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| **Order Decision** |
| Site visit made on 22 July 2021 |
| **by Susan Doran BA Hons MIPROW** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 7 October 2021** |

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| **Order Ref: ROW/3244722** |
| * This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as the City Council of Bristol Definitive Map and Statement Modification Order No. 1, 2019. |
| * The Order is dated 5 February 2019 and proposes to modify the Definitive Map and Statement for the area by adding public footpaths as shown in the Order plan and described in the Order Schedule. |
| * There were fifteen objections outstanding when the City Council of Bristol submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation. |
| **Summary of Decision: The Order is proposed for confirmation subject to modifications set out below in the Formal Decision** |
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Preliminary Matters

1. This Order concerns the addition of a public footpath between No.2 Shaldon Road and the rear of No.246 Muller Road, Lockleaze, Bristol, point A on the plan attached to the Order, continuing along a track to point B, behind Nos. 233-247 Muller Road, then turning to follow a track running parallel with and behind the houses (Nos. 2 – 88) on the west side of Shaldon Road through point C to point D where it turns, following the track alongside the Chapel, to point E on Shaldon Road. A further spur path runs from point C to point F at Morris Road, between Nos. 76 and 78.
2. The City Council of Bristol (‘the Council’) requested a modification, in the event that I decide to confirm the Order. This concerns the width of the Order route between points D and E, and I consider this below.

The Main Issues

1. The Order has been made in consequence of the occurrence of an event specified in Section 53(3)(b) of the 1981 Act, being the expiration, in relation to any way in the area to which the map relates, of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path. The Council relies upon use by the public which is considered sufficient to raise a presumption of dedication as required by the tests laid down in Section 31 of the Highways Act 1980.
2. This requires me to consider the date on which the right of the public to use the claimed footpath was brought into question; whether the claimed footpath was used by the public as of right and without interruption for a period of not less than 20 years ending on the date on which their right to do so was brought into question; and whether there is sufficient evidence that there was during this 20-year period no intention on the part of the landowner to dedicate the claimed footpath.

Reasons

***When use of the claimed route was brought into question***

1. In February 2007, locked gates were erected at various points along the Order route on behalf of the residents whose properties back on to it. The gates prevented use by the public. I conclude that the installation and locking of the gates, referred to in many of the user evidence forms, brought into question the right of the public to use route, providing a 20-year period of 1987 to 2007.

***Whether the claimed route was used by the public as of right and without interruption***

1. Evidence of use was provided in 26 user evidence forms, with use claimed between 1965 and 2007. Twelve forms were accompanied by maps showing the entire Order route and four showing all but the spur C-F, three showing the route from A-D, and two marking the spur C-F. One shows only two short sections of the route, and two an extension that does not form part of the Order.
2. Claimed use was on foot (with two people claiming use with a bicycle) to go to the library and shops on Muller Road, for dog walking, and as a short cut to Morris Road. Several people travelled between home and work and many to access the bus stop on Shaldon Road. Claimed use ranged from regular and frequent, often twice a day or daily, to weekly or more. All claimants knew or had seen others using the route, many being residents of Morris Road, Downman Road, Gaskins and Shaldon Road. Fifteen people claimed use for the full 20-year period and the others for periods varying between 2 and 19 years. Fourteen people claimed used for periods prior to 1987. Two people used it to access the rear of a property on Shaldon Road, which may have been in exercise of a private right, consequently I have disregarded it in my analysis.
3. Claimed use was without interruption or challenge with no notices or obstructions encountered prior to 2007 when the gates were installed. One person was turned back in 2007, again coinciding with the installation of the gates. None had sought permission to use the Order route.
4. Others described “use too numerous to mention”, and that people were always seen going in and out of the lane entrances. However, it is not necessarily the case that all those seen were members of the public since the residents of Shaldon Road enjoy a right of access to the rear of their properties. Three forms refer to its use by school children, and others to its use after school to go to the shops, to go to Muller Road, and to pick blackberries.
5. On balance, I find the user evidence as of right, that is without force, permission, or secrecy, and sufficient to raise a presumption of dedication of the claimed route as a public right of way.

***Whether there was no intention to dedicate a public right of way***

1. The erection of the gates in 2007 appears to have been in response to alleged anti-social and criminal behaviour. The gates were accompanied by notices and some challenges to users.
2. Adjacent landowners refer to private rights of access to the lane, or road, as shown on their property deeds and that they had carried out maintenance work to it, with some indicating the Council had regarded it as private over the years. Some believed use was only by residents, or was low or infrequent, whilst others acknowledged use of the way by the public prior to 2007 when the gates were put up.
3. Bollards near C installed in the mid-1960s appear to have been to prevent vehicular access from Morris Road to the route running parallel with Shaldon Road but presented no obstacle to use on foot, as supported in the user evidence considered above.
4. There is no evidence that any landowner took any action during the 20-year period prior to 2007 to indicate to the public a lack of intention to dedicate the way, nor indeed before it.
5. In view of the above, I am satisfied that a public right of way on foot subsists.

***Width***

1. As part of its investigation, the Council consulted a variety of sources to shed further light on the route. It established that the Order route first appeared as a feature in a 1935 Conveyance and is later seen on a 1946 aerial photograph and 1949 Ordnance Survey map.
2. The Council owns parcels of land at Morris Road, and the 1935 Conveyance provides rights for them as follows, *“Together with a right of way in perpetuity for all purposes over and along the back lanes thirteen feet in width shown on the said plan…together also with the free and uninterrupted right of access in perpetuity at any point and for all purposes to the said piece or parcel of land from the said back lanes.”*
3. The Order records a width of 4 metres for the majority of the Order route. This is consistent with the width described in the 1935 Conveyance (at 13 feet), and referred to by several of the residents, although the available width has reduced recently due to overgrowth. The spur C-F has a width of 5 metres recorded in the Order and this is not disputed. Nevertheless, it is stated in the Order as both 5 metres and a minimum width of 5 metres. For clarity, I propose to delete the reference to a ‘minimum’ width.However, in light of a response received during their consultation process, the Council seeks a modification to the width of the spur path from points D-E, should I decide to confirm the Order. Here it is considered the appropriate width between the original boundaries is 3 metres. This is consistent with a measurement taken at the accompanied site visit.
4. There is nothing to suggest that the 4 metres (13 feet) width in respect of the bulk of the route running behind Shaldon Road, as evidenced from the 1935 conveyance, has differed during the 20-year period under consideration. However, the spur D-E is slightly narrower, and there is no evidence before me that the width between the boundaries here has altered during that 20-year period. Accordingly, in the absence of evidence to the contrary, I propose to modify the Order to record a width of 3 metres between D and E.
5. In addition, I note that Part I of the Schedule to the Order describes the length of D-E, but neither this nor the width are stated in Part II. Therefore, I shall modify the Order to correct this omission.

Other matters

1. I understand the concerns that have been raised in the objections, many of which relate to the private nature of the route and the need for continued access to garages, parking and for the less able. It is not unusual for public rights of way to exist over private land, and in the event that the Order is confirmed, its effect would be to record in the Definitive Map and Statement, the legal record of public rights of way, a public right of way on foot, as described in the Order. The existence of any private rights is a separate matter to my consideration of the evidence as to the existence or otherwise of a public right of way.
2. In reaching my decision, under the 1981 Act, I am unable to take into account such matters as the suitability or desirability of the Order route for use by the public, nor issues such as alleged anti-social behaviour, vandalism and criminal activity. Nor is the impact on the residential amenity a matter that has a bearing on my decision.
3. Submissions made requesting and/or querying such matters as adequate drainage to prevent flooding from water run-off; removeable bollards at certain locations or lockable gates to prevent access by unauthorised vehicles; installation of security cameras; lighting; and for the Council to adopt the lane, are not matters that I can consider in reaching my decision. As stated above, my findings are limited to the existence or otherwise of public rights over the Order route.

**Conclusions**

1. Having regard to these and all other matters raised in the written representations, I conclude that the Order should be proposed for confirmation with modifications as described above and set out below.

**Formal Decision**

1. I propose to confirm the Order subject to the following modifications:

* In Part I of the Schedule to the Order, ‘Description of path to be added’, at paragraph 2, line 4, delete ‘minimum’; at paragraph 3, line 5, delete ‘4m’ and insert ‘3m’
* In Part II of the Schedule to the Order, ‘Description of Route’ beneath the heading ‘Particulars…’ ‘General Description of Route’ for FP611, after the description insert ‘LENGTH: 46m WIDTH: 3m

Since the confirmed Order would not show part of a way as shown in the Order as made, I am required by virtue of Paragraph 8(2) of Schedule 15 to the Wildlife and Countryside Act 1981 to give notice of the proposal to modify the Order and to give an opportunity for objections and representations to be made to these proposed modifications. A letter will be sent to interested persons about the advertisement procedure.

**S Doran**

**Inspector**

