

|  |
| --- |
| **Order Decisions** |
|  |
| **by A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practicing)** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 8 July 2022** |

|  |
| --- |
| **Order Ref: ROW/3264648 (‘Order A’)** |
| * This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as The South Tyneside Council Public Footpaths in the General Hospital Area Definitive Map Modification Order (No 1) 2019.
 |
| * The Order is dated 7 November 2019 and proposes to modify the Definitive Map and Statement for the area by adding nine footpaths as shown in the Order plans and described in the Order Schedules.
 |
| * There were two objections outstanding when South Tyneside Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.
 |
| **Summary of Decision: The Order is confirmed** |
|  |

|  |
| --- |
| **Order Ref: ROW/3264649 (‘Order B’)** |
| * This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as The South Tyneside Council Public Footpaths in the General Hospital Area Definitive Map Modification Order (No 2) 2019.
 |
| * The Order is dated 7 November 2019 and proposes to modify the Definitive Map and Statement for the area by adding twenty one footpaths as shown in the Order plans and described in the Order Schedules.
 |
| * There were two objections outstanding when South Tyneside Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.
 |
| **Summary of Decision: The Order is confirmed** |
|  |

|  |
| --- |
| **Order Ref: ROW/3264650 (‘Order C’)** |
| * This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as The South Tyneside Council Public Footpaths in the General Hospital Area Definitive Map Modification Order (No 3) 2019.
 |
| * The Order is dated 7 November 2019 and proposes to modify the Definitive Map and Statement for the area by adding twenty three footpaths as shown in the Order plans and described in the Order Schedules.
 |
| * There were two objections outstanding when South Tyneside Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.
 |
| **Summary of Decision: The Order is confirmed** |
|  |
| **Order Ref: ROW/3264651 (‘Order D’)** |
| * This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as The South Tyneside Council Public Footpaths in the General Hospital Area Definitive Map Modification Order (No 4) 2019.
 |
| * The Order is dated 7 November 2019 and proposes to modify the Definitive Map and Statement for the area by adding nineteen footpaths as shown in the Order plans and described in the Order Schedules.
 |
| * There were two objections outstanding when South Tyneside Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.
 |
| **Summary of Decision: The Order is confirmed** |
|  |

Preliminary Matters

1. Together the South Tyneside Council Public Footpaths in the General Hospital Area Definitive Map Modification Orders (No 1, 2, 3 and 4) (the Orders), described above, seek to add seventy two public footpaths to the Definitive Map and Statement (DMS) for the area.
2. The former County Borough of South Shields was excluded from the requirement contained within Part IV of the National Parks and Access to the Countryside Act 1949 that a DMS be produced for that area. However, the 1981 Act introduced a statutory requirement to produce a DMS for that previously excluded area.
3. In order to compile the DMS, the former County Borough of South Shields was divided into several project areas. The Orders concern an area described as ‘Area 19 – General Hospital’. On 7 November 2019, the Orders were made by the Order Making Authority (the OMA), and which were subsequently advertised on 21 January 2020. Following advertisement, two objections were received which concerned all the Orders. The OMA is now seeking confirmation of the Orders.

The Main Issue

1. The Orders have been made under Section 53(3)(c)(i) of the 1981 Act, and based on evidence which the OMA has put it to me confirms that public footpaths subsist over the Order routes.
2. Dedication as a highway through public use arises either by presumed dedication as set out in Section 31 of the Highways Act 1980 (the 1980 Act), or by implied dedication under common law. The 1980 Act requires that the date when the public’s right to use the Order routes were brought into question be established, and then determine whether use by the public has been without force, secrecy or permission and without interruption for a period of not less than twenty years ending on that date. It is also necessary to consider whether there is sufficient evidence to show that the landowners did not intend to dedicate public footpath rights during that period.
3. In addition to the above, at common law a right of way may be created through express or implied dedication and acceptance. Dedication may be presumed if there is sufficient evidence, from which it could reasonably be inferred, that the landowner has dedicated a right of way and the public has accepted that dedication. No minimum or fixed user period is required for the dedication of a public right of way at common law.
4. The submissions in these cases confirm that all the land on which the footpaths exist are tarmacked with publicly funded street lighting and is within the ownership of South Tyneside Council. The land was acquired by the Council in 1975, and these footpaths were constructed to serve a housing estate and were subsequently included within the Lists of Streets Maintained at the Public Expense. As such, the highways and footpaths within the estate constructed by the Council in its housing capacity, has resulted in the creation of public rights.
5. In terms of Section 31 of the 1980 Act, there does not appear to be any evidence that the landowner ever challenged the existence of public rights, with the routes being added to the List of Streets Maintained at the Public Expense as noted above. Furthermore, and following a period of consultation, the evidence indicates that no objections to any of the routes were made and that the evidence is consistent with use by the public that has been without force, secrecy or permission.
6. By reason of the inclusion of these routes on the List of Streets Maintained at the Public Expense, intention by the landowner to dedicate the routes has been demonstrated, with evidence of long, uninterrupted use, the conclusion is that public rights of way over the routes have been established at common law.
7. The objections in relation to these routes do not allege that the footpaths should not be added to the DMS or that the status of those routes has been recorded incorrectly. Rather the two objections raise concerns regarding the titles given to the Orders and how they should be referred to. Both objectors have put it to me that the inclusion of the wording “General Hospital Area” should be removed from the title of the relevant orders and replaced with another form of description. As such, the main issue concerns the validity of the Orders in terms of their formality requirements.

Reasons: Order A, Order B, Order C and Order D

1. In terms of the objections, it has been put to me that the description of the Orders to include “General Hospital Area” is inaccurate in that the abovementioned housing estate was constructed at the former Harton Colliery site rather than at the South Tyneside Hospital site, and that the Orders do not relate to changes in connection with that hospital site.
2. The 1981 Act provides that an order shall be in such form as may be prescribed by regulations made by the Secretary of State, and shall contain a map, showing the modifications to which the order relates. Regulation 4 of the Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993 (the Regulations) confirms that a modification order shall be in a form as set out in Schedule 2 of the Regulations, or in a form substantially to the like effect.
3. Schedule 2 of the Regulations provides a standard model order, with spaces included for completion by the OMA in relation to matters such as applicable specific sections of the 1981 Act and the nature of the event that has resulted in the modification, in addition to information to be included which describes the position, length and width of the relevant path. Space is also provided within that model order for the OMA to include the ‘Title of Order’. The Regulations do not prescribe the form that the ‘Title of the Order’ should take nor seeks to impose any specific wording in that respect.
4. The Orders have been completed in a form substantially similar to that as set out in the model order provided at Schedule 2 of the Regulations. The Regulations do not expressly require that a specific form of classification, categorisation or nomenclature be used within the title of orders and, consequently, the naming, or indeed numbering, of a route is a matter for the surveying authority.
5. Whilst I acknowledge the objectors’ submissions, it is apparent that relevant footpaths contained within the Orders are located within the vicinity of the hospital site and given the above provisions of the 1981 Act and the Regulations, I am satisfied that the Orders are valid and in the required form. The Orders include the required and relevant maps showing the routes and, therefore, there can be no confusion that the modifications do not relate to changes made in respect of public rights of way at the existing hospital site.

**Overall Conclusion**

1. Having regard to these and all other matters raised in the written representations, I conclude that the Orders should be confirmed.

**Formal Decisions**

**Order A**

1. I confirm the Order.

**Order B**

1. I confirm the Order.

**Order C**

1. I confirm the Order.

**Order D**

1. I confirm the Order.

Mr A Spencer-Peet

INSPECTOR

