ROW/3186868
Beeks Mill

Objectors statement of case.

The law states;

31 Dedication of way as highway presumed after public use for 20 years.

(1) 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 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.

This Statement of cases challenges the Inspectors interim decision on two grounds;

Firstly, in his interim Decision the Inspector placed weight upon the claims of a few users but did not address the issue raised during our closing, where we stated;

In R (Lewis) v Redcar and Cleveland Borough Council UKSC 11 (03 March 2010) Lord Walker said that if the public is to acquire a right by prescription, they must bring home to the landowner that a right is being asserted against him. Lord Walker accepts the view of Lord Hoffman in Sunningwell that the English theory of prescription is concerned with how the matter would have appeared to the owner of the land or, if there was an absentee owner, to a reasonable owner who was on the spot. In R (Powell and Irani) v SSEFRA [2014] EWHC 4009 (Admin) Dove J confirmed that the judgements in Lewis were not authority for an additional test beyond the tripartite 'as of right' test. The judgements in Lewis confirm that the extent and quality of use should be sufficient to alert an observant owner to the fact that a public right is being asserted. The presumption of dedication arises from acquiescence in the use. Again in Redcar, in the Court of Appeal Dyson LJ refers to Hollins and Verney and the words of Lindley LJ.

"… no actual user can be sufficient to satisfy the statute, unless during the whole of the statutory term … the user is enough at any rate to carry to the mind of a reasonable person…the fact that a continuous right to enjoyment is being asserted, and ought to be resisted if such a right is not recognised, and if resistance is intended."

The Inspector, whilst accepted that attending motorists recollection of their use was misremembered placed undue weight on written witnesses statements who claimed horse and cycle use.

If the witnesses, whose written statements and User Evidence Forms he relied upon, had attended the Inquiry we would have been able to effectively dismiss their claims as well.

In his decision however the Inspector did not undertake a comparative exercise to establish whether the numbers of claimed users would have been identifiable to a reasonable land owner on the scene. i.e. Was the limited "as of right" claimed (but seriously doubted) user sufficient to alert the land owner of a right being asserted?

The acknowledged "of right" permissive and private user far outstrips the minimal (and acknowledged by the Inspector in various cases to be false) user claims.

It is however the case that in later years when Mr McIntyre started his "Doggy Doos" business nearby that the owners of Beeks Mill did indeed become aware of residents of Marshfield starting to attempt to use the Order Route. Not only was the usage challenged but Mr Thornhill, as manager of Beeks Mill, went to the home of Ms McIntyre and demanded that she stop her clients using the route.

We say that the claimed user, prior to Doggy Doos, was insufficient to succeed in proving the case for a Section 31 creation.

Secondly, and notwithstanding the above, new witnesses have now come forward who can personally testify that the then owners of the land did make clear that use, limited as it was, was permissive and that this was made clear to all lawful users that they were aware of.

The previous owner of Beeks Mill, the late Reverend Lane was aware of the risk of non-permissive users of the way claiming a creation of a public right if he failed to make it clear to them that the way was private and not a public right of way.

In response to that threat the Reverend Lane did undertake action to prevent a presumption of dedication. Each year, at New Year, when the family were in residence he would ensure that the top gate was locked for a full day.

Witnesses will say that not only were they aware of the Reverend Lanes locking of the gate but he also expressly told them why he undertook such a course of action.

Furthermore, when the running of the property was passed to the Reverend Lanes' children they oversaw and took over this task, continuing the annual locking of the gate right up to the selling of the property in 2009.

The witness will say that after he took over the locking of the gate for its annual closure and then after the installing of the new side gate, that he locked both gates together to prevent all usage on that one day a year.

Additionally, he will say that at other times for private and public functions at Beeks Mill the owners would also block the route in totality to prevent unwanted incursion in to their events.

Other witnesses will confirm this locking of the gate and its impact. They will say that this impact, and the expectation that the gate might be locked, caused them to choose to use a different route to get to Marshfield or Beeks Farm.

Our case, in this part, now rests upon the facts that no period of 20 years uninterrupted use has been found and in any case that the owners took sufficient steps throughout their ownership to prove there was no intention to dedicate.

In view of the above reassessment of the already given evidence and in light of the new evidence it is clear that the Order cannot be confirmed.

Andy Dunlop

Hall Barn
Little Field Lane
Levisham
YO18 7NL