

|  |
| --- |
| **Order Decision** |
| Inquiry held on 1 March 2022 |
| **by Barney Grimshaw BA DPA MRTPI(Rtd)** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 10 March 2022** |

|  |
| --- |
| **Order Ref: ROW/3261042** |
| * This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Public Footpath No.10.39/11 Easby Modification Order 2013.
 |
| * The Order is dated 23 December 2013 and proposes to modify the Definitive Map and Statement for the area by adding a footpath running between Bridleway No.10.39/10 (Mucky Lane) and Footpath No.10.39/2, Easby, as shown on the Order Map and described in the Order Schedule.
 |
| * There were 14 objections outstanding when North Yorkshire County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.
 |
| **Summary of Decision: The Order is not confirmed.** |
|  |

Procedural Matters

1. I made an unaccompanied site inspection on Monday 28 February 2022 when I was not able to walk the whole of the Order route but viewed it from accessible points.
2. North Yorkshire County Council, the Order Making Authority (OMA) adopted a neutral stance at the inquiry. Arrangements had been made for support for the Order to be led by a local resident but, in the event, no supporters attended. I nevertheless proceeded with the inquiry and took the opportunity to hear the evidence of objectors and to question witnesses.
3. 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.

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. All 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 Order route follows a stoned track which leaves the bridleway known as Mucky Lane at Point A and crosses a stone bridge over the River Leven to Point B and then continues across a field to join a public footpath at Point C.
2. No documentary evidence of the existence of public rights over the route has been submitted. Accordingly, the determination of this Order depends entirely on the evidence relating to public use of the claimed route that is available and whether this indicates that a public footpath 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*

Date of calling into question

1. In 2003, land crossed by the Order route changed hands and the new owners began preventing public use of the route by locking gates at the eastern end of the route This led to an application for the Order route to be added to the definitive map being made on behalf of Easby Parish Meeting in 2004. This application was rejected by the OMA, but it seems clear that public use of the route had been brought into question in 2003. A new application made in 2009 resulted in the making of the current Order.
2. It is therefore my view that the relevant 20 year period of public use during which a presumption that the route has been dedicated as a public right of way may have been raised in accordance with the provisions of the 1980 Act runs from 1983 to 2003 in this case.

*Evidence of Users*

1. Twenty one User Evidence Forms (UEFs) were submitted with the 2004 application for the route to be added to the definitive map, although I have seen only 20 (1 form was a duplicate), and 3 further forms were submitted subsequently. Accordingly, I have considered a total of 23 UEFs. In addition, I received further information regarding use of the route from some people who also completed UEFs.
2. The UEFs describe use of the route from the 1930s until 2003. Fifteen people claim to have used it throughout the period 1983-2003 and a further 6 for at least part of that period. One person had only used the route before 1983 and one did not specify when they had used it.
3. The frequency of use claimed is difficult to quantify with any precision. The forms asked people to indicate whether they used the route more or less than 10 times per year. Most ticked the box claiming use more than 10 times per year and more detailed analysis of the forms and additional information provided suggests that some used the route much more than 10 times per year. Users generallv claimed that they had never been obstructed or challenged regarding their use and although several mentioned at least one gate having been present this was said not to have been locked.
4. The main issue in this case relates to how much of the use of the route was use by the public ‘as of right’, as required under the 1980 Act, or was by permission or otherwise ‘by right’. One UEF was completed by someone who had owned the land crossed by the Order route during most of the relevant period and occupied it as tenant for the remainder of the period and 3 others by members of his immediate family. These people would have had the right to access the land irrespective of the existence of any public rights. A further 5 UEFs were completed by people who have acknowledged that they received permission to use the route from the landowner and another 3 from members of the immediate families of these people.
5. In addition, several forms were completed by people who occupied property owned by the Easby Estate which also owned the land crossed by the Order route prior to 1987. However, I have seen no evidence to indicate that the Estate gave permission to tenants of other properties to have access to the route. Also, it is clear that other forms were completed by people who were friends of the previous owner of the land, or at least were well known to him, but again I have seen no specific evidence that these people were given permission to use the route

Actions of landowners

1. As already mentioned, the current owners of the land crossed by the Order route took possession of the land in 2003 and immediately took steps to prevent public use of the route.
2. The previous owner purchased the land in 1987 but, before then, his family had been tenants of the land since 1916. He has stated in a written statement that he and his father before him were happy to let people use the claimed route, never took any steps to prevent its use and actively encouraged it. He also states that he did not give individual permission to people to use the route.
3. The current landowners report that they have been approached by a number of people, including the previous owner, requesting permission to use the Order route. This has been declined as they consider such access incompatible with their agricultural operations. They stated that the previous owner had been somewhat upset that he could no longer use the route and permit others to do so.
4. Objection letters from 4 people refer to having been challenged when using the Order route by the landowner and informed that it was private and they should leave.
5. The evidence of the previous landowner is potentially somewhat confusing and it is unfortunate that it was not possible for it to be tested at the inquiry. However, I note that he stated that he knew the route was not recorded as a public right of way and that he ‘allowed’ people to use it. This could be interpreted as indicating that he regarded use of the route as being subject to his permission, even if this had not been explicitly given to each individual, and that this could be withdrawn on occasion, as it appears to have been with regard to 4 people who reported having been stopped from using it.
6. There is evidence from both objectors and path users that there were gates across the Order route at either side of the bridge over the River Leven. Although these were apparently not locked before ownership changed in 2003, they were reportedly fastened in a closed position with twine and chains and might have been difficult to open. There was also a report that an electric fence had been in place across the route at one time although this may have been before 1983.
7. When new owners took over in 2003 there was a sign close to the bridge which read *“Private Fishing No Trespassing”*. This appeared to have been in place for a long time and was said to probably have been erected on behalf of the Easby Estate before 1987. The sign is no longer there but I have seen photos of it in place. This sign did not specifically state that the Order route was not a right of way but may well have discouraged some potential users of the route.
8. Before 1987, the land crossed by the Order route was owned by the Easby Estate. A letter dated 6 November 1985 from agents to the Estate, addressed to the County Surveyor of North Riding County Council, stated that the bridge over the River Leven on the Order route was in urgent need of repair. The writer also stated that the bridge was used for agricultural access and *“…I believe also as a public foot path…”*. The letter then asked if there was a source of grant aid towards the cost of repair of the bridge. It was argued on behalf of objectors that this statement represented the view of one individual with an interest in seeking to obtain public money to repair the bridge rather than evidence that the route was indeed public. It was also pointed out that the letter was written at a time when the Estate was negotiating the sale of the land. The word *“NO”* is hand-written on the copy of the letter I have seen, but it is not known by whom this was added. In any event, it may simply reflect the fact that at the time the route was not recorded as a public footpath.

*Conclusion regarding Presumed Dedication*

1. The available evidence of public use of the Order route is limited, if that of people whose use may have been by right or permission rather than ‘as of right’ is discounted. This, combined with the evidence of the landowner and the fact that most, if not all, users were known to and possibly friends of the landowner, could suggest a permissive route rather than a public right of way. Such a conclusion is reinforced by the fact that there is specific evidence that permission to use the route was given to some people but that others were prevented from using the route.
2. The route is located in a small community and the evidence suggests that use of the Order route was largely confined to residents in that community. The presence of gates and the sign may well also have discouraged other users. On balance, it is my view that the evidence of use and the actions of landowners is not sufficient to support a conclusion that the route has been dedicated as a public footpath in accordance with the provisions of the 1980 Act.

**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, the evidence suggests that some members of the public have used the Order route over a long period on foot. However, the actions of landowners appear to me to have been more consistent with permitting some local people to use the route rather than an intention to dedicate a public right of way. Accordingly, it cannot be inferred that the route has been dedicated as a public footpath at common law.

Other Matters

1. A number of concerns were raised by some objectors, including:
* The incompatibility of public access with use of the field to contain dairy cows and a dairy bull;
* The fact that the bridge was considered to be in a dangerous condition;
* The presence of other paths in the area.
1. On the other hand, the desirability of the route as a useful link facilitating circular walks was referred to by supporters of the Order.
2. I understand all of these matters but, as they relate to considerations outside the criteria set out in the relevant legislation, I am not able to afford them any weight in reaching my decision.

Conclusions

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

Formal Decision

1. I do not confirm the Order.

Barney Grimshaw

Inspector

appearances

|  |  |
| --- | --- |
|  |  |
| **For the OMA** |  |
|  |  |
| OMA neutral – attended only to facilitate inquiry arrangements. |  |
|  |  |
| **Supporters** |  |
|  |  |
| None attended |  |
|   |  |
| **Objectors** |  |
|  |  |
| Piers Riley-Smith | Counsel, representing Mr R and Mrs A Chapman |
|  |  |
| Who called: |  |
|  |  |
|  Andrea Chapman | Landowner |
|  |  |
|  Robert Chapman | Landowner |
|  |  |
| Debra Wade | Local resident |
|  |  |
| Carol Jaskowicz | Local resident |
|  |  |
| Heather Moorhouse  | Councillor and local resident |
|  |  |

**DOCUMENTS**

1. Statement of Case of Mrs Amanda Taylor (with 8 Appendices).
2. Statement of Mr & Mrs Chapman.
3. Rebuttal Statement of Mr & Mrs Chapman.
4. Consolidated Statement of Mr & Mrs Chapman.

