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| **Order Decision** |
| Site visit made on 22 September 2021 |
| **by Barney Grimshaw BA DPA MRTPI(Rtd)** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 22 October 2021** |

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| **Order Ref: ROW/3240106** |
| * This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as The Northumberland County Council Definitive Map Modification Order (No 15) 2018.
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| * The Order is dated 29 October 2018 and proposes to modify the Definitive Map and Statement for the area by adding two footpaths on Alnmouth Common, as shown in the Order Map and described in the Order Schedule.
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| * There were 3 objections outstanding when Northumberland County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.
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| **Summary of Decision: The Order is not confirmed.** |
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Procedural Matters

1. In writing this decision I have found it convenient to refer to points marked on the Order Map. I therefore attach a copy of this map.
2. This case concerns the addition of two public footpaths on Alnmouth Common, the first from its junction with Alnwick Footpath No 2 (Point L) running north-easterly, then northerly, for 875 metres to re-join Footpath No 2 (Point M) which I shall refer to as ‘Route A’; and a spur leaving the first path (Point N) and running north-easterly for 110 metres to Marden Rocks (Point O) which I shall refer to as ‘Route B’. The case is based on claimed use by the public.
3. Although the Order describes two separate routes, it is appropriate to consider these together as use of Route B could only take place in conjunction with Route A.
4. Northumberland County Council adopted a neutral stance in respect of the Order and the case in support was made by the Applicant.
5. I carried out an unaccompanied site visit on Wednesday 22 September when I was able to walk the whole of the Order routes.

The Main Issues

1. The requirement of Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 (the 1981 Act) is that the evidence discovered by the surveying authority, when considered with all other relevant evidence available, should show that a right of way that is not shown on the definitive map and statement subsists along the Order route.
2. Most of the evidence in this case relates to usage of the route. In respect of this, the requirements of Section 31 of the Highways Act 1980 (the 1980 Act) are relevant. This states that where it can be shown that a way over land has been enjoyed by the public as of right and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The period of 20 years is to be calculated retrospectively from the date when the right of the public to use the way was brought into question.
3. Common law also requires me to consider whether the use of the path and the actions of the landowners have been of such a nature that the dedication of the path by the landowners can be inferred.

Reasons

1. The land over which the Order routes pass is part of Alnmouth Common and is owned by the Ninth Duke of Northumberland Will Trust (Grandchildren’s Fund) subject to various rights in favour of the Burgage Holders of Alnmouth Common. It is occupied by Alnmouth Village Golf Club under a licence granted by the Burgage Holders.

***Documentary Evidence***

1. Route A is shown on an Ordnance Survey (OS) map dated 1976 submitted in support of the application for the routes to be added to the definitive map. However, this does not indicate the existence of public rights over the route. The route is shown leading to a property, Marden House, which no longer exists, and could have been the access drive to this property.
2. A copy of the local rules of Alnmouth Village Golf Club includes a small map which appears to show the Order routes, and a golf club notice regarding course safety includes an instruction to golfers to *“Give way to walkers on the roadway to the left of the fairway”* (on the 5th hole). I do not know the date of these documents but, in any event, whilst they confirm the presence of the routes, they do not indicate the existence of public rights over them.
3. These documents do not in my view indicate the existence (or otherwise) of public footpaths on the Order routes. Accordingly, the determination of this Order depends entirely on the evidence of public use of the claimed routes that is available and whether this indicates that public footpaths can be presumed to have been dedicated in accordance with the provisions of the 1980 Act (statutory dedication) or inferred to have been dedicated at common law

***Statutory Dedication***

*When use of the Order routes was brought into question*

1. In 1997, the owner of the land crossed by the claimed footpaths, deposited a statement and plan under Section 31(6) of the 1980 Act which was followed up by the appropriate statutory declarations in January 1998, May 2003 and May 2013. This deposit confirmed that the Order routes were not accepted as public rights of way and therefore brought public use of them into question.
2. There is also evidence that a locked gate was erected towards the western end of Route A in 1993 which completely obstructed the route. However, evidence of people claiming to have used the path suggests that there was a gap wide enough to permit pedestrian passage at the side of the gate. It is accepted by objectors that there has been such a gap for some time but disputed that it has always been present. In 2016 several notices were put up stating ‘no right of way’.
3. It is my view that public use of the paths was brought into question in 1997 as a result of the deposit under Section 31(6) of the 1980 Act but may also have been brought into question in 1993 when a gate was erected. Accordingly, the relevant 20 year period of public use during which a presumption that the routes have been dedicated as public rights of way might have been raised in accordance with the provisions of the 1980 Act runs from 1977 to 1997 in this case. However, in view of the evidence regarding the erection of a gate in 1993, I have also given consideration to the evidence of public use in the period 1973 to 1993.

*Use by the public*

1. Evidence of use is provided in 18 user evidence forms (UEFs) on behalf of 19 people, with use claimed between 1950 and 2016. Of these, 9 users claimed to have used the paths throughout the period 1977-97 and a further 6 for part of that period. Four people only claimed to have used the route after 1997.
2. If the period from 1973 to 1993 is considered, the evidence of use is similar.
3. All those completing UEFs claimed to have used the paths on foot and in addition a few people claimed to have used them occasionally on horseback, bicycle or with a car. The frequency of use claimed varied from daily to 50 times a year and would therefore seem to have been regular and frequent.
4. The UEFs simply invited respondents to estimate the number of times per year that they used the paths and consequently it is not possible to tell whether the frequency of use changed over time. One respondent did however state that her use was only occasional before 1987 but daily thereafter.
5. The amount of use claimed is questioned in evidence from members of the golf club. Seven long standing members who had played regularly during the relevant period stated that it was very unusual to see anyone using the claimed paths during that time. They all stated that more frequent use has only been observed in recent years, after 1997.
6. It is also alleged in evidence on behalf of the golf club that 2 of the people claiming to have used the routes frequently throughout the relevant period lived a considerable distance way from Alnmouth for much of that period and possibly were not frequent users until more recently. It is also alleged that one of the respondents was a Burgage Holder during part of the relevant period and that use during this time may have been by right not ‘as of right’ as required under the 1980 Act.

*The evidence and actions of the landowners*

1. The landowner claims a gate was installed and padlocked on Route A in 1993, and at this time there was no gap to the side. A letter from the Chairman of the Burgage Holders to Northumberland Estates dated 6 September 1993 confirms that the gate had been erected and would be locked as from 27 September 1993. The gate may have been installed primarily to prevent use by motorised vehicles, nevertheless, use on foot would have been prevented and/or interrupted at this time.
2. A pamphlet produced by the Burgage Holders stated that there are no rights of access to the common for the public except on the public footpaths. However, it is not known when this was produced or how it was distributed.
3. Members of the golf club have stated that they have challenged walkers and advised them that the Order routes are not public rights of way on a number of occasions. Such challenges only seem to have commenced since 1997 though, as it was said that before then challenges were unnecessary as there were so few walkers.
4. There are now several signs on the routes stating that they are not public rights of way, but these were erected in 2016 and were not present during the relevant period.

*Conclusions on presumed dedication*

1. The available evidence of public use of the Order routes during the relevant period is limited and to some extent incomplete. It is also questioned by objectors in some respects. In these circumstances, it is my view that there is insufficient evidence of public use to raise the presumption that they have been dedicated as public rights of way of any sort.

***Common Law***

1. An inference that a way has been dedicated for public use may be drawn at common law where the actions of landowners (or lack of action) indicate that they intended a way to be dedicated as a highway and where the public have accepted it.
2. In this case, although there is some evidence that members of the public have used the Order routes over a long period, there is no evidence of action by the landowner to indicate an intention to dedicate the routes as public rights of way. In fact, the actions that have been taken would suggest a lack of such an intention.

Other Matters

1. The possible danger to walkers from flying golf balls or golf buggies was referred to by objectors to the Order, as was the availability of a parallel footpath close to the Order routes. I understand these points but, as they relate to matters outside the criteria set out in the relevant legislation, I have given them no weight in reaching my decision.

Conclusion

1. Having regard to these and all other matters raised in the written representations, I conclude that the Order should not be confirmed.

**Formal Decision**

1. I do not confirm the Order

Barney Grimshaw

**Inspector**

