

Penderfyniad ar y Gorchymyn

Ymchwiliad a gynhaliwyd ar 4, 5 & 6/8/2015
Ymweliad â safle a wnaed ar 5/8/2015

gan Martin Elliott BSc FIPROW

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 13/10/15

Order Decision

Inquiry held on 4, 5 & 6/8/2015
Site visit made on 5/8/2015

by Martin Elliott BSc FIPROW

an Inspector appointed by the Welsh Ministers

Date: 13/10/15

Order Ref: A6835/W/2015/516056

The Welsh Ministers have transferred the authority to decide this Order to me as the appointed Inspector.

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Flintshire County Council (Public Bridleway from Watery Lane in the Community of Hope to Stringer's Lane in the Community of Higher Kinnerton) Definitive Map Modification Order 2013.
- Flintshire County Council submitted the Order for confirmation to the Welsh Ministers.
- The Order is dated 24 September 2013 and there were eight objections outstanding at the commencement of the local inquiry.
- The Order proposes to modify the Definitive Map and Statement for the area by adding a public bridleway as shown in the Order plan and described in the Order Schedule.

Summary of Decision: The Order is confirmed subject to modifications.

Procedural Matters

1. I opened a public local inquiry on 4 August 2015 at the Broughton and Bretton Community Centre. The inquiry sat on three consecutive days. I carried out an unaccompanied site inspection of the Order route on the afternoon of 3 August. I did not inspect the section which falls within the boundary of Talwrn Lodge Farm. However, I carried out an accompanied site visit of this section of the Order route and the section through Hafod Farm on the afternoon of 5 August. I did not carry out an accompanied inspection of the remainder of the route as there were no issues which required me revisit this part of the Order route. Following the close of the inquiry, I carried out a further unaccompanied inspection of the Order route in the vicinity of Hafod Farm. This was limited to attempting to identify the previous location of a notice erected at Hafod Farm.
2. The Order arises from an application made by Dr Armstrong-Braun under section 53(5) of the 1981 Act on 13 December 2007. On consideration of the application the Council made an Order on 24 September 2013 to add the route to the definitive map and statement. The Council adopted a neutral stance at the inquiry in accordance with its policies and the case in support of the Order was made by Mr L Wilcox on behalf of the applicant.
3. The Order states that the relevant date of the Order shall be the date on which the Order is made but does not provide a date. In my view, for completeness, the Order

should include an actual relevant date. The Council were agreeable in the event of confirmation that the Order be modified to record a relevant date of 24 September 2013. The Order, if confirmed, will be modified accordingly.

4. In addition I note that Part II of the Schedule to the Order, in respect of the modification of the definitive map and statement for Hope, identifies the maximum width of the path as 8.5 metres. However, the Order map identifies the maximum width of this part of the Order route as being 8.9 metres. There is therefore an anomaly between Part II of the Schedule and the map as to the width. However, Part I of the Schedule to the Order does indicate that the maximum width of the Order route is 9 metres. The Council agreed that the width in the Schedule should read 8.9 metres. Whilst the reference to a width of 8.5 metres is in error, the intentions of the Order are clear in respect of the width of the Order route and there is nothing to suggest that anyone will have been misled or prejudiced. Again, the Order, if confirmed, will be modified accordingly.

The Main Issues

5. The Order has been made under section 53(2)(b) of the Wildlife and Countryside Act 1981 in consequence of an event specified in section 53(3)(c)(i) of the 1981 Act. The main issue is whether the discovery by the authority of evidence, when considered with all other relevant evidence, is sufficient to show that a right of way which is not shown in the map and statement subsists over land in the area to which the map relates.
6. The test to be applied to the evidence is on the balance of probabilities.
7. Section 31 of the Highways Act 1980 (the 1980 Act) provides that where a way, other than a way of such a character that use of it 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 period of twenty years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that the landowner demonstrated a lack of any intention during this period to dedicate the route. The 20 year period applies retrospectively from the date on which the right of the public to use the way was brought into question.
8. Should the test for statutory dedication fail under section 31 of the 1980 Act then it may be appropriate to consider the dedication of the way at common law. Dedication at common law requires consideration of three issues: whether any current or previous owners of the land in question had the capacity to dedicate a highway, whether there was express or implied dedication by the landowners and whether there is acceptance of the highway by the public. There is no evidence of any express dedication. Evidence of the use of a path by the public as of right may support an inference of dedication and may also show acceptance by the public. For a dedication at common law the burden of proof rests on those claiming the public right of way.
9. The applicant relies on documentary evidence to demonstrate the existence of public rights. In the alternative it is argued that a statutory dedication under section 31 of the 1980 Act is made out in consequence of use for a twenty year period up to 1982. The applicant contended that there was a further twenty year period of use up to 2007 when the right to use the way was again called into question. The evidence was also sufficient in respect of user up to 2007 to justify the confirmation of the Order.

10. I shall firstly consider the documentary evidence and then, in the event that I do not find that the evidence is sufficient to show that public rights subsist, the statutory dedication of the route under section 31 of the 1980 Act.

Reasons

11. Both the applicant and the Ramblers Cymru (RC) rely on the Discovering Lost Ways (DLW) Research Standards 3.3 (1910 Finance Act records) and 3.11 (highway handover records). These standards published in 2006 and 2007 respectively were produced to provide a basis for quality assurance of case files produced by the DLW programme, for the accreditation of lost ways claims made by Natural England, and to define the standard for research carried out in respect of the project. The research standards were therefore prepared for a specific purpose. They reflect the view of the author at the time of publication and the weight to be given to these documents should be seen in this context and in the light of more recent case law as identified below. The research standards do not constitute guidance to Inspectors.
12. The point is made in opposition that the research standards do not relate to Wales. In this respect, whilst the standards were produced for the purposes of the DLW project in England, noting my comments above, I do not consider that the views expressed in respect of the 1910 Finance Act and the handover maps would necessarily be different in Wales.
13. In opposition to the Order reference is made to the Planning Inspectorate's Definitive Map Orders: Consistency Guidelines. The Guidelines are compiled to assist in the interpretation and weighing of evidence in relation to definitive map orders. The Guidelines are neither definitive nor exhaustive and do not set any precedent. In reaching my decision I am nevertheless mindful of the Guidelines.

Documentary Evidence

14. RC notes that the Clwyd-Powys Archaeological Trust has an entry describing 'Talwryn Lodge Farm track' as a mediaeval trackway. Whilst this may be the view of the Trust I heard no evidence as to the Order route dating from mediaeval times or that the route was public at this time.

Inclosure Award 1797/1798

15. The Inclosure award identifies the western end of the Order route as a private road for the use of the adjacent owners and occupiers on foot, horseback and carriage and for the driving and leading of animals. The route does not continue to Stringers Lane
16. The award provides no evidence as to the public status of the Order route although as noted by RC this does not preclude the route from acquiring public status at a later date.

Tithe apportionment 1842

17. The tithe map shows the western end of the Order route as being excluded from the adjacent allotments. Whilst the exclusion may, as suggested by RC, be consistent with the route having a public status, the depiction is entirely consistent with the route being a private road for the adjacent owners and occupiers. The apportionment provides no information as to the status of the route.

Route origins

18. RC state that it has not been possible to determine exactly when the eastern end of the route was constructed. However, documents submitted by RC suggest that the through route connecting Watery Lane to Stringers Lane was physically in existence by 1870. It cannot necessarily be concluded that the route may have been in existence up to twenty years before that date. Whilst the documents provide information as to the physical existence of the route they provide no information as to status.

1910 Finance Act

19. The western end of the Order route to Talwrn Lodge¹ is excluded from the adjacent hereditaments. I note the view expressed in the DLW Research Standard 3.3 that uncoloured parcels tend to represent features that are plainly accepted and established carriageway roads. It is also recognised that in *Robinson Webster (Holdings) Ltd v Agombar [2002] 1 P&CR20* the evidential value of the 1910 Finance Act records has been described as most powerful. However, in the more recent case of *Fortune and Others v Wiltshire County Council and Another [2012] EWCA Civ 334* Lord Lewison stated that the 1910 Finance Act records formed part of a jigsaw. In my view the exclusion of the western part of the Order route from the adjacent hereditaments provides a strong indication that the way was regarded as a public highway. However, the exclusion is also consistent with the inclosure award evidence which indicates that the way is a private road and for which the ownership is not assigned to any individual.
20. RC suggest that the Inland Revenue, after making various enquiries and looking at Form 4 completed by the landowner, accepted that the road was not a taxable hereditament and raised a presumption that the lane was public. I have not been provided with any information from Form 4 or any indication as to landownership from which such a conclusion can be reached.
21. The eastern end of the Order route is included within the hereditament numbered 173. Although it may be the case that the owner chose not to seek a deduction in the rateable value in consequence of a public right of way, the records provide no information as to the existence of public rights. Nevertheless the inclusion within the hereditament does not preclude the existence of public rights.

Handover map

22. The handover map produced by Flintshire County Council shows the entire Order route highlighted in green. The accompanying key provides no information as to the status of ways coloured green. Correspondence from the Clwyd County Surveyor dated 9 August 1982 states that it is on record that the route formerly existed as a green lane which signifies an un-made road over which at least some public right of passage once existed. However, it is not clear that this conclusion was reached on the basis of information contained on the handover map or that the inclusion on the handover map indicates that the way is a green lane. As noted above the accompanying key provides no information as to the status of the way and the key makes no reference to green lanes. The County Surveyor also acknowledges that the term green lane has no statutory basis. I nevertheless recognise the view expressed by a Mr Fisher², a solicitor employed by Clwydd County Council, that routes shown with a green lane

¹ Talwrn Lodge Farm

² At a public inquiry in November 1981

status on the handover maps was an indication that they were public vehicular highways. Mr Fisher was referring to a route shown green on the handover map.

23. I note the examination by RC of the handover maps and the recording of routes on the definitive map. Whilst there appears to be a close correlation between routes shown green on the handover maps and their recording as public rights of way I have not been provided with any evidence as to how the routes came to be recorded on the definitive map. Each case must be considered on its own merits and it may be the case that other evidence exists as to the status of the ways. My determination must be based on the evidence before me measured against the relevant criteria.
24. Overall, whilst the handover map might give some indication as to the maintenance liability of the route, the maps, in the absence of any indication as to the status of routes shown in green, provide no indication as to the status of the way. It must be noted that handover maps were produced for internal administrative purposes and were not open to public scrutiny. The evidence needs to be considered in the context of all the other available evidence.
25. RC refer to other correspondence from Mr Fisher, namely an internal memorandum to the County Surveyor, 28 June 1982. He expresses a view that if the evidence provided with the claim made in 1982 is taken at face value then the Order route must be accepted as being public. I give this no weight in determining the Order as although Mr Fisher appears to accept the evidence which was submitted there is nothing to suggest that the evidence was subject to more detailed scrutiny. The memorandum expresses Mr Fishers view when taking the evidence at face value.

National Street Gazetteer

26. RC state that the Order route is recorded on the National Street Gazetteer as a 'prospectively maintainable' highway. Advice from the Local Government Association indicates that a local authority may designate a private road as a prospectively maintainable highway which the council may adopt such that it is maintained at public expense. RC contend that this appears to mean that the authority regards the route as a highway but one which is not publicly maintainable. Further, that the record is consistent with the handover maps.
27. Whilst the National Street Gazetteer identifies the route as a prospectively maintainable highway there is no evidence as to the basis of the inclusion of the route in the gazetteer. I have heard no evidence from the Council that the route is regarded as a public highway which is privately maintained. In the absence of any such information I am unable to attach any weight to the information contained in the gazetteer in respect of the Order route.

Conclusions on documentary evidence

28. Having regard to all of the above, whilst the western end of the Order route is excluded from the adjacent hereditaments on the 1910 Finance Act map this is consistent with the way being awarded as a private road under the 1797/98 inclosure award. The 1910 Finance Act records provide no information as to the existence of public rights along the eastern part of the route. The handover map may give some indication that the way was regarded as a public highway. However, in the absence of any explanation as to the annotation of the route in green I do not consider that it can be concluded, when considered with all the other available evidence, that, on the balance of probabilities, the way subsists as a highway.

29. In view of my conclusions it is necessary to consider the statutory dedication of the route in accordance with section 31 of the Highways Act 1980.

Statutory dedication – Section 31 of the Highways Act 1980

When the right to use the way was brought into question

30. If the right of the public to use a particular route is to be effectively brought into question there must be some act that is sufficient to bring to the attention of at least some of those people using the way that the right to do so is being challenged so that they may be apprised of the challenge and have a reasonable opportunity of meeting it. I was referred by the applicant to the case of *Fairey v Southampton CC [1956] 2 QB 439* which identifies the appropriate actions to bring the right to use a way into question.
31. As noted in *Paterson v SSEFRA [2010] EWHC 394 (Admin)* the right to use a way may be called into question more than once and therefore more than one twenty year period can be considered.
32. In May 1982 the new owner of Talwrn Lodge Farm, a Mr D Green, began to close gates along the route and challenged the use of the way. It was these events which prompted Mr Barnes to collect the evidence of use forms which were submitted to the Council around the same time. The actions of Mr Green would have challenged the right to use the way and sets a relevant twenty year period of 1962 to 1982.
33. The applicant contends that there is a further twenty year period terminating when the right to use the way was brought into question in 2007. In 2007 gates on the route at Talwrn Lodge Farm were closed; the gates were difficult to open whilst on horseback. The difficulties are acknowledged in the evidence of use forms submitted with the application made in 2007. The evidence of use forms also refer to challenges to the use of the way by the owners of Talwrn Lodge Farm and reference is made to gates being locked in 2007. These actions would have brought the right to use the way into question and sets a further relevant twenty year period of 1987 to 2007.
34. In opposition it was asserted that notices erected on the route at the material times were sufficient to bring the right to use the way into question. I address the issue of notices at paragraphs 54 to 65 and 77 to 82 and refer to my conclusions in that respect at paragraph 82.

Evidence of use 1962 to 1982

35. In relation to the statutory dedication arising from the twenty year period ending in 1982 the applicant relies upon the 55 evidence of use forms gathered by Mr Barnes and submitted to the Council in 1982.
36. In opposition it is submitted that no weight should be placed on the evidence of use forms completed by those who have chosen not to attend the inquiry. However, the evidence of use forms provide consistent evidence as to the use of the way. The forms have been signed and witnessed with the majority indicating a willingness to give evidence to a public inquiry to verify the evidence contained in the forms. Although the evidence of the majority of the witnesses has not been subject to cross examination some weight should be given to signed and witnessed evidence of use forms.
37. It is further suggested that the evidence of use forms were produced as a result of an access dispute between the then owner of Talwrn Lodge Farm, Mr Green, and the

owner of Talwrn Cottage, Mr Barnes. Mr Barnes in his evidence was open to the fact that the forms were initially gathered in consequence of an access dispute with Mr Green. However, it became evident to him that, in his view, the lane was a public right of way. Whilst the forms were gathered for a specific purpose this does not cast doubt on their validity. As noted above the forms which seek information on public rights have been signed and witnessed and should be given the appropriate weight.

38. Mr Barnes acknowledged that he completed the details as to the route on a number of the evidence of use forms and in some cases the main body of the form was completed by someone other than the individual signing the form. However, the forms are signed and dated and there is nothing to indicate that the information is not correct such that it should not be relied upon.
39. The point is also made that no further action was taken at the time of the dispute with the only credible explanation being that there was no such use of the way as set out in the forms. However, Mr Barnes provided clear evidence as to why the matter was not pursued. In 1982 Mr Green sold the property and, it is said by Mr Barnes, that the new owners of the property acknowledged the public right of way and that there was no need to pursue the matter further. The matter was not pursued by Clwyd County Council as the provisions of the 1981 Act had not, at that time, come into force.
40. It is also submitted in opposition that no weight can be placed on the statement of Mrs D Humphreys. I accept that there is no evidence to demonstrate an inability to attend the inquiry. However, this does not mean that the statement should be given no weight. Some weight should be given to a signed and witnessed statement although it is accepted that, in the absence of an opportunity for the evidence to be tested, the weight which can be given to the statement is lessened.
41. From my examination of the evidence of use forms only one individual has used the route with a horse alone (W Smith). However, her use does not extend over the full twenty year period (1967 to 1982) and was monthly. Three individuals have used the route on foot and on horseback for the full twenty year period (D and S Ellson and S Smith), use being on a monthly basis. A Mr G Arnold used the way for the majority of the period using the route 'many times during the sixties & seventies perhaps only 3-4 times a year since'; use was as a bridleway and footpath. A Mr W Wildbore used the route for driving stock, farm vehicles, horse riding and pleasure. The form indicates that he had used the route frequently in the past but in more recent times 3 or 4 times a year. The form of Mrs N Humphreys indicates that the route was used by her daughter for riding but no further details of this use is provided and as such it is difficult to give this any weight. Use by those identified above was as of right and there is no evidence that use was interrupted.
42. A number of individuals indicate use on foot during the twenty year period with a substantial proportion using the way for the full twenty year period. Use is generally on a monthly basis. Four individuals indicate that they have been challenged in their use of the way but these appear to be references to challenges made by Mr Green in 1982. Mrs Ball makes reference to receiving permission to use the way although the form also indicates that she was a tenant of the landowner. The granting of permission to some individuals does not prevent use by others from being use as of right. A Mr or Mrs Mewes indicates that for 20 years they were tenants of the land over which the route passes; no dates are provided as to when they were tenants of the land.

43. Some of the evidence of use forms give no indication as to the mode of use and whilst some of these individuals consider the way to be a bridleway it is difficult to give these forms any weight in the consideration of a statutory dedication. The issue to be considered is whether the use is sufficient to raise a presumption of dedication.
44. A number of individuals gave evidence to the inquiry as to the use of the way.
- i) Mr Wray lived at Talwrn Lodge Farm between 1940 and 1958 and from 1990 had land near to the Watery Lane end of the Order route. When he moved away from Talwrn Lodge Farm he used the Order route occasionally for walking and riding. In the early part of the twenty year period he would walk the route with his children. Mr Wray recalled the route being used by pedestrians and equestrians.
 - ii) Mr Arnold used the route from 1957 to 1962 to go shooting and also used the route in a horse and trap with his grandfather. After 1962 until around 1967 he used the route on horses on a regular basis at weekends and during school holidays. From 1967 he used the route around twice a year. To his knowledge the Order route has always been used as of right for walking, bicycling and horseriding.
 - iii) Mr Barnes lived at Talwrn Cottage from 1971 to 1984. He observed use by pedestrians, equestrians and vehicles. Equestrian use was more frequent at the weekends possibly 4 to 5 on a Saturday or Sunday. He saw the occasional walker during the week but during the weekend he would see 5 to 6. Vehicular use was mainly agricultural but there were some cars. In cross examination Mr Barnes accepted that he did not know where people were heading and could have been visiting properties along the route.
 - iv) Mr Pilkington used the route from 1975 for business purposes only, helping the Wray family in baling and the moving of stock.
 - v) Mrs Smith used the Order route from 1944/1945 and not from 1936 as stated on her evidence of use form. She used the whole route on a bike as a child. In 1982 when out with her daughter on her pony she was challenged by Mr Green. She also used the route from 1982 with her granddaughters. Her evidence of use form completed in 1982 refers to 40 years' use on foot and by horse whereas her form completed in 2007 indicates that use from 1936 was on foot and in a vehicle making no reference to equestrian use as set out in her earlier form. Whilst the evidence of Mrs Smith was not particularly clear it is evident that she used the Order route during the relevant twenty year period. However, given the inconsistencies I give her evidence less weight.
 - vi) Although Mrs D Humphreys, 94 years of age, did not give evidence to the inquiry her statement indicates use of the way on foot for as long as she can remember with her last use being about 20 years ago. Mrs Humphreys used the route whilst the postwoman for the village but this would have been outside the relevant period and in any event would have been with implied permission.
45. The objector called a number of witnesses who provided evidence as to their recollections of the way.
- i) Mr Knowles gave evidence as to his business use from 1953 to 1955 and said that the route was impassable and could not be used with a tractor or bailer between Talwrn Cottage and Talwrn Lodge Farm. He always understood the route from Talwrn Lodge Farm to Hafod Farm to be private access for the farms.

- ii) Mrs Crewe lived, with her parents, at Hafod Farm from 1938 to 1968³. At that time the Order route was not accessible beyond Talwrn Lodge Farm; there was no access to Watery Lane. To her knowledge the route was only for private use between Hafod Farm and Talwrn Lodge Farm.
- iii) Mrs Reece moved into Hafod Farm in September 1967 when she was 13 years of age. Her Father, Mr E Roberts was the tenant of Hafod Farm from the mid 1960s to March 1988. She always considered the way to be private, providing access to those who lived at the properties on the lane.

46. A Mr D Wildbore, the son of Mr W Wildbore, living at Burton Lodge Farm all his life, always considered the Order route to be private and would always obtain consent to gain access, in the main for gathering stray sheep and cattle. He had not seen the public at large using the route on foot or horseback.

Conclusions on evidence of use between 1962 and 1982

47. The evidence of use forms indicate use of the Order route on foot by a significant number of individuals during and before the twenty year period. That use was as of right and without interruption. In terms of equestrian use, this is more limited. Only three have used the route for the full twenty year period but this was on foot and horseback on a monthly basis. Given that use was also on foot it is likely that equestrian use was less frequent than monthly. The equestrian use by Mr Arnold is limited to between 1962 and 1967. After that time, according to his evidence of use form, he used the route only 3 to 4 times a year although in evidence in chief he indicated that use was less at around twice a year.
48. Mr W Wildbore used the Order route for a variety of purposes, including for horseriding and pleasure, and although he used the route frequently in the past his use towards the end of the twenty year period was only 3 or 4 times a year. Given his other uses it is again likely that his equestrian use would be more limited. I note that Mr D Wildbore contended that his father, and grandfather, considered the way to be private; this accords with his knowledge of the route. He was also unaware that his father had completed an evidence of use form. However, the evidence of use form of Mr W Wildbore indicates that he considered the route to be a public bridleway. Whilst this was his view his use for driving stock or with farm vehicles would not be consistent with the use of a bridleway.
49. Mr Wray outlined occasional equestrian and pedestrian use during the relevant twenty year; he observed other such use. Whilst I give the evidence of Mrs Smith less weight it is apparent that she used the route during the relevant twenty year period although the extent of equestrian use appears to be limited to the use by her daughter. Mr Barnes observed pedestrian and equestrian use between 1971 and 1982.
50. The evidence of Mr Knowles and Mrs Crewe is that it was not possible to gain access between Stringers Lane and Watery Lane. Although Mr Knowles' knowledge does not extend into the twenty year period it is consistent with the evidence of Mrs Crewe which was that up to 1968 there was no through access. However, this is inconsistent with the evidence provided in the evidence of use forms and the evidence given to the inquiry by Mr Wray, Mr Arnold and Mrs Smith. It seems to be the case that whilst the

³ It is noted at paragraph 45 iii below that Mrs Reece moved into Hafod Farm in September 1967. There is nothing to indicate that the occupancy of Hafod Farm overlapped and it is likely that one of the dates is incorrect. This has no material effect on my consideration of the Order.

route may not have been accessible to larger farm equipment it was clearly accessible to equestrians and pedestrians. There is nothing before me to suggest that any of the equestrian or pedestrian use was interrupted in consequence of the route being inaccessible.

51. Having regard to all of the above the evidence of equestrian use during the twenty year period is limited and is in my view insufficient to raise a presumption of dedication as a bridleway. However, the evidence of use on foot, as of right and without interruption is, on balance, sufficient to raise a presumption that the way has been dedicated as a footpath.
52. I note the suggestion of Mr Barnes, made in cross examination, that references to a 'road ahead closed' notice in the letter dated 5 May 1983 (inquiry document 6), relating to the concreting of the lane, was to prevent public access. However, given that the works would have affected access to a number of properties it is more likely that the notices were to inform those visiting these properties. It is noted that the correspondence seeks approval for the placing of the notice. If the Council considered the route to be public it would not have been necessary to seek approval for the placing of any such notice. I give this evidence no weight in my consideration of the Order.

Lack of intention to dedicate 1962 to 1982

53. For there to be sufficient evidence that there was no intention to dedicate the way there must be evidence of some overt acts on the part of the landowner, during the relevant period, such as to show the public at large, the public who used the path, that they had no intention to dedicate. The test is whether a reasonable user would have understood that the landowner, that is the owner of the land over which the route passes, was intending to disabuse the user of the notion that the way was public. The case of *R (on the Application of Godmanchester Town Council) (Appellants) v SSEFRA and R (on the application of Drain) (Appellant) v SSEFRA [2007] UKHL 28* is relevant.
54. In opposition it was argued that signage since 1938 to the present day was sufficient to demonstrate a lack of intention to dedicate.
55. Only two of the evidence of use forms completed in 1982 make reference to notices along the route. Mr Barnes refers to some private signs recently appearing at Talwrn Lodge and Miss W Smith refers to 'some sort of notice' in recent times. Both forms were completed in 1982. Mr Barnes confirmed that there were no signs on the route before 1982. Those witnesses who spoke in support of the Order did not recall any notices before 1982. I note the assertion of the objectors that Mr Arnold recounted signage at the Hafod Farm end of the route in the early 1970s. However, the statement of Mr Arnold states that there were no signs on the Order route.
56. Mrs Crewe, living at Hafod Farm from 1938 to 1968 recalled an old wooden sign at the Stringers Lane end of the Order route stating 'Private – Access'. In cross examination Mrs Crewe did acknowledge that her recollection may have been incorrect but was clear in her mind that there was a wooden sign between Stringers Lane and the entrance to Hafod Farm.
57. Mrs Reece moved to Hafod Farm in September 1967 and lived there until 1988. Throughout that period she recalled a sign at the Hafod Farm end of the Order route which from memory stated 'Private. No Through Road'. She said the sign was present due to the need to prevent problems arising from the movement of cattle twice a day.

58. Mrs Reece provided a number of photographs. An aerial photograph of Hafod Farm, marked 1981 on the back, said to have been in her father's handwriting, shows a white notice at the entrance to the farm but no details as to the wording can be seen. The photograph shows that the Order route had not been concreted at the time. Correspondence from the Council suggests that the concreting of the lane took place after 5 May 1983. A further photograph shows her father's 'new' car with the notice in the background of the photograph. From the registration plate it was suggested that the car would have been new in 1979/80. Mrs Reece said that her father would not buy a car less than two years old which therefore dates the photograph as around 1982. Two further photographs show the presence of a white notice, it was suggested that the photograph showing three tractors was taken at the farm sale in 1987. However, no dates have been provided in respect of the black and white photograph.
59. Bearing in mind the above, the photographs provide evidence of a notice being present from between 1981 and 1983.
60. Mr K Jones, having worked for the relevant local authorities since 1974, 'categorically stated' that there had always been a metallic sign in the hedgerow at Hafod Farm some 3 metres from Stringers Lane. The sign advised that the lane was in private ownership and was not open to public access. Mr Jones recalled pointing out the sign to some horseriders; this was before the concreting of the roadway.
61. It is perhaps surprising that, in the local authority correspondence around 1982 relating to the status of the way, there is no mention of any notice on the Order route. Given that the claim had a direct effect on land owned by the Council any appropriately worded notice would have negated any claim. However, I do not accept that the absence of any reference to notices in the correspondence necessarily means that there were no notices on the route. I also note that there is no documentary evidence from the Council records relating to the erection of notices. Again, whilst no documentary evidence has been produced I do not consider that this means that no notices were present.
62. The evidence before me suggests that notices of some description have been in place on the Order route. The issue to be considered is whether the notices were in place during the relevant twenty year period and whether they disabused the public of the notion that the route was public.
63. Whilst Mrs Crewe recalled a notice she accepted that her recollections may have been incorrect as to the wording. However, she was clear that any sign was made of wood. Although this predates the evidence of Mr Jones this contradicts his evidence that the notice was metallic. It is of course possible that any notice recalled by Mrs Crewe could have been replaced by one made of metal in the years between 1968 and 1974. The evidence of Mrs Reece points to the existence of a notice no earlier than 1981 and whilst the photographs do not provide evidence as to wording she remembered that the notice stated 'Private. No Through Road'.
64. In contrast there are 55 evidence of use forms which, other than those identified at paragraph 55 above, make no mention of notices. Unlike the evidence of Mrs Crewe, Mrs Reece and Mr Jones, which relies on their memory, the evidence contained in the forms was provided in 1982 when those completing the evidence of use forms would have more recent recollections of the route. There is no indication from the forms that until 1982 there were any challenges to the use of the way; use continued throughout the relevant period.

65. Looking at the evidence as a whole, there is nothing before me, other than the evidence of Mrs Crewe, to suggest the presence of a notice on the Order route before around 1982. Further, there is no indication that those using the way were disabused of the notion that the way was a public right of way in consequence of any notice. Use continued throughout the relevant twenty year period until 1982 when the right to use the way was brought into question and the evidence of use forms indicate that users considered the way to be a bridleway or footpath. No other evidence has been put before me of other actions which would have been sufficient to demonstrate a lack of intention to dedicate. The statutory dedication of a public footpath is therefore made out.
66. I note the observation made in opposition that if the Council had considered the Order route to be a public right of way then the concreting of the route in 1983 would have required a licence from the highway department. This may give an indication as to the authority's understanding of the status of the route however, it should be noted that the route was not recorded on the definitive map at that time which would have provided information as to the status of the way.

Evidence of use 1987 to 2007

67. From my examination of the 47 evidence of use forms there are 11 individuals who have used the route, as of right, on horseback for the full twenty years with a further 17 using the route, as of right, for part of the period. Some of those who used the way also did so in a vehicle, on foot and by bicycle.
68. A number of supporters of the Order gave evidence as to their knowledge of the way during the period 1987 to 2007. I do not repeat the evidence of the other witnesses who used or had knowledge of the way from 1987 (summarised at paragraph 44).
- i) Mr Lloyd purchased Talwrn Farm in July 1993 and was aware, from that time, of use of the Order route on foot, horseback and vehicles by those who did not live on the lane. Mr Lloyd and his family used the Order route on foot and in a vehicle until being prevented, in the autumn of 2007, by a locked gate at Talwrn Lodge Farm.
 - ii) Ms L Thomas purchased Talwrn Cottage in 1990. She said that the lane was used by all manner of traffic. She stated that there were never any signs saying that the route was private until around 2006 (Ms Thomas was unsure if this was in 2006 or 2007) when the Council erected a notice stating 'Private, Access only, No Public Right of Way' as the route had become unsafe.
 - iii) Mrs Mather used the route from 1983 with horses. She did not see any signs but if she had done so then she would have stopped using the way. She never encountered problems in using the route.
 - iv) Mrs McIntyre used the route from 1997 until 2007. Use was mostly at weekends. She recalled seeing others on the route and had spoken to Mr Geldeard who had never challenged her. She said she had spoken to Mr Jones. She had not seen any signs until 2007.
 - v) Mrs Pilkington started using the way in 1986. From 1987 she had a livery business. She outlined that there were three routes which riders took including the Order route. She nevertheless acknowledged that she did not know where the riders actually went. In the absence of knowledge as to which route the riders took it is difficult to attach any weight to this evidence in respect of use of the

Order route. Mrs Pilkington rode the Order route around twice a week although rode less after 2000. In her evidence of use form Mrs Pilkington referred to a sign saying 'Private no through road' but provides no dates. In cross-examination she said that this was in 2007.

- vi) Mrs Davies, living in Higher Kinnerton since 1984, regularly rode along the Order route. She often spoke to Ms Thomas at Talwrn Cottage and also used the ménage at Talwrn Lodge Farm; such use would have been with the inferred permission of the owner. After 2007 she was told that the route was not public. The first time she saw any notices on the route was in 2007.

69. In opposition a number of individuals gave evidence as to their knowledge of the route during the relevant period. Again I do not repeat the evidence of those which I have summarised at paragraph 45 and 46.

- i) Mr J M Jones tenant of Hafod Farm from 1988, and from 2015 the freehold owner, gave a comprehensive insight into the working day at the farm. Milking taking place between 6:00 am and 8:30 am and again from 3:45 pm to 6 pm seven days a week. Whilst involved in milking there would always be someone on the yard. The only equestrian use which Mr Jones saw was that by the Geldeards who had permission from the family to use the route. He said that he had not witnessed intensive use of the way. Whilst Mr Jones said that he had extensive views of the Order route he fairly accepted that there were blind spots. He did not deny that whilst milking and when involved in other farming activities it was possible to have missed people using the way. However, he did not expect the way to be used because of the notice. Mr Jones (and Mrs Jones in her statement) recalls a notice being in place when he took over the tenancy in 1988. The notice on the left side of the route from Stringers Lane confirmed the private nature of the route. The notice stating 'Private no through road' was there for a long time until the post rotted. Mr K Jones then arranged for new signs in early 2001.
- ii) Mr E Jones, moving to Hafod Farm at the age of 12 with his parents in 1988, also outlined the farming activities on the farm. He accepted that people could go up the Order route without him seeing them but said that the route was not used as suggested. The only horses he saw on the route belonged to the Geldeards; he challenged other use but not very often as he could not be certain where people were heading.
- iii) Mrs McNamara lived at Talwrn Lodge Farm, with her parents, from 1983 to 1993 and spent a lot of time there after her marriage until the property was sold in 2007. She confirmed that the route was private but acknowledged use by a number of riders and dog walkers who were given permission to use the way. Those who were not known were advised that the route was not public.
- iv) Mr Vickery, of Talwrn Lodge farm acknowledged that he could not comment on the evidence of use prior to his moving to the property in 2007. He did say that he had bought the property in good faith bearing in mind the notices on the Order route. Mrs Baskeyfield had used the track from the late 1980s to visit Mrs Geldeard on one occasion she used the full route but never saw others using the route. There were always signs on the route.
- v) Dr Barber, living at Talwrn Green since 1991, always understood the track to be private and recalled council signs confirming this. He had been given permission

by Mr and Mrs Geldeard to walk the route which he did up to ten times a year. He did not recall use of the track for walking or on horseback.

- vi) Mrs Perks purchased Talwrn Barn in July 1993. She said that the route had only been used in connection with agricultural activities at Hafod Farm and the residents and visitors to Talwrn Farm and Talwrn Barn. She outlined that at the auction for the sale of Talwrn Farm it was made clear that the Order route should be kept clear at all times and that Talwrn Barn and Talwrn Farm enjoyed access rights from Stringers Lane to the respective properties. Whilst I note this latter observation this does not preclude the existence of public rights or prevent such rights from being acquired.

Conclusions on evidence of use between 1987 and 2007

70. Bearing in mind the above, the evidence of use forms indicate uninterrupted use of the Order route by the public, as of right, on foot and horseback for the full twenty year period. Those who gave evidence in support of the Order gave clear evidence as to use of the way consistent with the evidence contained in the evidence of use forms. A number of those giving evidence recalled seeing others using the route.
71. Mr Lloyd, living adjacent to the Order route, was aware of use by pedestrians, equestrians and vehicles although it is noted that he provided no details as to the frequency of that route. Nevertheless he did see the use of the way by pedestrians and equestrians. I am aware that Mr Lloyd was involved in the claim for the Order route. However, Mr Lloyd indicated that he would gain no benefit from the confirmation of the Order and there is nothing to suggest that his evidence should be seen as unreliable in consequence of his involvement. It may also be the case that Mr Lloyd questioned the ownership of the Order route between Talwrn Farm and Stringers Lane but this was on the basis that he considered the Order route to be a byway. I do not accept that this places doubt on the credibility of Mr Lloyd's evidence as to the use of the way. It was clearly his view that the way was a public right of way.
72. Ms Thomas was also aware of the use of the way. However, I do not give any weight in support of the confirmation of the Order as to use by 'bin wagons, post men, oil & gas delivery tankers'. This does not support the dedication of the route as a bridleway and in any event such use could be seen as with inferred permission of the various owners who would have, in effect, invited such use. I accept that the evidence of Ms Thomas was confused in respect of the issues surrounding a planning application. However, I do not think that this means that her evidence as to use lacks credibility. Ms Thomas was clear that the way had been used and this evidence is consistent with that contained in the evidence of use forms.
73. It has to be accepted that some of the use observed by others may have been in connection with visiting the adjacent properties or may have been with some form of permission. Mr and Mrs Geldeard were given permission to use the way with their horses and, although it is not clear to me that Mr and Mrs Geldeard were in the position to grant permission to use the whole of the Order route, they granted permission to some to use the way. It should nevertheless be noted that the granting of permission to some does not preclude use by others from being without permission. Those identified at paragraph 67 above were not given permission to use the route although other evidence of use forms do indicate use with permission. None of those who gave evidence at the inquiry in support of the Order said that their use was with permission although some of the use by Mrs Davies would have been with implied permission.

74. I note that Mrs Nutkins sought permission from Mrs Perks in 2011 to ride with her daughters to Mr and Mrs Perks' property. However, I do not accept that this demonstrates that Mrs Nutkins had been aware that permission to use the Order route had always been required. After 2007 the right to use the route had been brought into question and therefore her request for permission should be seen in the light of this. The evidence of use form of Mrs Nutkins gives no indication as to whether permission was needed or that her use was with permission.
75. In contrast to the evidence of use, the evidence of the objectors is that the use as asserted by the applicant did not take place. However, Mr M Jones accepted that it was possible that he had missed people using the Order route. Mr E Jones also accepted that people could have used the Order route without his knowledge. He also acknowledged some use of the route although he could not necessarily identify whether that use was public. Mrs McNamara whilst indicating that some use was with permission said that the route was used by others albeit that those which were not known were said to be turned away.
76. It may well be the case that some did not see any use of the way as suggested. However, the evidence of use forms and the evidence to the inquiry does indicate that the way was used by equestrians and others. That use was as of right and without interruption. Some weight should be given to the signed evidence of use forms which are consistent with the evidence of those who spoke at the inquiry in support of the Order. Having regard to all the evidence, whilst the evidence of use may not be substantial, it is in my view sufficient to raise a presumption that the way has been dedicated as a bridleway.
- Lack of intention to dedicate 1987 to 2007*
77. In view of my findings at paragraph 76 it is necessary to consider whether the landowner demonstrated a lack of intention to dedicate the way. I have already set out the requirements as to what constitutes sufficient action to demonstrate a lack of intention to dedicate (paragraph 53). In opposition it is contended that notices were present on the Order route which were sufficient to demonstrate a lack of intention to dedicate the way.
78. As regards any notices, Mr K Jones contended that signage on the route advised the public that the lane was in private ownership and not open to public access. Mr K Jones recalled that the sign at Hafod Farm had been removed and that a new sign was erected in the name of Flintshire County Council advising 'Private Access only, No Public Right of Way'. Mrs Reece, living at Hafod Farm until 1988 recalled a sign saying 'Private. No Through Road'. Although Mrs Crewe did not live at Hafod Farm during the relevant period she suggested the notice stated 'private – access only'. Mr J M Jones recalled a sign saying 'Private no through road' from the start of his tenancy which was replaced in 2001.
79. Mrs Perks contended that throughout her time at Talwrn Barn there had always been a sign at the end of the track indicating the private nature of the track. She referred to a treasure hunt in 2004 where one of the clues related to the sign at Hafod Farm; this suggests that the notice was clearly visible from Stringers Lane. The clue related to the name of a credit card with the answer being 'Access Only'.
80. Of those giving evidence in support of the Order, Mr J Lloyd indicated that there were no notices until 2006. It is perhaps surprising that Mr Lloyd did not recall any signs on the Order route before this time given that he would have used the route on a regular

basis. However, Mr Lloyd has a right of access to his property and any notices would have no consequences for him. The fact that he did not see any notices is contrary to the evidence of Mr M Jones and Mrs Perks also resident on the lane. Other witnesses did not recall any notices on the Order route until 2007.

81. A number of evidence forms make reference to notices being erected on the route although most do not provide a date or details as to any notices. Some refer to notices being erected in 2007. Miss L and Mr R Von Der Fecht refer to a notice being erected in 2001 by the Council and this is consistent with the evidence of Mr J M Jones. Mr E Ellis recalls a private notice appearing 'a few years ago', his form being completed in 2007. Mrs Dennis refers to signs being put up 'maybe 8 years ago' her form being completed in 2009. However, whilst the evidence of use forms make reference to notices use of the Order route did not cease. There is no evidence of challenges to the use of the way until 2007 when the right to use the way was brought into question.
82. I do not doubt that notices were erected on the route during the relevant twenty year period. However, the evidence as to what the notices said is by no means clear; the recollections as to the wording is varied. Furthermore, the use of the Order route continued until 2007 when the right to use the way was brought into question. Given the continued use, I do not consider that the wording of any notice was sufficient to disabuse those who were using the route of the notion that the way was a public bridleway. For this reason I also do not consider that the notices on the route prior to 2007 would have been sufficient to bring the right to use the way into question.
83. Mr J Jones referred to the tenancy agreement to Hafod Farm which requires the tenant to prevent the acquisition of new footpaths or other easements. Whilst this may be the expectation of the tenant, the tenancy agreement would not have been brought to the attention of the users of the way such as to show them that there was no intention to dedicate.
84. I am aware that Mr and Mrs Geldeard advised members of the public that the way was private. However, there is nothing to indicate that this was during the twenty year period. It was the challenges and other actions which brought the right to use the way. As noted above use continued throughout the twenty year period.
85. No other evidence has been put before me such as to demonstrate a lack of intention to dedicate. Bearing in mind all of the evidence I conclude that the Order route has been dedicated as a public bridleway. In view of my findings it is not necessary to consider an inference of dedication at common law.

Width

86. In opposition it was contended that at Talwrn Lodge Farm the width is limited to 2.4 metres as the use of the area within the curtilage of the property would have been limited to the parking of vehicles. Further and alternatively it would not be possible to infer any dedication up to the house door.
87. Other than the evidence of Mr Vickery and Mrs McNamara I heard no evidence as to any reduction in the width of the Order route around the curtilage of Talwrn Lodge Farm. It is nevertheless likely that, at times, during the twenty year period from 1987 to 2007 vehicles will have parked on the land used by equestrians and pedestrians. However, there is nothing to suggest that the parking of vehicles was to such an extent as to have prevented the land from being dedicated as a bridleway. I do

nevertheless accept that the use of the Order route would not have extended directly to the door of the house.

88. Any width should be based on evidence or, in the absence of clear evidence, based on the type of user and what is reasonable. The applicant suggested that the width at Talwrn Lodge Farm should be 4 metres. This would be reasonable in the circumstances in that it would allow two riders to pass. In view of my conclusions as to a statutory dedication I propose to modify the Order in respect of the land in front of the dwelling at Talwrn Lodge Farm.

Other Matters

89. One of the statutory objections raises concerns that confirmation of the Order will increase traffic and the risk of crime. Whilst I note these concerns they are not matters which I can take into account in reaching my decision.

Conclusion

90. Having regard to these and all other matters raised at the inquiry and in the written representations I conclude that the Order should be confirmed subject to modifications.

Formal Decision

91. I confirm the Order subject to the following modifications:

- At the paragraph 1 of the Order delete 'shall be the date that the Order is made' and insert 'is the 24 September 2013'.
- At Part II of the Schedule to the Order in relation to Column (5) delete '8.5' and insert '8.9' and insert after 'order plan' 'reducing to 4 metres in front of the dwelling of Talwrn Lodge Farm'.
- Delete from the Order map '8m' and insert '4m'.

Martin Elliott

Inspector

