



Order Decision

On papers on file

by Sue M Arnott FIPROW

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

Decision date: 3 March 2016

Order Ref: FPS/M1900/7/83

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981. It is known as the Hertfordshire County Council (Welwyn 58) Modification Order 2015.
- The Order is dated 20 February 2015. It proposes to modify the definitive map and statement for the area by adding a footpath from Mornington to New Road in Welwyn, as shown on the Order map and described in the Order schedule.
- There was one objection and one representation outstanding when Hertfordshire County Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.

Summary of Decision: The Order is confirmed subject to modifications as set out in the 'Formal Decision' below.

The Main Issues

1. There are two main issues here. The first (which is not disputed) is whether the evidence shows that in the past the Order route has been used in such a way that a public footpath can be presumed to have been established. The second issue concerns the manner in which the width of the right of way is recorded. Both the objection and representation relate to this matter.
2. The Order was made under the Wildlife and Countryside Act 1981 (the 1981 Act) on the basis of an event specified in Section 53(3)(b). Therefore if I am to confirm the Order I must be satisfied, on a balance of probability, that a period of time has expired in relation to the route in question such that its use by the public raises a presumption of dedication as a public right of way, in this case as a footpath.
3. The case in support of the Order is based primarily on the presumed dedication of a public right of way under statute, the requirements of which are set out in Section 31 of the Highways Act 1980 (the 1980 Act). For this to have occurred, there must have been use of the claimed route by the public on foot, as of right and without interruption, over the period of 20 years immediately prior to its status being brought into question so as to raise a presumption that the route had been dedicated as a public footpath. This may be rebutted if there is sufficient evidence that there was no intention on the part of the relevant landowner(s) during this period to dedicate the way for use by the public; if not, a public footpath will be deemed to subsist.
4. Since making the Order, Hertfordshire County Council (HCC) has accepted that the map and schedule are potentially confusing insofar as they deal with a mature tree which reduces the width of the Order route at one point along the path. HCC has suggested modifications to address this issue.

Reasons

5. HCC investigated the evidence in support of the claimed path following the submission of an application from an adjacent landowner in 2002. Since there had been no earlier event that had brought into question the status of the route, the date of the application itself was taken to represent the challenge which marked the end of a relevant twenty year period for the purposes of sub-section 31(1), and as provided by sub-section 31(7) of the 1980 Act.
6. An examination of the evidence from the 10 claimants shows there to have been regular use between 1982 and 2002 by the public throughout that period, 'as of right' and without interruption.
7. No evidence has been provided by or on behalf of the owner of the land affected by the Order route to rebut the claimed use or to otherwise negative the presumed intention to dedicate a right of way for the public on foot.
8. HCC therefore concluded, as do I, that the evidence is sufficient to show that, on a balance of probability, a public footpath can be presumed to subsist between the points marked A and B on the Order map, that is between Mornington to the south east and New Road to the north west.
9. On the basis of the information provided, I am satisfied that the relevant statutory test is met and, subject to consideration of the width of the path, I conclude that the Order should be confirmed.

Width of the proposed new footpath

10. The Order route is described as a 20 metre long narrow trodden path, sloping steeply adjacent to the fence which forms the boundary of No 24 Mornington and along the edge of Bankside Copse. The width of the path is measured at approximately 1 metre for most of its length. However at one point a mature tree narrows passage to 0.6 metres. These measurements are not challenged.
11. The Order Schedule regards the tree as a limitation which narrows the path to 0.6m and the inset plan on the Order map attempts to clarify the exact location of the tree at a point shown as X. Both the objection and representation express concerns about the way these details are portrayed.
12. To address the problem, and to better define the intended width of this route, HCC has suggested that the footpath is instead recorded as having a width which varies between 1.0m and 0.6m (removing the limitation in the process) but with reference to the inset plan; if this plan is amended so as to show (shaded) the extent of the footpath with measurements indicating where the 0.6m and 1.0m widths occur, this should make quite clear the extent of the public's right of way.
13. Both correspondents accept this proposal as a pragmatic way to remove the potential for confusion to arise. I concur with that view.
14. Although the overall intention of the Order is clear, recording the same information but in this slightly different way should avoid any doubt in future. I therefore propose to modify the Order as requested but do not consider further advertisement¹ will be necessary.

¹ As required by paragraphs 8(1) and 8(2) of Schedule 15 to the 1981 Act

Conclusion

15. Having regard to the above and all other matters raised in the written representations, I conclude that the Order should be confirmed with the modification requested and as noted in the preceding paragraphs.

Formal Decision

16. I confirm the Order subject to the following modifications (which do not require further advertisement):

- In the Order Schedule **PART I: Modification of Definitive Map:**
For 'Width': in line 1 before "1 metre" insert "Varying between 0.6 metres and ...", and in line 2 after "(point B on the Order Plan)" insert "as shown shaded on the Order Plan."
For 'Limitations': delete "Width of 0.6m at TL 2516 1567 (point X on the Order Plan) subject to a mature tree" and substitute "None";
- In the Order Schedule **PART II: Modification of Definitive Statement:**
For 'Width': delete "1m" and substitute "Varying between 0.6m and 1.0m as shown shaded on the plan forming part of the Hertfordshire County Council (Welwyn 58) Modification Order 2015."
For 'Limitations': delete "Width of 0.6m at TL 2516 1567 subject to a mature tree" and substitute "None";
- On the Order map, add shading and additional measurements (1m) to the inset map so as to better define the extent of Footpath 58 (Welwyn).

Sue Arnott

Inspector