



Order Decision

Inquiry opened on 5 December 2017

by Sue Arnott FIPROW

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

Decision date: 19 January 2018

Order Ref: ROW/3171233

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981. It is known as the Warrington Borough Council Rixton with Glazebrook Modification Order 2016.
- The Order is dated 24 October 2016. It proposes to modify the definitive map and statement for the area by adding a footpath from the end of Footpath 10 (Rixton with Glazebrook) to a point near the end of the access road at Glazebrook Station, as shown on the Order map and described in the Order schedule.
- There was one objection¹ outstanding when Warrington Borough Council submitted the Order for confirmation to the Secretary of State for Environment, Food & Rural Affairs.

Summary of Decision: The Order is confirmed.

Procedural Matters

1. I held a public local inquiry into the Order at the Rixton with Glazebrook Community Hall in Manchester Road, Glazebrook on 5 and 6 December 2017, having inspected the route in question, unaccompanied, during the afternoon of 4 December. At the close of the proceedings, I made a further visit to the site accompanied by both supporters and objectors.

The Main Issues

2. The Order was made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) on the basis of an event specified in Section 53(3)(c)(i), namely the discovery of evidence which shows a right of way which is not recorded in the definitive map and statement subsists over land in the area to which the map relates.
3. Whilst the evidence need only be sufficient to *reasonable allege* the existence of a public right of way to justify an order being made, the standard of proof required to warrant confirmation of an order is higher. In this case and at this stage, evidence is required which shows, *on the balance of probability*, that a right of way subsists along the Order route.
4. In short, the case for the Order requires me to consider whether the evidence shows that in the past the Order route has been used in such a way that a public footpath has been established.
5. The main case in support of the Order is based on the presumed dedication of a public right of way under statute, the requirements for which are set out in Section 31 of the Highways Act 1980 (the 1980 Act). For this to have occurred,

¹ One objection on behalf of three objectors

there must have been use of the claimed route by the public on foot, 'as of right' and without interruption, over a 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.

6. If not satisfied the requirements for dedication under statute have been met, I may consider the common law approach in the alternative. In addressing this possibility the issues I would need to examine are whether, during any relevant period, there was express or implied dedication by the owner(s) of the land in question (having the capacity to dedicate a public right of way) and whether there is evidence of acceptance of the claimed right by the public. The burden of proof lies with those that assert the existence of a public path.

Reasons

Background

7. In this case support for the footpath shown as A-B on the Order map rests primarily on the evidence of use by several local people over many years. After an application to record the route as a public right of way was submitted in February 2016, the order-making authority, Warrington Borough Council (WBC) considered a full report on the matter on 6 September 2016 and decided that an Order should be made.
8. The definitive map records Footpath 10 as a cul-de-sac leading from Bank Street, Glazebrook, to the point marked A on the Order map, this being the western end of the Order route. The public right of way now serves also as a private drive to the property known as "The Bungalow" and also affords access to land associated with the neighbouring property, Holly Bank, which operates as a horticultural nursery. Immediately to the south of Footpath 10 in Bank Street stands the former Glazebrook Sports and Social Club; this closed in the early 1990s following a serious fire.
9. At the eastern end of the Order route, the claimed footpath continues beyond point B to the vehicular road which affords access to Railway Cottages and to the station itself; it then proceeds to Glazebrook Lane along this road.
10. At all material times the Order route has been physically separated from the adjacent land (formerly railway sidings) by a concrete post and chain-link fence, although latterly the fence has been breached in places.

Ownership history

11. The Order route (A-B) lies on land owned jointly by the three objectors; its continuation eastwards (as claimed) crosses land owned by Network Rail.
12. The objectors (Mrs M Williams, Mr D Williams and Mrs K Taylor) acquired ownership of the land over which the Order route passes together with the adjacent woodland in 2008 following the death of Mr J Williams in 2007. Mr Williams (senior) had purchased the land (including both the path and former railway sidings) from the British Railways Board in December 1986.

The Definitive Map

13. The present definitive map and statement has a relevant date of 1 November 2010.
14. When the first definitive map was prepared in the early 1950s it seems that Footpath 10 was initially recorded from Bank Street through to Glazebrook Station but, following an objection from the British Transport Commission and a subsequent public hearing in March 1957, it was decided to remove the section which then crossed railway-owned land.
15. Although the district and parish councils of the time claimed that the footpath had been used for generations, the British Transport Commission appears to have argued, successfully, that the effect of Section 57 of the British Transport Commission Act 1949² was to preclude the establishment of a public right of way over the footpath insofar as it crossed land in its ownership. Consequently Footpath 10 was included on the map but only insofar as it did not cross land then owned by the Commission; in short, it was shown as a cul-de-sac although at the time the public could still use the continuation to and from Glazebrook Station but without acquiring any right to do so.

The railway and associated land

16. At the inquiry, witnesses Mr McArthur and Mr Eccles offered information on the establishment of the railway following an Act of Parliament in 1865. It was reported that works began on constructing the line in 1870, necessitating diversion of the road which previously ran along the line of Footpath 10 northwards to connect directly with Dam Head Road. Although no evidence was produced to substantiate this, the present layout of roads in this vicinity offers some support for such realignment.
17. It is possible that inspection of the deposited plans associated with the development of the railway or relevant Quarter Sessions records from the late nineteenth century may reveal some specific provision made for pedestrians following diversion of the former road. However no such evidence was available to the inquiry and no assumptions can be made about any such provisions.
18. Amongst the documents filed with the 1957 definitive map hearing was a detailed plan of the station which shows the Order route and its continuation to the station buildings marked in red within land edged green, this representing the British Transport Commission's boundary. The path is annotated as follows:

"NOTICE: The C.L.C³. hereby gives notice pursuant to the provisions of the L&NE Rly Co's Act 1924 Sec.70 and the LMS Rly Co's Act 1924 Sec.53 that this Roadway is their private property."

A stile was noted at point A (and is still in place today).
19. Section 53 of the 1924 Act required notices to be maintained by the Company whereas later Section 57 of the British Transport Commission Act 1947 did not.

² "Section 57: As from the passing of this Act, no right of way as against the Commission shall be acquired by prescription or user over any road, footpath, thoroughfare or place now or hereafter the property of the Commission and forming an access or approach to any station, goods yard, wharf, garage or depot or any dock or harbour premises of the Commission." References to "the Commission" were subsequently amended to "the Board" being the British Rail Board and later including any successor.

³ Cheshire Lines Committee

However both provided that long user by the public of an access path leading to a station should not result in the acquisition of a public right of way.

20. Since the claimed footpath (together with the sidings⁴) remained in the ownership of the relevant railway company until its sale to Mr J Williams in 1986⁵, it was accepted by all parties at the inquiry that any use by the public prior to sale could not give rise to a public right of way, either under Section 31 of the 1980 Act or at common law.

Ordnance Survey maps

21. Amongst the documents supplied to the inquiry were several Ordnance Survey (OS) maps, the oldest dating back to the turn of the twentieth century⁶. A more detailed 25" to 1 mile edition dated c1928 clearly shows the Order route as a double-pecked line running along the bottom and to the north of an embankment and leading north eastwards from a point just north of point A.
22. The same path is shown many years later on the updated edition of the same scale map, this dating from the 1960s. By this time the path was fenced on its northern side with the embankment remaining to its south. It is this edition that was used to define the extent of the land sold in 1986 and is the plan now recorded by H M Land Registry.
23. Even the most recent OS map drawn at a scale of 1:1250 (enlarged from 1:2500) providing the base plan used for the registration of The Bungalow (in 2008) clearly shows the dashed line of the path⁷.
24. Whilst no conclusion can be drawn as to the status of the footpath shown on these maps, they nonetheless lend support to the fact that a path on the line of the Order route has physically existed since the early twentieth century at least and that until relatively recent times it continued to be sufficiently well defined to appear on OS maps following revisions.

The case for statutory dedication

25. When considering the evidence in relation to Section 31 of the 1980 Act, the first matter to be established is when the public's rights were brought into question.

Bringing into question

26. It is accepted by all parties that the status of the Order route was challenged when the application was made on 19 February 2016. This establishes a twenty year period from February 1996 to February 2016 that requires closer scrutiny.
27. However there are several events which may also have raised questions over the extent of the public's rights over the route.
28. At some undetermined time in the past a mound of earth was placed behind the field gate which stands at point A beside the stile. This was apparently done in order to deter travellers from gaining vehicular access to the former sidings area via Footpath 10. It did not interfere with the public's ability to proceed through the adjacent stile and thereafter along the Order route.

⁴ The sidings closed to railway traffic in the 1960s.

⁵ Following closure of the goods yard in the 1970s

⁶ This map, listed as Document 8, dated between 1888 and 1913 does not show the claimed footpath A-B.

⁷ It is depicted as a dashed line on its southern side with a continuous line (a fence) on the north side.

- Consequently it seems to have had no effect on the claimed pedestrian right of way.
29. The earliest recorded issue along the path was in 2003 when WBC responded by letter to a complaint made about the claimed footpath. The nature of the problem which led to the complaint is not revealed in the response which sets out the background to the status of the route between Bank Street and Glazebrook Lane. This might have been triggered by an obstruction or a lack of maintenance; without further detail it is not possible to reliably conclude that this was an event that brought into question the extent of the public's rights.
 30. However three years later, according to a file note, on 25 May 2006 the same complainant rang WBC to report that the path was "*blocked – particularly at Station House*". Again, no more details of the problem are revealed in the hand-written note but in this instance it seems clear that the path was obstructed.
 31. The same problem appears to have continued into 2007, as reported in an email to WBC on 17 April by a different complainant. This email was explicit: "*At the Station end the path appears to be barred to prevent access – is this footpath open or closed pleased*"⁸. This is equally clear: the path was obstructed.
 32. Other reports indicate that around this period, various difficulties were being caused by the occupiers of Station House. This included obstruction of the private vehicular access to the objectors' land by vans and other debris (in particular old tyres). In September 2009 the WBC Planning Enforcement Officer noted problems involving "*the unauthorised use of a residential caravan and the erection of a fence that appears to be going across a public footpath*".
 33. Although the Enforcement Officer was advised by Mr Thorp that the footpath was not recorded as a public right of way, it is significant to note that the path at that stage had the appearance of being a public one.
 34. At some stage a septic tank was installed on the line of the claimed footpath⁹ and a fence erected around it. Although it has not been possible to identify an exact date for this, it seems to me most likely that this occurred in 2006 and that the fence was that subsequently referred to by the Enforcement Officer.
 35. This fence is visible on an aerial photo taken in 2009 and on a Google Streetview shot taken in May 2009, both of which were used in the civil proceedings successfully taken through the Court in 2011 by which the objectors secured removal of obstructions preventing access to their land. The occupiers of Station House are said to have moved on shortly after this.
 36. Although the fence (and/or septic tank) *might* have been the problem first raised in 2003, there is insufficient evidence to support it. However I am satisfied that by mid-2006 the claimed path was blocked by the fence.
 37. Evidence from witnesses at the inquiry suggests that whilst some people were intimidated by the situation developing at Station House during this period, especially the aggressive dogs that were kept chained up there, others found a way around the fence, some by walking up the banking, then continuing along the rest of the Order route. Mr Higson commented that it was awkward to get

⁸ Sic

⁹ This lies on the continuation of the Order route on Network Rail land.

around the septic tank but not impossible. Mr Vincent recalled being directed through the car park by the Stationmaster when the septic tank was being installed. Mrs Royle did not regard either the fence or septic tank as blockages; she could walk around them and recalled the path improved as one walked further from the station.

38. Examining the evidence relating to this series of events from 2003 to 2011 leads me to conclude that the extent of the public's rights along the claimed route¹⁰ were first brought into question in 2006 when specific complaints about the path being obstructed were raised with WBC, albeit the problems lay on Network Rail land, not on the Order route itself. This establishes a retrospective twenty-year period of 1986-2006 during which use by the public needs to be considered.
39. More recently there is a sequence of events which began with a survey of Footpath 10 on 10 October 2015 by the WBC Ranger, Mr Walsh. During this visit, Mr D Williams had informed the Ranger that people were trespassing in his woodland because the footpath (as now claimed) had become overgrown and was impassable.
40. In the first instance it seems this led the objectors to erect two notices stating "Private Land - Keep Out" at a point east of point B on the metal barrier across the vehicular access to their land¹¹ and on the fence north of point A (repaired on 3 December 2015) to prevent access into the woodland area. Neither this fence nor the notice placed on it prevented people using the Order route, but this had become inaccessible in part because of overgrowing vegetation. The notice was subsequently pulled down by persons unknown and Mr Williams says he challenged a number of people trying to walk through the woods around this time.
41. The Ranger's survey was followed by a visit from Mr Thorp at the request of Mr Williams in mid-January concerning unauthorised activity on Footpath 10. It seems that Mr Thorp was shown where the wire fence had been cut as people continued to use a route through the woodland, and that he had agreed the Order route was "well overgrown".
42. At this stage it appears Mr Williams was unaware that his ownership included the Order route. However the extent of the objectors' land was later confirmed by Mr Thorp after checking with the Land Registry.
43. In early February a group of local people cleared vegetation and rubbish from the line of the claimed path, witnesses who took part in the activity reporting that this was mostly at the Network Rail end.
44. Meanwhile email exchanges between WBC and Rixton with Glazebrook Parish Council led to the application being submitted by local resident Mrs Dempsey on 19 February 2016.
45. Some months later, the objectors erected a fence across the stile at A making passage beyond the northern end of Footpath 10 impossible.
46. Whilst I agree that the application itself brought into question the status of the claimed path, this was clearly triggered by earlier actions. Although the notice attached to the woodland fence in December 2015 was not intended to stop

¹⁰ which includes the Order route

¹¹ On land retained by Network Rail

people walking the Order route – indeed it was aimed at re-directing them onto it – it prompted local path users to query the extent of their rights, initially through the Parish Council.

47. It is not necessary for the action that brings into question the status of a way to be directed at users of the way. In the case *Applegarth v Secretary of State for Environment, Transport and the Regions* [2001]¹² it was recognised that sub-section 31(2) of the 1980 Act places no limit at all on the circumstances in which the public's right may be brought into question.
48. I consider the notice on the woodland fence positioned in December 2015 also brought into question the status of the claimed path, eventually leading to submission of the application. Although that brings forward the end date by no more than two months, I shall also consider the period of twenty years between December 1995 and December 2015.
49. In summary, I am satisfied that the status of the Order route was brought into question in May 2006 and in December 2015, in addition to the application submitted in February 2016. Accordingly I will examine the claimed use by the public during the twenty years preceding each of these dates.

Evidence of use by the public

50. If a presumption of dedication is to be raised, qualifying use by the public during the relevant period must be shown to have been enjoyed 'as of right', without interruption, and to have continued throughout the full twenty years. Use 'as of right' is interpreted as being use by the public that is not by force, does not take place in secret and is not on the basis of 'permission'.
51. In this case it is not disputed that, post-December 1986, use of the Order route by the claimants was 'as of right'. There is no evidence to suggest that permission had ever been given to individuals by Mr J Williams or by the objectors; there is no suggestion that use took place other than in an open manner or that it was by force, although it is clear that in recent years passage along the path became more difficult due to vegetation encroachment¹³. The point at issue here is whether the route was used continuously and without interruption throughout the relevant twenty year periods and to such an extent as to represent use by the public.
52. In support of the claimed route is evidence of use from a total of 17 people who completed standard forms, 11 of whom were subsequently interviewed by Mr Thorp. At the inquiry I heard directly from 7 of these people, each submitting to cross-examination, although actual use of the Order route by one witness (Mr Shaw) ceased in 1956.
53. WBC concluded that there was no suggestion of collusion between the claimants; each had their own individual stories when interviewed and most did not know each other before the issue came into focus at the end of 2015. This view was not challenged by the objectors¹⁴.

¹² *Applegarth v SSETR* (QBD)[2001] EWHC Admin 487, [2002] 1P & CR 9, [2002] JPL 245, [2001] 27 EG 134 (CS)

¹³ Whether this was the result of a lack of maintenance or reducing numbers of users is not established; however I heard no reports of maintenance ever having been carried out along the route.

¹⁴ The objectors did suggest that some of the claimants (and the Parish Council) were motivated by a desire to form a new link in the rights of way network. However there was no evidence to indicate this had led to any intentional mis-representation of facts or the fabrication of user evidence.

54. In terms of numbers of users, WBC identified regular use by 6 people between 1986 and 1994; 7 people in 1995 and 8 in 1996. During 1997 and 1998 there is evidence from 9 people claiming use of the Order route; from 1999 until 2006 7 people have provided evidence of use, and from 2007 to the date of the application in 2016 there are 8 or more people claiming use.
55. Whilst I accord greater weight to the evidence of those people who gave evidence in person and submitted to cross-examination, the written statements from the remaining claimants are consistent with other evidence and are not challenged. Indeed many referred to seeing other local people use the path at different times and for various purposes.
56. For example, Mrs Royle had used the path since the late 1980s; she was able to give clear details of use with her family, of use to visit the Country Club and later the gym that was located there. She would sometimes use it when meeting friends from the train and for walking her dogs about 2-3 times a month, seeing other people using the path too. She recalled there was often debris along the path when the people at Station House caused problems but she never had to stop using the footpath.
57. Mr Higson had walked his dog along the route since 1997, using this footpath twice a fortnight until 2012. Mr McArthur had walked the path when he first moved to the area in 1989 and used it for jogging but later found it unsuitable for running and stopped using it because of this.
58. In particular I noted the very clear evidence of Mr Vincent who, from 1977 onwards, took a keen interest in local footpaths and used the claimed route a great deal. He recalled the detail of its construction and appearance in the early years of his use and how this changed over time. He had at first used the route in connection with his work, his children had used it whilst doing paper rounds in the early 1990s and as a Scout leader in the late 1990s/early 2000s he had often walked to the station with a troop of scouts plus 5 or so leaders via Footpath 10 and the Order route. Mr Vincent remembered the septic tank being installed near the Station House end and being directed around the works via the car park by the Stationmaster. As a dog walker, he used the path on an almost daily basis.
59. Other witnesses Mr Eccles and Mrs Dempsey began their use later (beginning in 2010 and 2012 respectively) but nonetheless contribute to the body of user evidence alongside those who have provided written details of their use.
60. Whilst the objectors did not challenge the use claimed by the individuals attending the inquiry, their own witnesses presented a contrary view, stating that the use claimed was never observed.
61. Mr H Taylor said he found the path to be unusable in 1988; he had not attempted to walk it since and had seen no-one else do so. Mr Whittingham similarly recalled the path being overgrown and inaccessible since the 1980s, and likewise he had not seen anyone use it, despite walking his dog regularly in the area. Mr Marshall and Mr Gould had each visited the woodland site in 2015, in January and the spring respectively; neither had been aware of the presence of the claimed footpath, let alone anyone using it.
62. Mrs Taylor and Mr Williams both grew up at The Bungalow, Mrs Taylor from 1972 onwards and Mr Williams since 1969. Although both accepted there were periods when they were not at home, neither was aware of any use of the

Order route. Mr Williams admitted he had seen people use Footpath 10 but not regularly; he was adamant that people could not have walked the claimed route prior to the path being cleared in 2016. Mrs Taylor said that any use by the public stopped in 1986 because the overgrown vegetation meant people were unable to use it. Neither she, nor her brother, attempted to use the route themselves.

63. Yet it is very clear that other witnesses did use the footpath and whilst they accepted that it was often overgrown with vegetation (and obstructed at times near the Station House end) in their view it was always walkable.
64. It is the objectors' contention that at all material times relied upon the path has been inaccessible through natural overgrowth and physical obstruction until it was cleared by local people in early 2016. It is also argued that there is inadequate evidence of sufficient use by the public, or a sufficient cross-section of the public, during the period relied upon by WBC; they submit that any alleged user was not of a sufficiently open or regular quality as to bring home to the objectors that a way for the public was being asserted, nor has there been any acquiescence by them in any public use of the way in question.
65. Thus the two main points at issue here remain firstly, whether the claimed use was continuous or interrupted throughout the relevant period, and secondly whether the level and nature of the use was sufficient to represent use by the public.

Was the claimed use continuous or interrupted?

66. As regards the first point, there is little doubt that the correspondence shows there were blockages causing concern along the path at the station end from 2006 onwards (and possibly three years earlier). This seems to have deterred some people but others found a way through.
67. In 2010 Mr McArthur and Mr Eccles surveyed the route, having noted it was shown on their OS map and considered it had potential for inclusion in a publication promoting local walks. They found it easy to identify the path because of the concrete posts on one side and the embankment on the other. However they had to pick their way through rubbish and old tyres at the station end and deviate around shrubs elsewhere. Because of debris placed near the fence, people had begun to avoid this by walking under the metal barrier on the access road then return to the path further along. The Order route was said to be walkable despite the encroaching vegetation but not in a condition suitable for a guidebook.
68. It seems some witnesses (such as Mr Vincent) stuck rigidly to the Order route whilst others began to use a route through the adjacent woodland, until discovered by Mr Williams and challenged by the objectors' fence and notices. No reason was established to explain why this alternative should suddenly start in November 2015 although it was suggested that the problems along the claimed footpath reached a critical point where it could no longer be negotiated, other than by the most determined of walkers.
69. It was described as 'a walker's path', implying that it was not suitable for everyday journeys without walking boots or wellingtons but Mr Humphreys was quick to point out that this did not mean it was not a public right of way. He argued that it was simply a matter of perception: the objectors perceived the path as impassable whereas the claimants say it was overgrown in places,

requiring suitable footwear and a degree of determination, but a public path nonetheless.

70. I agree with that submission to an extent but, despite the numbers of claimants providing evidence appearing to rise from 2010 onwards, I must give weight to the emails and recorded phone calls to WBC which referred to the path as being blocked from 2006 until the difficulties associated with Station House were resolved in 2011.
71. I accept that accessibility would, in this context, be a matter of individual choice, and that photographs taken by Mrs Taylor in June 2016 do show a trampled line along the eastern end of the Order route that could only have been the result of people walking. However I hesitate to find that the claimed use was continuous and uninterrupted post-2006. On balance I conclude that there were interruptions to use along the claimed route on Network Rail land resulting from deposited rubbish, intimidating behaviour and vegetation overgrowth, all of which would have had an effect on use of the Order route and require deviations. There is a fine line to be drawn between taking a legitimate detour around an obstruction (deliberate or not) and walking a wholly different route.
72. As a result, I conclude that on balance the evidence shows that post-2006 use of the Order route A-B was not continuous but was intermittent during certain periods. It follows from this that the claimed use between November 1995 to November 2015 and February 1996 to February 2016 cannot demonstrate qualifying use to establish a presumption of dedication under the statutory scheme.
73. These findings do not affect the twenty year period between 1986 and 2006. However, the evidence shows the land ceased to be associated with the railway in December 1986 when conveyed from the British Railways Board to Mr J Williams. The date I have identified as the point the status of the path was brought into question is May 2006. This means use of the path during the first 6 months of the relevant twenty years was not 'as of right' and consequently the required term cannot be demonstrated.
74. Therefore, my conclusion must be that the claimed use of the Order route is not sufficient to satisfy the very specific requirements of Section 31 of the 1980 Act and that dedication of a public right of way cannot be established by following the statutory approach.

Implied dedication at common law

75. However I have also considered whether dedication of a public right of way might have been established under the common law. The relevant issues are set out in my paragraph 6 above.
76. In this case there is no evidence of express dedication. No evidence was put forward to suggest that, in relation to the Order route, the owners of the affected land post-1986 were not in a position to dedicate a public right of way.
77. Under the common law approach, it is not sufficient simply to demonstrate use by the public of a certain route for a long time. Where such use did occur and no steps were taken to prevent it, the public's use of the way may constitute evidence that the landowner was quite content it should continue and therefore contribute to the justifiable conclusion that dedication of the way could quite

- reasonably be implied. However the focus needs to be the landowner – what actions were taken (or not) in relation to the public and what could fairly be deduced from that in relation to the status of the way in dispute, assuming of course that the level of public use was sufficient to make the owner aware that a right of way was being asserted.
78. Given my conclusion above that use of the route was affected by the blockage reported in May 2006 and subsequent activities near Station House, I shall focus attention here on the period from December 1986 to May 2006.
79. I have already concluded that the claimed use was 'as of right': there is no evidence of permission being granted to users, of use in secret or use by force. No evidence has come to light of blockages or any direct acts affecting the public's use of the route other than the gradual encroachment of vegetation over the years.
80. I therefore conclude that nothing physically changed on the ground when ownership passed from the British Rail Board to Mr J Williams in 1986. There is no suggestion of any action by him, either positively encouraging walkers or in a negative sense to prohibit their continued use.
81. Indeed the claimed usage demonstrated by those witnesses at the inquiry whose use dated back to 1986 (Mr Vincent and Mrs Royle) continued uninterrupted during this period. Other claimants who did not give evidence verbally but were also walking the path in 1986 (Mr P Backhouse, Mr S Backhouse, and Mr and Mrs Grey), make no suggestion of any difficulties at all in using the route at that time.
82. The picture painted by this evidence is of a well-defined, crushed clay-surfaced, regularly used footpath, serving as an access to the station and to the then very popular country club whilst also being a regular dog-walking route.
83. I heard from several witnesses of much earlier and heavier usage: for example Mr Shaw recalled army personnel and their families¹⁵ using the claimed footpath to walk from the camps in Bank Street (set up during the Second World War) to the station and Glazebrook Lane in the 1940s, 50s and 60s when the path was in far better condition. After the camp closed in the late 1960s / early 1970s, the Glazebrook Country Club was established on the site. In the Club's heyday during the 1970s and 1980s, people often travelled by train and walked to the venue via the footpath¹⁶ until a fire led to its closure in 1991.
84. In her evidence, Mrs Taylor noted that her parents had lived at The Bungalow since 1966. It is therefore extremely unlikely that Mr J Williams would have been unaware of the use of the footpath enjoyed by local people during the twenty years that passed before he purchased the former sidings. In cross-examination she acknowledged that her mother knew there had been a path along the edge of their land.
85. Whilst Mr S Backhouse did not give evidence to the inquiry, I have noted that when interviewed by Mr Thorp in June 2016 he reported having met the late Mr John Williams along the claimed footpath around 2003 (after Mr Backhouse had purchased Holly Bank). Mr Williams had sought help with fencing wire to secure his boundary so as to keep walkers on the footpath and not on his land.

¹⁵ After the war there were said to be around 96 families living at the camp and making regular use of the claimed footpath.

¹⁶ For example, Mrs Royle met her friends at the station and walked to the Club.

86. I recognise this is untested evidence and that Mr Williams (senior) is no longer available to clarify the matter for himself. However, if Mr Backhouse's recollection is correct, it does tend to confirm that Mr Williams was well aware that people were continuing to walk the footpath even in 2003.
87. There is no evidence at all that, between his land purchase in 1986 and 2006, Mr J Williams took any action to deter people from using the Order route. Indeed it appears he wanted to ensure people stayed on it. With no suggestion of notices of any kind directed at people using the path, it seems that, after the sale in 1986, use continued just as it had before for several decades with people largely unaware of the change in ownership.
88. In their submissions, both Counsel for the supporters and the objectors highlighted relevant cases before the Courts which offer helpful guidance. As Mr Clayton pointed out, and as stated by Carnwath J in the case of *Whitworth v Secretary of State for Environment, Food and Rural Affairs* [2010]¹⁷, the underlying principle is that of acquiescence by the owner in a use of the way carried on 'openly and in the manner that a person rightfully entitled would have used it'.
89. On the particular point at issue here, I was referred by Mr Humphreys to the words of Lord Blackburn in *Mann v Brodie* [1885]¹⁸:
- "... where there has been evidence of a user by the public so long and in such a manner that the owner of the fee, whoever he was, must have been aware that the public were acting under the belief that the way had been dedicated, and has taken no steps to disabuse them of that belief, it is not conclusive evidence, but evidence on which those who have to find the facts may find that there was a dedication by the owner whoever he was."*
90. Further, the words of Lewison LJ in the *Fortune*¹⁹ case offer useful guidance:
- "One obvious area for evidence is the nature of the way over which the public right of way is claimed. If the way leads from one recognised highway to another, or from one inhabited settlement to another, the inference may be relatively easy to draw."*
91. In my view it would be entirely reasonable to deduce from the nature of this way and the lack of any intervention from the 'new' owner (Mr J Williams) that he was content to dedicate the Order route as a public path. With no steps taken during the ensuing years to counter any belief that the public could continue to enjoy unrestricted access along the clearly defined path offering access to the station, dedication of a public right of way can be implied from the available evidence and established facts.
- Was the claimed use sufficient to represent use by the public?*
92. It is against this background that the final question needs to be addressed: was the claimed use sufficient to represent use by the public such that dedication of a right of way was accepted?
93. There is no set number of people necessary to constitute the public. This may vary according to the locality, the nature of the path and many other factors.

¹⁷ *Whitworth v Secretary of State for Environment, Food and Rural Affairs* [2010] EWCA Civ 1468

¹⁸ *Mann v Brodie* [1885] HL 378, 10 App Cas 378

¹⁹ *Fortune v Wiltshire Council* [2012] EWCA Civ 334

94. On the matter of sufficiency of use, judicial guidance is to be found in *Hollins v Verney* [1884]²⁰ (albeit a case concerning a private right of way) where the judgement of Lindley J offered these words:

"No user can be sufficient which does not raise a reasonable inference of such continuous enjoyment. Moreover, as the enjoyment which is pointed out by the statute (Prescription Act 1832) is an enjoyment which is open as well as of right, it seems to follow that no actual user can be sufficient to satisfy the statute, unless during the whole of the statutory term (whether acts of user be proved in each year or not) the user is enough at any rate to carry to the mind of a reasonable person who is in possession of the servient tenement, the fact that a continuous right to enjoyment is being asserted, and ought to be resisted if such right is not recognised, and if resistance to it is intended."

95. For the supporters, Mr Clayton argued that the number of users post-1986 was consistently low, that it was not over a defined route whichever period is chosen, and that the claimed use is insufficient in terms of its quantity to infer acquiescence by the landowner.

96. In contrast, for WBC Mr Humphreys submitted that, in this context and given the local population, the numbers may be modest but are entirely what might be expected in an area of this nature and given the character of the path as it degraded over the years through lack of maintenance.

97. The direct user evidence provided with the application shows 6 people were using the path in 1986, two of whom gave evidence in person to the inquiry and 5 of whom elaborated upon their original statements when interviewed by Mr Thorp. Although the numbers peak at 9 in 1997 and 1998 and reduce to 7 by 2006, I have little doubt that this is not the full extent of use during this period of almost twenty years. Each claimant reports seeing other people use the route during this time and I heard clear recollections from individuals of occasions when it was used with or by other family members, friends and scouts.

98. The key question is whether the level and nature of the use was sufficient to warn Mr J Williams that a right of way was being asserted. The number of path users may not have been high and may have declined after closure of the Country Club in 1991. Use may have been increasingly affected by encroaching vegetation and in the latter stages of this period by issues concerning the residents of Station House. Nevertheless, each person who used the Order route also walked Footpath 10 directly past the owner's home.

99. In these circumstances I find it difficult to accept that the use which undoubtedly took place between December 1986 and May 2006 did not come to the attention of Mr Williams such that he could have resisted it if he had wished to do so. In this context I regard the claimed use as sufficient to represent the public and to confirm acceptance of the implied dedication of a public right of way along the Order route.

²⁰ *Hollins v Verney* [1884] 13 QB 304

Summary

100. To summarise, I have concluded that, despite the use claimed by those people who provided evidence of their use of the Order route, when taken together with that supplied by and presented to the inquiry by the objectors, the evidence as a whole is not sufficient to show, on a balance of probability, that a public footpath subsists over the Order route, under terms of Section 31 of the 1980 Act.
101. However I am satisfied that the evidence does show, on a balance of probability, that, at common law, dedication of a public right of way along the Order route is implied, primarily by the inaction of the landowner between late 1986 and mid-2006, and that, despite the limited number of people providing evidence of their use, this is sufficient to demonstrate acceptance of the way by the public
102. I therefore conclude that, on a balance of probability, a public footpath has been shown to subsist over the Order route and that the Order should be confirmed

Other matters

103. In closing, Mr Clayton highlighted the significant impact confirmation of the Order would have on the value and potential development of the objectors' land. This is not a matter relevant to my determination of this Order and I have not given weight to it.
104. Details of email exchanges between Mrs Taylor and Mr Thorp were submitted by the objectors to suggest that WBC had exerted pressure on Mrs Taylor to withdraw her objection. In my view, these emails do little more than invite withdrawal of the objection in the light of the evidence discovered.
105. As a representative of the Ramblers' Association, Mr Bratt commented on the potential usefulness of the Order route in the local path network. As I explained at the inquiry, the merits of the Order route are not at issue here and I have been unable to take this submission into account in reaching my decision.

Conclusion

106. Having regard to the above and all other matters raised at the inquiry and in the written representations, I conclude that the Order should be confirmed.

Formal Decision

107. I confirm the Order.

Sue Arnott

Inspector

APPEARANCES

In support of the Order

Mr F Humphreys Of Counsel; instructed by Warrington Borough Council

Who called

Mr J Thorp Public Rights of Way Lead Officer; Warrington BC

Mrs J Dempsey Applicant

Mrs F Royle

Mr McArthur

Mr J P Eccles

Mr P Higson

Mr D Bratt

Mr R Shaw

Mr P Vincent

Opposing the Order

Mr N Clayton Of Counsel; representing the objectors (Mrs M Williams, Mr D Williams and Mrs K Taylor)

Who called

Mr H Taylor

Mr A V Whittingham

Mr K Marshall

Mr D Gould

Mrs K Taylor Statutory objector

Mr D Williams Statutory objector

DOCUMENTS

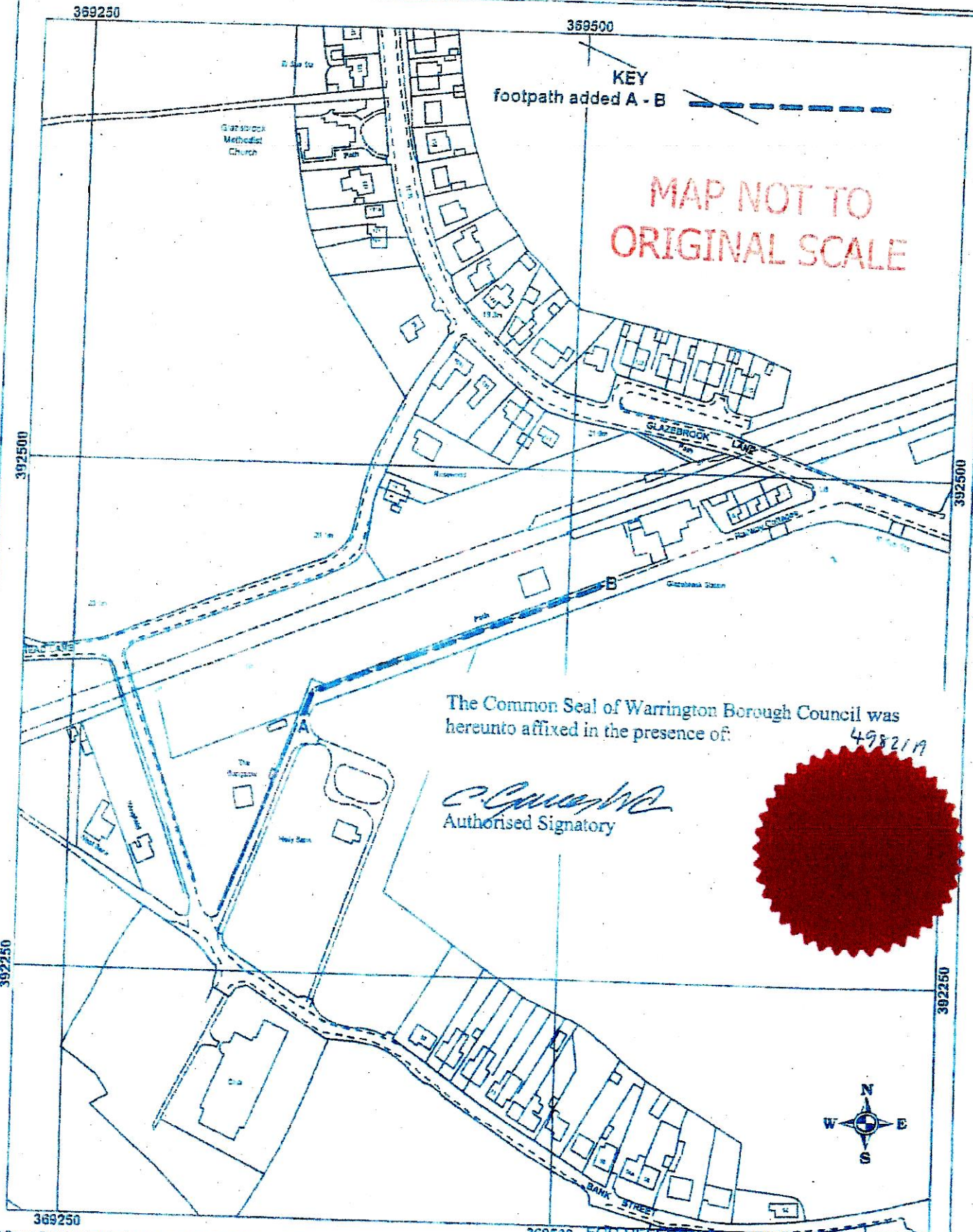
1. Copy of the statutory objection
2. Statement of grounds on which it is considered the Order should be confirmed submitted by Warrington Borough Council and comments on the objections together with bundle of relevant case documents
3. Statement of case of Warrington Borough Council with accompanying appendices 1 - 10
4. Proof of Evidence of Mr J Thorp on behalf of Warrington Borough Council
5. Statement of Case of Mr J Eccles
6. Statement of case on behalf of the objectors together with bundle of supporting documents
7. Witness statements of Mrs K Taylor, Mr D Williams, Ms J Cawley, Mr H Taylor, Mr A V Whittingham, Mr D Gould & Mr K Marshall
8. Extract from Ordnance Survey 6": 1 mile map dated 1888-1913
9. Colour photographs of Order route taken 30/1/16
10. Note to Inspector from Mr D Bratt
11. Note to Inspector from Ms J Rose
12. Email exchanges between Mrs K Taylor and Mr J Thorp from January 2017

Definitive Map Modification Order

Rixton with Glazebrook footpath no.10 extension
Drawing no. ER/JT/DMMO/R10/1

Scale 1:2500

Warrington Borough Council
Econ. Regen. Growth & Env.
Newtown House
Buttermarket Street
Warrington
WA1 2NH



The Common Seal of Warrington Borough Council was hereunto affixed in the presence of:

[Signature]
Authorised Signatory

