



Neutral Citation Number: [2025] EWHC 1640 (Admin)

Case No: AC-2025-LON-000485

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
DIVISIONAL COURT
ON APPEAL FROM GREAT YARMOUTH MAGISTRATES COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24/06/2025

Before :

LORD JUSTICE BEAN
MR JUSTICE LAVENDER

Between :
DEREK SMITH
- and -
GREAT YARMOUTH MAGISTRATES
COURT
- and -
NORFOLK COUNTY COUNCIL

Appellant

Respondent

Interested Party

Joel Semakula (instructed by **Fisher & Co**) for the **Appellant**
Peter Cruickshank (instructed by **NP Law**) for the **Interested Party**
The Respondent did not appear and was not represented

Hearing date: 24 June 2025

Approved Judgment

This judgment was handed down remotely at 10.00am on 30 June 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

Lord Justice Bean:

(1) Introduction

1. This is the judgment of the court, to which we have both contributed, on an appeal by case stated from the appellant's conviction on four charges of obstruction of the highway at a trial on 2 September 2024 before a bench of lay magistrates in the Great Yarmouth Magistrates' Court.

(2) Background

2. The case concerns land adjacent to Vauxhall Bridge in Great Yarmouth ("the land"). Norfolk County Council is the relevant highway authority. The land covers much of the approach to one side of Vauxhall Bridge, which crosses the River Bure. The appellant purchased the land in 1989 and now leases the land to a business which stores and sells motor vehicles. There is a portacabin on site serving as the business office. A fence encloses the cars and portacabin. The approach to Vauxhall Bridge has therefore been effectively blocked off, save for a small pedestrian pathway along the western side of the fence and leading to the bridge.
3. By summons dated 7 December 2023 the appellant was charged by the respondent with 6 offences of obstruction of the highway, contrary to section 137 of the Highways Act 1980:
 - (1) Three offences were alleged to have been committed on 25 August 2023, by: (i) maintaining the fence; (ii) maintaining a cabin building; and (iii) placing cars for sale on the land with such permanence as to amount to obstruction.
 - (2) Three further offences were alleged to have been committed on 8 September 2023, again by: (i) maintaining the fence; (ii) maintaining a cabin building; and (iii) placing cars for sale on the land with such permanence as to amount to obstruction.
4. Section 137(1) of the Highways Act 1980 provides:

"If a person, without lawful authority or excuse, in any way wilfully obstructs the free passage along a highway he is guilty of an offence and liable to imprisonment for a term not exceeding 51 weeks or a fine or both."
5. Blockage of the whole highway is not required, but the blockage must be more than *de minimis*. The offence is obstructing the highway and not the obstruction of other highway users, so it is not necessary to prove that anyone was actually obstructed. The burden is on the local authority to prove that the defendant was blocking the highway "without lawful authority or excuse".
6. The central issue at trial was whether the land was a highway. If the land was a highway, it was accepted before us that the appellant was blocking the highway by means of the cabin and the cars.
7. For there to be a highway, the law requires either an express or presumed dedication of the land as a highway and an acceptance of the right of way by the public. An express

dedication is a document, for example a deed of grant. A presumed dedication is where the highway has been used by the public as of right and without interruption. This can be a common law presumption or a presumption based on section 31 of the Highways Act 1980 (“section 31”).

8. This appeal is solely concerned with the magistrates’ finding that the land was a highway by virtue of section 31, since:
 - (1) the magistrates rejected the respondent’s argument that the land was a highway by virtue of a deed dating from 1931; and
 - (2) the respondent did not advance an argument that the land was a highway by virtue of a common law presumption.
9. Section 31 provides as follows:
 - “(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.”
 - “(2) 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.”
10. The phrase “as of right” means without force, secrecy or permission (see *R v Oxfordshire County Council, ex parte Sunningwell* [1999] UKHL 28). The phrase “without interruption” means there should be no entire prevention of the enjoyment of the right of passage during the 20 years, although temporary interference is permissible.
11. The magistrates accepted that the appellant was not responsible for the fence and found him not guilty of the two offences concerning the fence, but guilty of the other four offences.

(3) The Case Stated

(3)(a) The Case Stated: The Questions

12. The appellant applied to the magistrates to state a case and the questions for the High Court set out in the case stated, which is dated 20 December 2024, are as follows:
 - “a. Were we correct to reach a decision that the evidence showed that the right of the public to use the land was “brought into question” on the date the fence went up and to use this as the point from which to calculate the retrospective period of 20 years uninterrupted use?
 - b. Were we correct to reach a decision that the evidence showed the land had been enjoyed by the public as of right and without interruption for 20 years to the criminal standard of proof?”

(3)(b) The Case Stated: The Evidence

13. The case stated set out the evidence which was adduced at trial. In paragraph 5, it stated:

“No admissions were made but the following facts were not disputed by either party:

- a) The Respondent has evidence of a deed of dedication from 1931. They have the copy signed by the Great Yarmouth Corporation to whom the land was purported to be given. They do not have a copy signed by the London & North East Rail Company (LNER), the other party involved. They came into possession of this part of the deed in 2017.
- b) On 5th November 1987 Asda solicitors wrote to the Respondent (“the Asda Letter”) stating that they had been supplied with an agreement dated 12.1.31 and enclosing a copy of the agreement stating that the bridge and road was a public highway. The Respondent responded by saying that there was no trace of any agreement which would suggest that Vauxhall Bridge was a public highway.
- c) The Vauxhall bridge was the only bridge in Great Yarmouth from the A47 that crossed the river Bure until another bridge opened in 1953.
- d) The Applicant purchased the land in 1989. There was no official recognition of any public right of way at this time by GYBC. Solicitors carried out extensive local searches and there was no evidence.
- e) The Applicant allowed GYBC to install a footpath at the side of his land and pay a peppercorn rent. Mr Smith talks about this running from 2012, whereas Mr Burgess talks about this running from 2002. The agreement has since expired.
- f) The Applicant leases the land. It is used as a car sales area, cars are parked on it, there is a portacabin on it and fences have been erected.
- g) GYBC are considering making a compulsory purchase of the Applicant’s land. The type of land (public highway or not) and valuation of the land is in dispute.
- h) The documentation photographs and deeds are in the prosecution bundle and defence exhibit (Asda letter), which the High Court may need to see as they are part of the disputed evidence in this appeal. The Respondent also presented one enlarged copy of several photographs referred to during the hearing. Mr Fisher (for the Applicant) raised on 07/10/24 that the report of Ms Keohane was not formally adduced in evidence during the trial.”

14. The witnesses called by the respondent were Calyn Keohane, a research information officer with the respondent, Christopher Burgess, a lawyer based at County Hall, and Philip Riley, who took photographs of the land on 25 August and 8 September 2023. The appellant gave evidence in his own defence.

15. The case stated summarises the witnesses’ evidence. In particular:

- (1) Ms Keohane produced and gave evidence about photographs of Vauxhall Bridge said to have been taken in 1946, 1958, about 1960, 1975, 1985 and 1988. For instance, one of the photographs said to have been taken in about 1960 showed a van and a car crossing the bridge.
- (2) Ms Keohane “agreed there was no evidence that the land was used as a public highway between 1946 and 1958 but no evidence to show that it was not.”
- (3) Ms Keohane produced the minutes of a meeting of the respondent’s Planning and Transportation Sub-Committee on 2 June 1982, which stated that “the useable part of the bridge was restricted to light vehicles only in 1976.” The minutes also recorded that consideration had been given to re-opening the bridge to all traffic, but that the cost of making the bridge usable to anything other than light traffic would be at least £100,000 and the recommendation was that no further action be taken on this matter at the present time.
- (4) “Ms Keohane confirmed that there had been no legal process to withdraw public highway rights. There was nothing on any source including the London Gazette and she has searched thoroughly. The Gazette would show any extinguishment of public highway and she had searched it thoroughly. Nothing in the archive suggested that there had ever been a stopping up. The council had not granted any permits to the Applicant to obstruct the highway. She had searched thoroughly.”

16. As for the appellant’s evidence, the case stated states as follows:

- “34. David Smith gave evidence and confirmed he bought the land in 1989 at auction for £180,000. His solicitors did local searches and nothing came back to suggest any of the land was public highway and further, the title deed made no reference to any right of way over the land. The land was brought with a sitting tenant - Mallet Caravans - who occupied part of the land. The remainder of the land was let for car sales.
35. There was a 7-foot black steel fence in place on the land concerned by the end of the river on his side preventing access when Mr Smith purchased the land in 1989. This fence was removed and replaced by GYBC when they put the new fence up for the footpath to coincide with the lease for the footpath. GYBC entered into the lease to enable pedestrian access over a narrow strip. On purchase, you could not walk up to the bridge as the fence was in the way.”

(3)(c) The Case Stated: The Magistrates’ Findings

17. The case stated set out the magistrates’ findings as follows:

- “a. The Deed of Dedication was not a lawful enforceable document. There was no evidence provided that LNER owned the land in question, and we were concerned that the deed of dedication we were presented with only showed certification by one party, Great Yarmouth Corporation and not LNER.

- b. We then considered the twenty years continuous use of the land required to establish a highway from when the fence went up and were presented with evidence of such use by photographs mainly found on the internet and archives. Specifically, we looked at the photographs between 1946 and 1971 when it can be seen there is an absence of fencing, and the bridge is in use. We have therefore found that twenty years of continuous use of the land was proven and that when the Applicant purchased the land, it was a public highway.
- c. We have therefore considered the charges, and we find him not guilty of charges d) and e) - wilfully obstructing a highway by erecting and maintaining a fence, which was erected by GYBC.
- d. We have also considered that whilst the cabin building was put in place by a tenant, he should have instructed the tenant to move it. We therefore find him guilty of this charge.
- e. We have also considered the charges of placing cars for sale. We have considered this and decided that he has been responsible for placing the cars on the land for sale. We therefore find him guilty of this charge.
- f. We reconsidered our findings on the 20 years continuous use following Mr Fisher (for the Applicant) pointing out that we had not specified when the fence went up and the 20 years use needed to run from then, not from the dates the court had considered. Mr Lowens, for the Respondent, agreed and said the Respondent were saying the fence ran from 1988.
- g. We stated we considered that on the basis of the 1988 and the 1985 photographs, we are still content that there is evidence of 20 years of use as of 1988 and going backwards.
- h. The following was not announced in open court. Our reasoning as discussed in the retiring room and briefly on the bench in open court in full is that the fence on the evidence went up in between the last photograph in 1988 and the purchase of the land by the Applicant. The twenty years runs back from then. We considered the photographs in the context of all of the evidence adduced including the minutes from 1982, the evidence of Calyn Keohane and the contents of the photographs showing that for some time the land has been enjoyed as a highway. We determined that the right of the public to use the way was brought into question when the fence went up.”

(4) Question 1

- 18. In relation to question 1, it became apparent during the hearing that the real point being advanced by Mr Semakula was that the magistrates had not been entitled to rely on a finding that the right of the public to use the land had been brought into question on an unspecified date in a 15-month period, i.e. from the beginning of 1988 until March 1989, when the appellant bought the land.
- 19. He accepted that, given the 1988 photograph and Mr Smith’s evidence that the black steel fence was erected before he bought the land, it had not been irrational for the magistrates to find that the black steel fence had been erected between the beginning of 1988 and March 1989 and that the erection of the fence brought into question the right

of the public to use the land. However, he contended that this finding was insufficiently precise to be used in determining whether the requirements of section 31 had been met.

20. This point might have had some purchase if something significant had happened during the year 1968 or early in 1969, but if the magistrates were satisfied, as they were, that the land had been actually enjoyed by the public as of right and without interruption since before 1968 until the date of erection of the black steel fence, then the requirements of section 31 were plainly satisfied whether the fence was erected in January 1988 or March 1989 or on any date in between.

(5) Question 2

21. In *Oladimeji v DPP* [2006] EWHC 1199 (Admin), Keene LJ referred to rule 64.6 of the Criminal Procedure Rules 2005 and said as follows:

“3. It appears to me that those concerned with drafting the case stated in the present case paid little or no attention to the provisions of that rule. Those provisions derive from the fact that the function of this court in respect of a case stated is to determine whether the decision of the justices is “wrong in law or is in excess of jurisdiction” (see section 111(1) of the Magistrates' Courts Act 1980). This court is consequently only concerned with the state of the evidence before the justices in so far as it is said that the findings of fact made by them demonstrate an error of law or an error of jurisdiction.

4. What this court does need in all cases are clear findings of fact, and a clear identification of the questions of law which are said to arise. The justices should decline to pose questions for this court unless those questions are ones of law. If there is no evidence for a finding of fact, that will give rise to an error of law. But the weight to be attached to particular pieces of evidence is a matter for the justices. Only if no reasonable Bench could have reached the finding in question will that finding produce an error of law or amount to an *ultra vires* act. If a defendant believes that the justices have arrived at a finding for which there was evidence but at which he contends they should not have arrived (for example, because it was against the weight of the evidence), his remedy lies in an appeal to the crown court, not in an appeal by case stated to this court.”

22. In *Turner v Walsh* (1881) 6 App. Cas. 636, a Privy Council decision on appeal from New South Wales, Sir Montague Smith said at 642:

“The proper way of regarding these cases is to look at the whole of the evidence together, to see whether there has been such a continuous and connected user as is sufficient to raise the presumption of dedication; and the presumption, if it can be made, then is of a complete dedication, coëval with the early user.”

23. This passage was cited in *Barlow v Wigan MBC* [2020] EWCA Civ 696 at paragraph 65 and approved as a correct statement of English law.

24. Mr Semakula submitted that the evidence before the magistrates was piecemeal and fragmentary and that, taken as a whole, it only showed that the public had had the

opportunity to use the land as a highway and that there had been occasional use of the land as a highway, with too many large gaps. As a result, he submitted that the evidence was insufficient to support a rational finding to the criminal standard that the requirements of section 31 had been met.

25. In our judgment, on the facts of this case it was sufficient for the respondent to rely on a series of photographs which appeared to show that Vauxhall Bridge was used as a through route by vehicles on occasions both before and during the relevant 20 year period, coupled with the sub-committee minute. That provided strong evidence that the bridge was used by vehicles from before 1975 to 1982, when the only decision which the sub-committee was being asked to consider was whether the council should spend money to enable the bridge to be used again by heavy, as well as light, traffic.
26. In all the circumstances, we do not consider that the magistrates' finding on the basis of this evidence was irrational or contained any error of law.

(6) Conclusion

27. Our answer to each of the two questions in the case stated is to say that the decision was one which the justices were entitled to reach and contained no error of law. Accordingly, for the reasons set out above, we dismiss this appeal.