to the presumption that the claimed routes were dedicated as public carriageways at an unknown date in the past. No evidence has been discovered which indicates that public rights along the ways have subsequently been stopped up.
10. Cornwall Council has also evaluated evidence of recent use contained in 27 user evidence forms submitted in support of the application.
11. While 5 witnesses claimed to have used the way only on horseback of the remaining 22 witnesses the evidence indicates that use of the way on foot occurred between 1936 and 2013. The path has been used for varying lengths of time with 11 witnesses claiming to have used it in excess of 20 years.
12. An additional 4 witnesses have submitted user evidence forms to the Council since the Order was made. Although not considered as part of the Council's decision to make the Order, this evidence is considered relevant in that it shows pedestrian use has continued up until the present in 2019.
13. Frequency of use among witnesses varies, but of the original 22 witnesses, 3 (12, 13 & 18) claim to have used it on an approximately weekly basis, while another 3 witnesses (19, 20 & 22) claim to have used it more frequently than that, up to twice a week, or more often. A further 4 witnesses (1, 5, 10 & 23) have used it at least fortnightly. In conjunction with the evidence of the numbers of witnesses and length of time they had used it for, use on foot has been demonstrated to be substantial and continuous.
14. No users reported in their evidence that they had used the claimed footpath by permission of a landowner or occupier. Similarly, none of the users indicated they were exercising any right other than a public right when using the way. Nor did any user identify that they used force in order to use the claimed footpath, or that they exercised their use of the way in secret.
15. For the purposes of Section 31 of the Highways Act 1980, it is considered that public use on foot was brought into question by an earth bank obstructing the claimed way in 2013.
16. The Council considers insufficient evidence has been provided to show that landowners did not intend to dedicate a public footpath during the period over which use has been reported between 1936 and 2013.
17. Only one objector presented a Statement of Case by the time I was required to submit a Proof of Evidence. I can therefore only address the points of dispute in this statement.

18. In my judgement issues relating to private rights of way, or access a landowner might enjoy, are not relevant to whether public rights exist. Matters involving agricultural practices, how the land is farmed, or the condition of the path, are also not relevant to the question of whether public rights exist.
19. While _____ claim most of the users had permission to enter their land for agricultural or compassionate reasons, evidence contained in witness statements does not in my opinion support this contention. When asked specific questions on the user evidence form about whether they were working for any owner or occupier, or had ever obtained or been granted permission to use the route, all the witnesses indicated 'no', so if use was by permissive arrangement, the witnesses do not appear to have been aware of this.
20. Furthermore, when asked why they used of the way the majority of witnesses reported that it was for recreational purposes, or pleasure, mostly dog walking, which in my opinion does not support _____ claims that many of their neighbours were there by invitation for farming reasons.
21. While some witnesses were told repeatedly by the landowners that the claimed route was not a right of way and they were trespassing according to _____, I have seen no witnesses indicating that this occurred on their user evidence form. The statement that _____ had never witnessed any general use by any means during their stewardship and consequently hadn't felt the need to erect signs also appears to contradict this.
22. In my judgement evidence contained in public path user forms from 22 witnesses showing use of the route on foot between B-C and D-E on the Order map during the period 1936-2013 is, in the absence of evidence that the landowner took action to prevent a right of way being dedicated, sufficient to demonstrate that on the balance of probabilities a public footpath should be added to the definitive map.
23. Furthermore, I consider that the available documentary evidence alone indicates that, on the balance of probabilities public carriageway rights exist over A- C and D-E on the Order map. These have been established by inference of dedication at common law taking into account that Section 32 of the Highways Act 1980 permits a court or tribunal to take maps, plans and other documents into account before determining whether a way has been dedicated as a highway, but this is also supported by the fact people are continuing to use the path. I further consider that the Order to modify the definitive map and statement by upgrading a section of footpath to restricted byway and adding two sections of restricted byway to the definitive map and statement should be confirmed by the Secretary of State on the basis of this evidence.
24. Since the decision to make the Order was taken, no evidence has been submitted which has caused me to alter my opinion vis-à-vis the confirmation of the Order. Therefore I request that the Order be confirmed.