
Order Decision

Site visit made on 12 November 2015

by Susan Doran BA Hons MIPROW

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 11 December 2015

Order Ref: FPS/P0430/7/53

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as the Buckinghamshire County Council (Public Footpath from Elmshott Close to King's Wood, Parish of Chepping Wycombe) Definitive Map Modification Order 2014.
- The Order is dated 22 December 2014 and proposes to modify the Definitive Map and Statement for the area by adding to them a public footpath as shown in the Order plan and described in the Order Schedule.
- There were three objections outstanding when Buckinghamshire County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed subject to a modification set out below in the Formal Decision

Procedural Matters

1. This case concerns the recording of a public footpath between King's Wood, a registered Village Green, and Elmshott Close, Penn, High Wycombe based on evidence of claimed use.
2. None of the Objectors requested to be heard, and this matter has been considered on the basis of the written submissions and an unaccompanied visit to the Order route.
3. I was unable to walk the Order route, but was able to view it from public vantage points. I am satisfied, however, on the basis of this, and the evidence on file, that I can reach a decision on the Order. At my unaccompanied site visit I was approached by a local resident, but did not discuss the merits of the case with them.

The Main Issues

4. The Order has been made under Section 53(3)(b) of the Wildlife and Countryside Act 1981 ('the 1981 Act'). This requires me to consider whether a period has elapsed during which the public has enjoyed the use of the claimed footpath such that it may be presumed it has been dedicated as a public right of way. The Council relies on a presumption of dedication arising by reference to the tests set out in Section 31 of the Highways Act 1980 ('the 1980 Act').
5. In this case it is not disputed that a public right of way on foot exists. What is at issue is its width, and I consider the evidence in this regard below.

Reasons

6. With regard to Section 31 of the 1980 Act, I am satisfied from the evidence provided that the public's right to use the claimed footpath was brought into question in 2010. This is when it was obstructed by fencing, at point B on the Order plan, during the development of properties to the south of the Order route.
7. Thirty-eight user evidence forms were provided in support of the application to add the claimed footpath to the Definitive Map and Statement, with use claimed for varying periods between 1976 and 2010. Frequency of claimed use varies from daily to annually, with recreation, accessing the woods and dog walking given as the main reasons for using it. There is nothing to suggest that claimed use was by force, carried out in secrecy or was by permission during the 20 year period prior to the right to use the claimed path having been brought into question. Neither is there evidence that use was interrupted with the aim of preventing a public right of way being acquired.
8. It is not clear who owns the land crossed by the Order route at the south western end of Elmshott Close. However, there is no evidence that any actions took place by or on behalf of any landowner during the 20 year period prior to 2010 to demonstrate a lack of intention to dedicate the claimed footpath. The Parish Council owns King's Wood Village Green and has expressed support for the footpath claim.
9. On balance I conclude that a presumption of dedication is made out and there is a lack of evidence to rebut that presumption.

Width

10. The Order provides for a width of 3 metres throughout the length of the Order route. However, those objecting to the Order consider a width of 2 metres to be more appropriate based on an average from the widths given in the user evidence forms. In addition a 2 metre width is said to be consistent with that of other footpaths in the locality.
11. The Council based the 3 metre width on the information contained in the user evidence forms. Question 4 of the Council's form asks "How wide is the way?", and the responses to this question vary. In addition a number of the witnesses were interviewed by the Council when investigating the matter. Again, their responses vary as regards the width that was available and/or used. In analysing the user evidence forms, I find that twenty-two witnesses indicated a width varying between 0.6 and 2 metres, and fourteen of the witnesses indicated a width exceeding 2 metres, with 3 metres given as the maximum by six witnesses¹. Of those witnesses who were interviewed by the Council, ten stated a width of between 1 and 1.8 metres, and three gave a width of 2.7 metres. Whilst there are differences, this is not necessarily unusual where a route is not clearly defined by boundaries. Some witnesses also described the width as sufficient for two people to walk side by side. This description is endorsed by the Objectors who have lived adjacent to the Order route for 30 years, and who say use was generally in single file, and to their knowledge never more than two abreast. There is little or no evidence of the path on the ground now, due in part to the recent property development.

¹ The response from two witnesses as regards width was expressed in general terms

12. The Applicant for the Order has no objection to a width of 2.5 metres provided the Order route is bounded by a hard fence. However, should the boundary be a natural hedge, or similar, he considers the width should remain as 3 metres to prevent the useable width being lost to weed growth. I appreciate the Applicant's concerns as regards possible encroachment of the width by vegetation, although I consider that management and maintenance of the path would be a matter for the Council, if the Order is confirmed. In my view, the width is to be determined on the basis of the evidence of use during the relevant 20 year period during which the dedication of public rights occurred, rather than on what is desirable.
13. Taking all of the evidence into account I consider that 2 metres is a more accurate reflection of the user evidence. Indeed, the Council requests that the Order be modified so as to record a width of 2 metres throughout. I shall modify the Order accordingly.

Conclusions

14. Having regard to these and all other matters raised in the written representations, I conclude that the Order should be confirmed with a modification that does not require advertising, since no new land is affected.

Formal Decision

15. The Order is confirmed subject to the following modification:
- In Parts I and II of the Schedule to the Order , in the last line of the path's description, replace "3" with "2"

S Doran

Inspector