



Order Decision

Inquiry opened on 7 November 2017

Site visit made on 17 January 2018

by Alan Beckett BA MSc MIPROW

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

Decision date: 17 April 2018

Order Ref: ROW/3168433

- This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 ('the 1981 Act') and is known as the Wiltshire Council Durnford Paths Nos. 8, 25 and 26 Rights of Way Modification Order 2016.
- The Order is dated 1 September 2016 and proposes to modify the Definitive Map and Statement for the area by adding two public bridleways and upgrading to the status of public bridleway a section of footpath 8. The Order route is shown in the Order plan and described in the Order Schedule.
- There was 1 objection outstanding at the commencement of the inquiry.

Summary of Decision: The Order is not confirmed.

Procedural Matters

1. I held a public local inquiry into the Order which opened on 7 November 2017 and sat on the 8 November 2017 and 16, 17 and 31 January 2018. I made an inspection of the route at issue on the afternoon of 17 January in the company of the parties to the Order.

The Main Issues

2. Whether the evidence discovered by the Council is sufficient to demonstrate, on a balance of probabilities that a public right of way on horseback subsists over the Order route.
3. In a case where it is claimed that a public right of way has come into existence through long use the provisions of section 31 of the Highways Act 1980 ('the 1980 Act') require me to be satisfied that the public had used the claimed path as of right¹ and without interruption for at least 20 years prior to the right to do so being brought into question. Use by the public in such a way is sufficient to raise a statutory presumption that the owner or owners of the land crossed by the path had dedicated such a right to the public. This presumption is however rebuttable if there is sufficient evidence to demonstrate that during the 20-year period under consideration the public were made aware that there had been no intention on the part of the landowner to dedicate a public right of way.
4. In addition to considering the user evidence with regard to the provisions of section 31 of the 1980 Act, I am also required to consider whether a dedication of the claimed route can be inferred at common law. The evidential test to be applied, at common law or under the statutory provisions, is the civil standard of proof; that is, the balance of probabilities.

¹ Without force, without secrecy and without permission

Reasons

5. With regard to the oral evidence provided by the witnesses in support of the Order, the objector drew attention to the recent case of *Gestmin SGPA SA v Credit Suisse (UK) Ltd [2013] EWHC 3560 (Comm)* and the approach taken by Leggatt J in relation to the reliability of memory and the weight which could be attached to recollections of past events by witnesses. The objector submitted that this case established four basic principles: (a) memory was fallible; witnesses may remember facts honestly but inaccurately; (b) the approach to be taken should be to base findings of fact on inferences drawn from documentary evidence and known or probable facts; (c) the process whereby evidence is obtained is important and can lead to inaccuracies in witness evidence; (d) the personality, motivation and working practices of a witness should be assessed against the documentary evidence.
6. The Council submitted that *Gestmin* had nothing to do with rights of way user evidence which by its very nature was reliant upon the recollections of users. Variation between the recollections of one user and another should not be taken as an indication that their recollections were unreliable. The Council submitted that the nub of *Gestmin* was that in a commercial case, caution should be placed upon the recollections of witnesses given at some distance from events which are inconsistent with contemporaneous documentary evidence of what occurred or what was agreed as part of a commercial transaction; in the Council's view, *Gestmin* and the findings of Leggatt J were a world away from assessing evidence of past use of a claimed public right of way.
7. In approaching the question of recollections of witnesses, Leggatt J referred to '*common (and related) errors in supposing ... (1) that the stronger and more vivid is our feeling or experience of recollection, the more likely the recollection is to be accurate; and (2) that the more confident another person is in their recollection, the more likely their recollection is to be accurate.*' In the light of these and other considerations, Leggatt J considered that "*the best approach for a judge to adopt in the trial of a commercial case is, in my view, to place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts. This does not mean that oral testimony serves no useful purpose - though its utility is often disproportionate to its length. But its value lies largely, as I see it, in the opportunity which cross-examination affords to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness, rather than in testimony of what the witness recalls of particular conversations and events. Above all, it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth.*"
8. Whilst it may be possible in a commercial case of the type at issue in *Gestmin* for witness recollection of conversations, events and meetings to be examined in the light of contemporaneous records of those meetings, such critical scrutiny of witness evidence may not be possible in other jurisdictions and would be impossible in those situations where there was no contemporaneous documentary evidence to which the recollections of individuals could be compared with.

9. In the current case, evidence was given by local residents as to their use of the claimed bridleway and the physical conditions they experienced during that use. However, very little by way of documentary evidence which was contemporaneous with the 20-year period of use under consideration was submitted by the objector; that which was submitted is considered in detail below. The absence of contemporary documentary evidence regarding the Order route or the land over which it runs was explained by Mr Gentle who stated that none of the estate records were transferred when the Durnford Estate was separated from the combined Wilsford and Durnford Estate and sold on in 2014.
10. However, I accept the general comments made by Leggatt J regarding the fallibility of memory, and where it has been possible, I have considered the recollections of witnesses (on both sides) in relation to such contemporaneous documentary evidence as has been adduced, even though the documentary sources available may not have been produced in relation to the question of whether the public may have been acquiring a right of way over the land.

Documentary evidence

11. The aerial photograph dated as having been taken between 1947 and 1949 shows the existence of a well-defined track on the alignment of A – B – C although the continuation C – D is indistinguishable from the adjacent field.
12. Mrs Cox provided to the inquiry her expert evidence with regard to aerial photographs of the fields crossed by the Order route. Although the relevant 20-year period under consideration was 1985 – 2005 (see below) , Mrs Cox had been instructed to consider photographs taken during the period 1975 – 1992 in relation to gates at points A and B and in relation to the condition of Glebe Field. In this period, three aerial photographs of the area were produced to the inquiry, namely those taken in 1981, 1991 and 1992.
13. Mrs Cox’s evidence regarding the aerial photograph taken in August 1981 was that gates were present at A and B in the closed position, that the gate at B was hung between two posts and that there appeared to be free access along footpath 8 at the side of the gate at point B. In Mrs Cox’s interpretation of this photograph, Glebe Field was a pasture field at that date; the photograph did not provide strong evidence of a fence or hedge being present to the west of A – B. Mrs Cox accepted that although the gates were shown in a closed position, the photograph did not demonstrate that the gates were locked.
14. Two other aerial photographs were also submitted to the inquiry by the objectors, both of which were taken during the relevant 20-year period. The August 1991 photograph does not show gates in a closed position at either point A or point B, nor does the photograph taken in June 1992. The absence of evidence of the gates does not mean that gates were not present on those dates; however, if gates had been located at A and B, they were open and pushed back to the hedge on the east side of the track. There is no indication on these photographs of any obstruction or restriction across footpath 8 at point B.
15. The objectors considered that an Ordnance Survey 1:10000 map published between 1977 and 1983 provided evidence to support the contention that a physical barrier to access had been present at Point B at the time of the 1981 aerial photograph. This OS map showed a feature by means of a solid line

- across the track at both A and B which corresponded with the features shown on the 1981 aerial photograph.
16. By way of an addendum to her initial evidence submitted during the first adjournment of the inquiry, Mrs Cox submitted that having studied the OS map and the 1981 photograph, and in contradiction of her evidence in chief she was of the view that a fence or barrier had extended across footpath 8 at point B. The objectors instructing solicitor had asked whether this feature would have been consistent with a 'hosier' gate; Mrs Cox was of the view that it would have been.
 17. Mrs Cox did not appear at the resumed inquiry to present her revised evidence which clearly contradicts her initial oral evidence; at no time during that evidence in chief or during cross-examination did Mrs Cox suggest that there was anything visible on the 1981 aerial photograph which suggested the presence of any feature on the ground to the north-west of the gate at B.
 18. I consider it to be highly likely that the solid line feature shown on the 1977 map is a cartographic representation of the existence of a gate at point B and that in order to show the gate in a closed position, that feature has been drawn as extending between adjacent boundaries. The 1981 photograph in contrast does not demonstrate the existence of a feature which extends from the northerly gatepost to the hedge. The depiction of the gate on the OS map is not therefore inconsistent with Mrs Cox's initial evidence to the inquiry. Although gates may have been present at A and B there is no contemporaneous documentary evidence to demonstrate that they were locked and therefore no contemporaneous evidence that it would not have been possible for the public to make their way along the Order route at the time the aerial photographs were taken.
 19. From Mrs Cox's initial evidence and her responses in cross-examination the following conclusions can be drawn with regard to the 1981 photograph. First that gates were present at points A and B and that there was no obstruction to the side of the gate at B which would have prevented access along footpath 8. Although Mrs Cox's interpretation of the photograph was that Glebe Field was a pasture field in August 1981, the absence of any barrier to the north-west of the gate at B would have meant that the field would not have been stock proof at B and that any livestock held within the field would have been at liberty to roam. If there was no barrier adjacent to the gate at point B, it seems unlikely that livestock would have been present in the field at the time. The photograph cannot show whether the gates were locked.
 20. A letter to Lord Tryon from the Council dated 12 February 1988 noted that a hosier gate obstructed access along footpath 8 which was considered to be an illegal obstruction of the path. The response from Lord Tryon was that he was to contact his tenants to make the path available. The conclusion to be drawn from this letter is that in February 1988 a hosier gate had obstructed free passage along footpath 8. However, this does not shed any light upon whether such a gate had been present at other times prior to February 1988. However, in the absence of any evidence to demonstrate that the gates at A and B were locked, the presence or otherwise of a hosier gate on footpath 8 would not have prevented access along the Order route.
 21. No tenancy agreement for the land crossed by the Order route remains extant although Mr Jim Powell had entered into a tenancy agreement for North Farm

- in September 1971 with his address stated to have been Church Farm. It is not disputed that Mr Powell was the tenant of the land crossed by the Order route for many years up to 1990. The sporting rights over North and Church Farms were retained by Lord Tryon as part of the tenancy agreements. In September 1977, Jim Powell gave up part of the tenanted land which Lord Tryon subsequently sold, again retaining the sporting rights. The land relinquished by Jim Powell did not include any of the land crossed by the Order route.
22. No documents relating to the management of the land subsequent to the end of Jim Powell's tenancy were submitted by the objector. It was said that in 1998 Lord Tryon had entered into a Contract Farming Agreement which included Glebe and Cocked Hat Fields. The Contract Farming Agreement was taken over by Julian Properties Corporation on September 2000 after its purchase of the Durnford Estate with the land being managed under annual farm business tenancies between September 2001 and September 2014. The retained sporting rights were sold to Woodhouse Properties in September 2000.
23. During the first five years of the relevant 20-year period, the land crossed by the Order route was (with the exception of the sporting rights) in the possession of Jim Powell. Between 1990 and 1998 (in the absence of evidence to the contrary), the land appears to have been 'in hand' with Lord Tryon and from 1998 until 2005 managed under contract for Lord Tryon and Mr D'Arcy-Irvine.
24. The Manor House School was run by Dreda, Lady Tryon between 1942 and 1992. The Manor House School (Great Durnford) Educational Trust Limited was incorporated in February 1963 to acquire and take over the school established by Lady Tryon in 1942 with the 2nd Lord Tryon and the future 3rd Lord Tryon as members of the company. The company was dissolved in July 1996; Lord Tryon had been a member of the company throughout its existence.
25. This then is the documentary evidence (albeit limited and not generated with regard to the question of public rights of way) against which the evidence of use is to be assessed. It is to the user evidence that I now turn.

When the right of the public to use the claimed footpath was brought into question

26. In November 2004 the then owner of the Durnford Estate deposited with the Council a statement and plan under the provisions of section 31 (6) of the 1980 Act. On 25 January 2005 a statutory declaration was made to give effect to the deposited statement and plan.
27. Although the plan which accompanied the statutory declaration was not fully compliant with the requirements of section 31 (6), the Council had accepted the declaration as valid and has continued to regard it as valid. It was common ground between the parties that the making of the statutory declaration had the effect of bringing into question any public use of the Order route.
28. Consequently, the relevant 20-year period to be considered for the purposes of section 31(2) of the 1980 Act is 26 January 1985 to 25 January 2005.

Whether the public have used the Order route as of right and without interruption for a period of not less than 20 years prior to their right to do so being brought into question

29. The application to add the Order route to the definitive map as a public bridleway was supported by 34 user evidence forms ('UEFs') in which use of the Order route was claimed to have occurred from 1957 to 2015. The evidence of use does not extend beyond 2015 as the application appears to have been triggered by the erection of gates and prohibitory notices at points A and B.
30. The application was initially made to record a number of routes within Great Durnford and many of the UEFs did not differentiate between the four routes which were the subject of the application in terms of the frequency or duration of use. At the inquiry, I heard from 29 witnesses as to their use of the claimed bridleway and those witnesses who had completed a UEF were able to clarify which part of their written evidence related to the Order route.
31. Of the 29 witnesses who appeared in support of the Order, 15 offered no evidence of use of the claimed route in the early part of the relevant 20-year period as they had only taken up residence in Great Durnford or the surrounding area in the early to mid-1990s. Of this group of witnesses, use of the claimed route had commenced between 1993 and 1999. This group used the Order route for walking or riding on a weekly or more frequent basis. In addition to individual users, an annual sponsored walk by pupils of Stonehenge School which commenced around 1993 had incorporated B – C – D as part of the route.
32. Nine further witnesses had used the claimed route outside the relevant period; one had ridden the route from 2012 having joined a local livery yard; one had ridden the route as part of a group from Durnford School in the early 1960s, but had not used it between 1979 and 2011; another witness had driven her horse and cart over the Order route two or three times a week after 2005; other witnesses had only taken up residence in the years following the end of the relevant 20-year period. Cllr Hewitt offered no evidence of use of the path but spoke regarding his recollection of the background to the case.
33. Of the remaining five witnesses who spoke with regard to the use of the Order route in the early part of the relevant 20-year period, one witness had used the path on a weekly basis on foot between 1986 and 1996; one had used it on foot once per month since 1979; one had used it on foot 6 times per year from 1976; one had ridden it twice per year from the late 1980s and one had used C – D on foot a couple of times per year. Any use of the Order route by Mr & Mrs Hazzard prior to 1990 cannot be regarded as use as members of the public as they are the son-in-law and daughter of Jim Powell; any use during Mr Powell's tenancy would have been as a member of the family and therefore 'by right' in connection with Mr Powell's occupation of the land, as opposed to being 'as of right' as a member of the public.
34. None of these witnesses recalled the gates at A and B being locked and many had no recollection of the gates being present. Use was not conducted in secret and there is no evidence that the claimed use was forceful as there was no evidence that prohibitory notices had been erected on the route or any physical obstructions placed in the way of users.

35. The objectors submitted evidence from a Mr Elliot by way of a statutory declaration to the effect that the gates at A and B had been locked during the period of Jim Powell's tenancy. Mr Elliot is the only person who asserts that the gates had been locked. This evidence was in contrast to that of Mr Hazzard or other users who had no recollection of the gates being locked.
36. There is no documentary evidence regarding the gates with which to compare the contrasting statements of Mr Elliot and other witnesses; the aerial photographs taken during the relevant period post-date Mr Powell's tenancy and are of no assistance as to whether the gates were locked. The letter from the Council to Lord Tryon regarding obstructive hosiery gates being present on footpath 8 in 1988 suggests that attempts were made to render the field stock proof, this of itself does not demonstrate that the field gates at A and B were locked during Mr Powell's tenancy.
37. I understand that Mr Powell ran a mixed farm and whilst it may have been necessary to have secured the gates if livestock had been present in the field, there is no specific evidence which demonstrates that the gates at A and B were locked during that part of Mr Powell's tenancy encompassed by the relevant 20-year period under consideration. The only person who provided evidence as to the gates being locked was Mr Elliot, whereas the preponderance of the evidence on this matter was to the contrary.
38. On this particular matter, I consider that the evidence of the users is to be preferred. Their evidence was open to cross-examination unlike Mr Elliot's and as a member of Mr Powell's family, Mr Hazzard's recollection of events regarding the gates is likely to be more accurate than Mr Elliot's. On the evidence before me, I consider it to be more likely than not that the gates at A and B were not locked during the relevant 20-year period.
39. Whilst it is not a requirement of the statutory scheme that all those who claim to have used the Order route had done so throughout the relevant 20-year period, use by the public is required to be demonstrated throughout that period and at a level of use which would have alerted a reasonably alert on the spot landowner that a right to use the path was being asserted. In this case, there is a considerable body of evidence of use from the mid-1990s of the Order route being used on a daily or weekly basis which would be sufficient to satisfy the statutory requirements.
40. However, the same cannot be said for the early part of the period from 1985 to around 1993. On the basis of the evidence put forward at the inquiry, the use in that early period can only be described as sporadic; use twice per year by two witnesses and use once per month or every other month by two others is unlikely to have been regarded by an on the spot landowner as anything other than occasional opportunistic trespass. Even the claimed use of once per week by the remaining witness is insufficient to suggest that a public right was being asserted. Other written evidence submitted to the inquiry reflects this low level of use in the early part of the relevant period; Mr Curbishley, for example, states that he walked the claimed route once every other year. Of the 34 UEFs submitted only 5 respondents claimed use prior to 1993; three of those individuals appeared at the inquiry. The remaining two claimed use on a weekly basis.
41. The Council submitted that relatively low levels of use should be set in the context of the rural nature of Order route and that the number of witnesses

- who appeared at the inquiry represented about 10 % of the population of Durnford. Whilst this may be the case (Durnford being recorded as having 368 inhabitants at the time of the 2011 census), not all those claiming to have used the route came from Durnford, as some respondents were from the neighbouring villages of Wilsford and Middle Woodford.
42. Taking into account the populations of these villages necessarily reduces the number of claimed users as proportion of the total population of these three villages to around 3%. Irrespective of the proportion of claimed users to the surrounding overall population, neither proportion overcomes the basic problem that the evidence of use of the Order route for a significant part of the relevant 20-year period is very small in absolute numbers and highly sporadic in terms of frequency.
 43. Evidence of use of the route on horseback during the relevant period by pupils at Durnford School was submitted and it is not disputed that such use occurred prior to the school closing in 1992. In written evidence, a number of former pupils described their use as part of a circuit to and from the school and I understand that pupils would ride out twice per week. I also heard that others could stable their ponies at the school even though they were not pupils on condition that pupils were able to ride them. The written evidence of Mrs Gosse was that prior to 1980 she had supervised such rides and that whilst the gates at A and B had been closed they had never been locked; this was corroborated at the inquiry by her son who had ridden with the school's pupils during the 1960s and 1970s.
 44. The Council's view was that as the school was an entirely separate entity from the Durnford Estate any use of the Order route by pupils would have been as of right as members of the public. Despite the school having a separate identity from the Durnford Estate, the documentary evidence demonstrates that the shareholders and members of the educational trust which governed the school included Dreda, Dowager Lady Tryon and Lord Tryon. The school was located in the Manor House on the Estate and its pupils used the Order route on horseback for exercise. There is therefore an inescapable link between the school, its management and the ownership of the Estate.
 45. Written submissions from Miss Zoe Tryon were to the effect that her father had not given permission for pupils of the school to ride the Order route and that the tracks over the Estate were open to all. However, no direct evidence on any of the matters before the inquiry was provided by Lord Tryon and any use of the Order route by Miss Tryon prior to 2000 has to be discounted as the daughter of the owner of the land.
 46. Whilst I acknowledge that there is no evidence that Lord Tryon gave pupils from the school express permission to ride over Estate land outside of the immediate environs of the school, the use of tracks which were not public rights of way across Estate land by pupils of a school established by the owner of the Estate is highly likely to have been with the implied permission or licence of the owner. I concur with the objectors' submission that such use cannot therefore be considered to be use 'as of right'.
 47. Discounting the use of the Order route by pupils of Durnford School therefore means that the only evidence of use of the Order route by the public during the early part of the relevant 20-year period is that identified in paragraphs 33 and 40 above. In my view the infrequent and sporadic nature of the use between

1985 and the early 1990s is more likely than not to have been viewed by a reasonably alert landowner or his tenant as occasional trespass as opposed to members of the public asserting a right to cross the land.

48. Although the Order route is in a rural location between Amesbury and Salisbury, it is not a remote or sparsely populated area. Given the location of the Order route it is therefore somewhat surprising that claimed use by the public in the early part of the relevant period amounted to use by five or six people with the majority using the path once a month or less. I acknowledge that users claim to have seen others on the path; however observation of others in recent years does not make up for the paucity of user evidence during the early part of the 20-year period under consideration. It follows that the evidence of use in this case is insufficient to raise a presumption that the Order route has been dedicated as a public right of way.
49. Notwithstanding this conclusion I have given consideration to the question of whether use of the Order route would have been interrupted by use of the land for shooting. I heard from Mr Gentle that for one of the current drives on the estate, the guns are stationed either side of the track between A and B with shooting taking place in the immediate vicinity of part of the Order route. It was the objector's case that a similar practice had been followed by successive owners throughout the 20-year period and that shooting would have interrupted use of the path on a regular basis.
50. Although the evidence I heard from Mr Gentle and Mr Paul related principally to the management of the shoot during Mr D'Arcy-Irvine's and Mr Turner's ownership of the Estate, the retention of sporting rights over the land by Lord Tryon during Mr Powell's tenancy suggests that shooting took place over the land crossed by the Order route throughout the 20-year period under consideration. The evidence I heard was that there were around 12 shoots per year during Lord Tryon's ownership and that the frequency of shoots had increased during Mr D'Arcy-Irvine's ownership and that the frequency had increased still further under Mr Turner's ownership.
51. Although the frequency of shooting may have been less intensive during Lord Tryon's period of ownership, it was not suggested that shooting on the land crossed by the Order route had not occurred. Several of the witnesses who had taken up residence during Lord Tryon's period of ownership stated that on shoot days they would not use the Order route but would walk or ride somewhere else whilst the shoot was in progress; none of the witnesses stated that they had attempted to use or had used the claimed route when shooting was in progress. Mr Gentle's evidence was to the effect that each drive would take around 40 minutes with up to 5 drives taking place over the Estate on each shooting day. The impact upon users of the path is therefore likely to have been of limited duration, ranging between 40 minutes whilst shooting was in progress to as much as a whole morning or afternoon until the drives had been completed.
52. With regard to Section 31 of the 1980 Act an interruption in use must be some physical and actual interruption which prevents enjoyment of the path or way and not merely some action which challenges that use but allows it to continue. For any action taken to qualify as an interruption of use there must be some interference with the right of passage.

53. Whether any action can be regarded as an interruption is also dependent upon the circumstances of that action; temporary obstructions of a minor nature such as the parking of vehicles on a road² or the storage of building materials on a path³ have been held not to amount to relevant interruptions. The evidence in this case is that the public avoided using the Order route on those days when shooting was in progress, but resumed use once the shoot had finished. The shoot does not appear to have prevented the public from enjoying the use of the order route during those times when shooting was not taking place and consequently did not interrupt use in the way required by section 31 of the 1980 Act.
54. Given that the user evidence is insufficient to raise a presumption of dedication under the statutory scheme, it is not necessary for me to give consideration to the proviso to section 31 (1) of the 1980 Act, namely, the question of whether there was sufficient evidence of a lack of intention to dedicate a public right of way. However, whilst use of the Order route appears to have been uninterrupted by the presence of the shoot (as most users simply stayed away or followed some other route), it seems highly unlikely to my mind that a landowner would dedicate a public right of way over his land the effect of which would be to give users the right to use the claimed way at all times and therefore interrupt or prevent him from exercising his legitimate sporting rights over his land. Furthermore, I know of no instance where a public right of way has been dedicated subject to periodic closure to enable the owner to make an alternative use of his land.

Common law

55. An inference that a way has been dedicated for public use may be drawn at common law where the actions of landowners indicate that they have intended the way to be dedicated as a highway and where the public can be shown to have accepted that dedication through use.
56. Although there is a body evidence of public use of the claimed route which increases in absolute number and frequency from the mid-1990s, there is no evidence that the owners of the land intended to dedicate a public right of way. Although the statements of Miss Tryon suggests that her father was content for the public to use the path, it is highly unlikely that a landowner would have intended to dedicate a public right of way over land which was actively used for shooting purposes which would result in the interruption or curtailment of his shooting activities. The use of the land crossed by the Order route as part of the shoot conducted by successive landowners indicates on a balance of probabilities that there was no intention to dedicate a public right of way over that land.

Conclusions

57. Having regard to these and all other matters raised in the written representations and at the public local inquiry I conclude that the available evidence of use of the claimed path is insufficient to raise a presumption of dedication under section 31 (1) of the 1980 Act, nor is it possible for an inference of dedication to be drawn at common law. It follows that I conclude that the Order should not be confirmed.

² Lewis v Thomas [1950] 1KB 438

³ Fernlee Estates Ltd v City & County of Swansea [2001] EWHC Admin 360

Formal Decision

58. I do not confirm the Order.

Alan Beckett

Inspector

APPEARANCES

For Wiltshire Council:

Mr T Ward of Counsel, instructed by the Head of Legal Services,
County Hall, Blythsea Road, Trowbridge BA14 8JN

Who called:

Mrs S Madgwick Definitive Map and Highways Records Team Leader

Interested parties in support:

Mr L March	Mr J Ward	Mrs M Deeny
Mr N Pownall	Mrs C Edwards	Mrs F Curtis
Mrs M Snell	Miss N Leahy	Miss J Rasch
Mrs K Teed	Mrs M Eyre	Mr A Wells
Miss L Holbrook	Mr M Deeny	Mr R Phayre
Mr N Gallop	Mrs V Hawkings	Mrs J Stringer
Mrs E Ward	Mr M Hazzard	Mrs S Down
Miss F Patterson	Mr M Hewitt	Mrs J Wells
Mrs J Gallop	Mrs J Hazzard	Mr N Gosse
Mr A Mills	Mrs C Eyre	

For Mr & Mrs Turner (the objectors)

Miss K Jones of Counsel, instructed by Miss Carey of Ushers LLP
16 Old Bailey, London

Who called:

Miss C Cox Air Photo Services, Swindon
Mr M Gentle
Mr T Paul

Inquiry documents

1. Extract from Facebook page of Zoe Tryon.
2. Emails from members of the Wells family regarding their use of the Order route.
3. Three plans showing the Great Durnford Estate.
4. Census information for Woodford (1801 – 2011).
5. Companies House data for Great Durnford School Educational Trust Limited.
6. Email and plan regarding the route of a sponsored walk undertaken by pupils of Stonehenge School.
7. Statement of Mrs J Hazzard.
8. Statement of Mrs F Patterson.
9. Statement of Mr R Phayre.
10. Statement of Mrs J Phayre.
11. Statement of Mr N Gallop.
12. Statement of Mrs J Wells.
13. Extract from the working copy of the definitive map.
14. Statutory Declaration made by Roy Gould.
15. Statutory Declaration of Simon John Southey.
16. Statutory Declaration of David Southey.
17. Census information for Wilsford cum Lake (1801 – 2011).
18. Statement of Mr A Mills.
19. Tabulation of oral user evidence given on day 1 and day 2 of the inquiry (prepared by Mrs Madgwick).
20. Email from Mr Orssich of Roxtons to Mr Gentle dated 16 January 2018.
21. Email from Mr B Moffat dated 6 November.
22. Letter from Mr F R Southey dated 24 November 2017.
23. Statement of Mr N Gosse.
24. Letter from Stonehenge School to Mrs Madgwick dated 19 December 2017.
25. Statement of Truth of Zoe Tryon dated 3 January 2018.
26. Statement of Truth of Rowena Paxton dated 22 December 2017.
27. Statement of Truth of Peter Curbishley (undated).
28. Statement of Truth of Camilla Ann Carr dated 18 December 2017.
29. Statement of truth of Harriet Benson (undated).

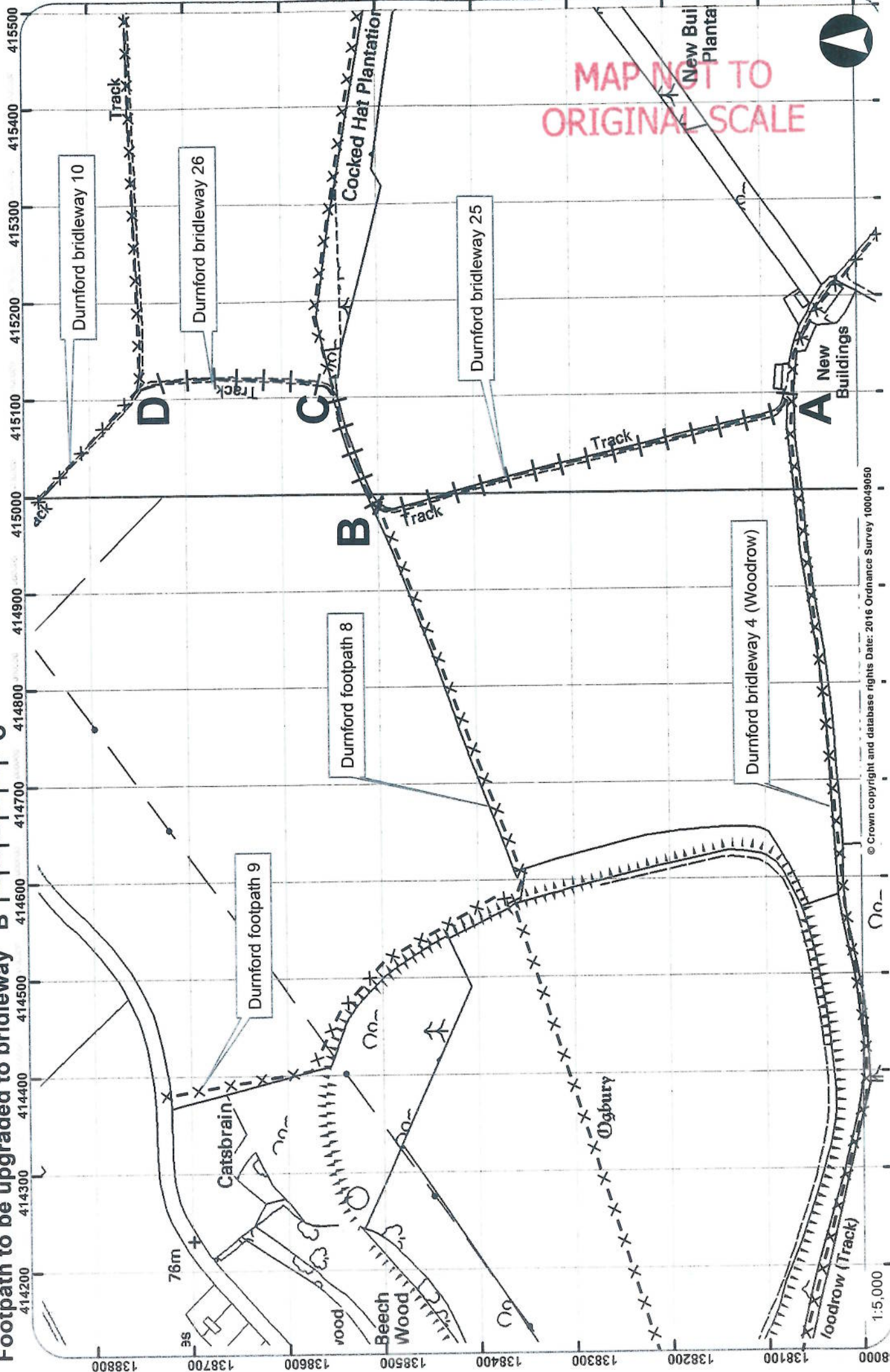
30. Statement of Truth of Jane Rogers dated 10 January 2018.
31. Email from Debra Harker of Stonehenge School to Mrs Madgwick dated 10 January 2018.
32. Statement of Truth of Dr Jonny Blamey (date illegible).
33. Closing Statement on behalf of the objectors.
34. Closing Statement on behalf of Wiltshire Council.

DURNFORD 8, 25 and 26 ORDER PLAN

Bridleways to be added A | - | - | - | B C | - | - | - | - | D
 Footpath to be upgraded to bridleway B | - | - | - | - | C

Unaffected rights of way X - X - X - X - X - X - X - X

Date: 22/08/2016



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