



Order Decision

Inquiry held on 19 March 2019

by Sue M Arnott FIPROW

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

Decision date: 30 April 2019

Order Ref: ROW/3200267

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981. It is known as the Public Footpath No. 83 (Baildon) Between Pennithorne Avenue, Northgate and Moorgate (Via High Fold and Low Fold) Baildon (Modification) Order 2014¹.
- The Order is dated 4 March 2014. It proposes to modify the definitive map and statement for the area by adding footpaths linking Pennithorne Avenue, Northgate and Moorgate in Baildon, as shown on the Order map and described in the Order schedule.
- There were five objections outstanding, together with one representation in support, when Bradford Metropolitan District Council submitted the Order for confirmation to the Secretary of State for Environment, Food & Rural Affairs.

Summary of Decision: Confirmation of the Order is proposed, subject to the modifications set out in the Formal Decision below.

Procedural matters

1. On 19 March 2019 I held a public inquiry at the City Hall in Bradford, having visited the site of the claimed public footpath(s), unaccompanied, during the previous day. After the close of the event, I make a further brief visit, again unaccompanied.
2. At the inquiry, two minor errors were noted in the drafting of the Order: (a) in Article 3 the Order is incorrectly cited as being made in 2013 although the Order title itself correctly refers to 2014, and (b) in Part I of the Schedule, the word "metes" is used to describe the path width, rather than "metres". In neither case do I consider there to be any likelihood of anyone being misled as to the intention of the Order or of any prejudice arising.

The Main Issues

3. The main issue here is whether the evidence is sufficient to show 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.
4. Bradford Metropolitan District Council (BMDC) made the Order on the basis of events specified in sub-section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 (the 1981 Act). If I am to confirm it I must be satisfied that, on a balance of probability, the evidence shows a public right of way subsists along the route(s) described in the Order between the points labelled A, B, C, D, E and F.

¹ See paragraph 2

Reasons

5. The claimed footpath at issue here consists of four linked routes which connect busy roads (Pennithorne Avenue, Northgate and Moorgate in Baildon) via the quiet residential cul-de sacs known as Low Fold and High Fold and connected paths. These appear on the Order map as A-E, B-E, E-D, C-D and D-F (although B-E-D is referred to here as one route).
6. In 2007 the new owner of Moorgate House erected new fences to enclose land adjacent to the claimed footpath B-E-D. This action, together with the submission of a retrospective planning application, prompted local opposition including a petition against the development. Planning permission was granted but concern over the status of the path remained once it was discovered that it was not recorded as a public right of way.
7. As a result, Baildon Parish Council (BPC) gathered relevant evidence and, in June 2008, submitted an application to BMDC for a definitive map modification order to record all four branches on the definitive map as public rights of way. This included written evidence forms completed by path users, old photographs and extracts from a number of historic maps.
8. Following further investigation, on 9 September 2013 BMDC concluded that an Order should be made. The Council now seeks confirmation of this Order.
9. The 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, there must have been use of the claimed route(s) 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(s) for use by the public; if not, a public right of way on foot will be deemed to subsist.

Historical evidence

10. Although BMDC's case does not rest on the historical documents it has discovered, it is worth noting that the Ordnance Survey maps (which date back to the 1850s) and other nineteenth century plans confirm the physical existence of a way between points C, D and F in much the same form as appears today.
11. A plan of 1855 compiled by the Baildon Public Health Board and a sale plan of 1883 also depict two routes emerging onto the moor at point E; the Order route B-E-D lies broadly between these two paths which are clearly visible on an old photograph supplied by BPC with its application. Further, these plans show that historically A-E has not always been an open through-route.
12. I note that in the detailed statement provided by Mrs West (one of the claimants) she recalled that, when a child, her grandmother had explained that it had not been possible to walk the route between A and E until some outbuildings were removed. Looking at the mapping evidence that has been provided, this seems to have occurred between the late 1930s and the mid-1950s.

When was the status of the way brought into question?

13. 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 in order to set the relevant twenty-year period. In this case there seems little dispute that public use of the Order route was challenged by the events which culminated in the application made by BPC to record these paths.
14. BMDC considered that the date of BPC's application in June 2008 should be taken as the point of challenge. Looking at this more closely it may be that the trigger for this (the erection of adjacent fencing or the retrospective planning application) might pin-point the challenge more accurately but specific dates for this sequence of events are difficult to identify from the evidence available.
15. In the absence of more detailed information to the contrary, I am content to accept June 2008 as being the point at which the status of the routes now at issue were first brought into question.
16. It was also suggested that the erection of a gate across the claimed route D-F adjacent to No 32 Low Fold in the summer of 2012, together with notices which read "PRIVATE ROAD: ACCESS FOR RESIDENTS ONLY – NO PUBLIC RIGHT OF WAY" challenged the public's rights. In addition, the former owner of No 32 said he challenged people using the path but no dates or locations are identified in his statement and there is no evidence from the claimants to corroborate this.
17. I agree that a further question was raised over the extent of the public's rights by the two notices and gate which could potentially indicate a further retrospective twenty-year period for consideration. However, I will focus my examination initially on the period relied on by BMDC, this being the 20 years prior to the application: June 1988-June 2008.

Evidence of use by the public 1988-2008

18. 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 does not take place in secret, is not by force and is not on the basis of permission.

Was the claimed use 'as of right'?

19. Addressing the 'as of right' issue first, there has been no suggestion that any of the claimed use took place other than in a completely open fashion or that any element of 'force' was involved at any time.
20. Whilst none of the claimants stated they had used any part of the Order route expressly 'with permission', there is a possibility that some path users may have done so in exercise of a private right attached to their residences in High and Low Fold or as visitors to such properties. No specific details have been provided to clarify this aspect of the evidence. Consequently, when examining the statements submitted by the claimants, I exercise a degree of caution where it is possible the claimant has relied on a private right, but I find BMDC's recognition that "*such use is woven into more general use*" to be a pragmatic approach to the user evidence as described on each form. With this qualification, I accept that the majority of the use claimed was 'as of right'.

Was the claimed use continuous and without interruption?

21. As I have already noted, the former owner of 32 Low Fold stated that he challenged members of the public walking between D and F but no dates are given for this. It may or may not have been during the relevant twenty years.
22. Amongst the user evidence forms there are a couple of references to someone being stopped whilst using this section but there is insufficient detail to be certain whether or not this was between 1988 and 2008.
23. Even if these incidents did take place during the relevant period, it seems clear that the otherwise continuous use by claimants was not interrupted in fact. The challenges do not appear to have prompted any contact with the highway authority, any report to BPC or any cessation in use until a gate was erected in 2012 together with the 'PRIVATE ROAD' notices.
24. The only action which does appear to have caused some claimants to stop using any part of the Order route is the installation of the gate at point A although there are no reports that this was ever locked.
25. From the evidence given by Mr Gaunt (at the inquiry) and Mrs West (in writing) this gate seems to have been installed around the same time as the fence beside B-E, but after rather than before. Mr Gaunt recalled it was put in around 2008. When Mr Pratt moved to No 3 in November 2008, the gate was already in place. Although it is difficult to be certain, my reading of the evidence is that the gate at A was probably erected at about the same time as BPC made its application to BMDC. I therefore accept that the gate did not interrupt the otherwise continuous nature of the use claimed for section A-E.
26. Looking at the Order route as a whole, I am satisfied that the claimed use for all four sections was continuous and not interrupted between 1988 and 2008.

Was the claimed use of sufficient quality and quantity?

27. In support of the claimed route is the written evidence of use from 33 people who completed standard forms. Two of these claimants (Mr Watson and Professor Green) gave evidence at the inquiry together with one other witness (Mr Leahy) who had not previously completed a form but who was nonetheless able to contribute his own long-standing use of the route. All three witnesses had considerable knowledge of the locality dating back to the 1960s (at least).
28. In addition, adjacent landowners Mr Gaunt and Mr Pratt said they had used parts of the claimed route (other than the section which relates to their own properties (A-E)).
29. There are also 11 further evidence forms from adjacent or affected landowners, some contributing individual use of parts of the Order route.
30. Whilst I accord greater weight to the evidence of those people who gave evidence in person and submitted to questioning, the written statements from the remaining claimants are largely consistent with the oral evidence, at least in relation to the paths claimed between D and F, D and C, and D and B via E.
31. In total I have before me 21 completed forms from people who have used section B-E-D for considerable lengths of time plus Mr Leahy's verbal evidence to the

- inquiry. Mr Leahy also contributed evidence in relation to section C-D for which I have a further 15 forms from claimants. For section D-F I have 26 forms from people who have used this particular route.
32. Not all those providing evidence walked these paths throughout all twenty years, and some used these routes more regularly than others, but collectively this provides a considerable body of evidence of regular and frequent use by the public during the relevant 20-year period.
 33. However, the evidence of use of A-E is less impressive.
 34. From the written evidence BMDC has identified 14 people who claim to have used A-E at some time in the past. One of these, Professor Green, explained at the inquiry that his use of this section pre-dated 1980 and that his subsequent use was generally via B-E-D; this had not been obvious from the user evidence form he completed. The two other witnesses, Mr Watson and Mr Leahy, had never used the path between points A and E and had not known of its existence until the status of adjoining routes became an issue.
 35. Looking at the remaining 13 user evidence forms relating to A-E, it is clear from the descriptions contributed by some claimants that they did indeed use A-E at some stage. In one case the claimant explains that her use began in 1993 after she had been shown the route, but most of the others began using the way as children in the 1970s, 60s, 50s, 40s and one claiming use since the 1930s.
 36. The lengthy and helpfully detailed statement submitted by claimant Mrs West provides a convincing account of her and her family's use since 1960, together with references to physical changes in the nature of the Order routes.
 37. However the limited capacity of the standard forms to invite specific details leaves several questions unanswered, especially where claimants have not attached their own additional information. Where use began such a long time before the relevant period (1988-2008) and where that use spanned several decades, it is difficult to establish from the forms alone the frequency of use at different life stages, and whether A-E was chosen in preference to B-E during the very specific 20 years now at issue. Patterns of use can change significantly over time, as demonstrated by Professor Green's evidence.
 38. Closer examination of the evidence reveals that in fact one claimant does not state his frequency of use. In two cases the exact route walked is not clear on the accompanying map and may or may not be A-E as it now appears on the Order map. The lack of clarity on these, and other, important points means I cannot rely on this evidence and weakens the case in support of this section.
 39. This assessment sits alongside a statement from a respected local historian, Mr Arthur Edwick, who says categorically that "*pathway from point A to E is not (to my knowledge) a public right of way.*" Mr Edwick has in the past contributed to a review of the definitive map and has extensive experience in researching local history and walking footpaths in the locality. For this review in the 1980s (which was subsequently abandoned for other reasons) he identified potential public rights of way for inclusion on the definitive map; this included a footpath from Low Fold to High Fold. No map is available to identify its route but it would be safe to say that, given Mr Edwick's more recent statement, it did not include A-E.

40. I must also take into account statements from near neighbours, for example Mr Brown of High Fold who has written "*I don't remember ever using or seeing anyone else use the way between 3 & 11*". That does not mean there was no use at all but it suggests use may have been less frequent than the other paths that are the subject of this Order.
41. In summary, I am satisfied that the use claimed over sections D-B, D-C and D-F is sufficient, both in terms of the quantity and quality of the evidence, to show use by the public, as of right and without interruption, and throughout the period from June 1988 to June 2008. In this regard the written evidence submitted reflects that given verbally at the inquiry by the witnesses present and there is little (if any) evidence to the contrary.
42. However I find the evidence in respect of the section between A and E falls short of the quality required to raise a presumption of dedication as a public right of way, and consequently the quantity of supporting evidence is lessened as the forms from some claimants cannot be relied upon to the required extent.
43. I therefore conclude that the evidence before me is sufficient to raise a presumption of dedication in relation to the claimed public rights of way D-E)-B, D-C and D-F but not A-E.

The intentions of the relevant landowners

44. Only the owner of land has the capacity to dedicate a public right of way in perpetuity. It follows from this that it is only the intentions of the relevant landowner that can rebut any presumption that dedication of a way for public use was intended.
45. In the present case, landownership has not been established for every part of the claimed route and therefore it is not clear whether any of the limited number of actions which have sought to restrict the public in any way were carried out by or on behalf of any relevant landowner.
46. I have seen no evidence to show that the gate and notices installed along section D-F were put there by the owner of the land over which the path runs. Even so, these actions took place in 2012, after the period that is relevant here, and cannot affect the presumption of dedication raised by the 20 years of use by the public.
47. In the case of the gate at point A, installed by Mr Gaunt around mid-2008, by some historical quirk, the land on which it stands is owned by BMDC. The Council does not oppose the recording of a public right of way and it has taken no action to remove the gate. But even if the gate was installed during the relevant period rather than after, the action (ostensibly to deter public use) would not be attributable to the intention of the landowner.
48. There are no reports of notices challenging use by the public on any part of the claimed routes (until 2012) and no statutory deposits or declarations have been lodged under Section 31(6) of the 1980 Act.
49. I therefore conclude that the necessary tests are satisfied by the evidence but in relation to the parts of the Order route B-E-D, C-D and D-F but not A-E.

Other matters

50. Some of the objections raise concerns over issues such as the effect of recording a public right of way on privacy, dog fouling, litter problems and anti-social behaviour, suggesting that a public footpath is unnecessary and expressing concern over increased liability, maintenance responsibility and expense for landowners. None of these are matters which are relevant to my consideration of this Order which is based on the premise that long-standing use by the public has already established a public path. Nothing in this Order would affect liability for maintenance.

Summary

51. In conclusion, and on the basis of the information provided, I am satisfied that the relevant statutory test is met: that, on a balance of probability, a public right of way on foot has been shown to subsist but only in relation to the routes identified in the Order as B-E-D, C-D and F-D. Consequently, I conclude that the Order should be confirmed with a modification to remove the route shown between points A and E.

Conclusion

52. Having regard to the above and all other matters raised at the inquiry and in the written representations, I propose to confirm the Order with modifications to the Order route as referred to in the preceding paragraph and to correct the error in the citation noted above in paragraph 2 .

Formal Decision

53. I propose to confirm the Order subject to the following modifications²:

In the Order: Article 3

- Correct the date of the Order title as cited to "2014";

In the Order schedule

In Part I: Modification of the Definitive Map - Description of path or way to be added:

- Amend first paragraph to read: "A Public Footpath in the Parish of Baildon as shown by a broken black line on the map 66660T52/OrderPlan annexed hereto, commencing at Pennithorne Avenue at SE 15335 39952 (marked B) and continuing in a south easterly direction for 24.5 metres with a width of 1.4 metres; to SE 15351 39936 (marked E) where there is a step."
- Delete third paragraph;
- Delete "Section A-E has a mostly earth and grassed surface."

In Part II: Modification of Definitive Statement – Variation of particulars of path or way:

- Delete from 'Description of Route': "Two branch footpaths ..." and substitute "Also footpath branching ...";
- Delete from 'Nature of Surface': "Grass and earth";

² Substituted text underlined

- Delete from 'Approximate Length': "30.5"
On the Order map
 - Amend the line of "Footpath to be added" to remove section A-E as shown.
54. Since the confirmed Order would (if modified) not show a way as it is shown in the Order as made, I am required by virtue of Paragraph 8(2) of Schedule 15 to the Wildlife and Countryside Act 1981 to give notice of my proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modifications. A letter will be sent to interested persons about the advertisement procedure.

Sue Arnott

Inspector

APPEARANCES

In support of the Order

For the Order-Making Authority:

Mr J Field Solicitor, representing Bradford MDC

Who called:

Ms J Benson Strategic Routes Officer; Bradford MDC

Mr R S Watson

Mr M T Leahy

Professor R G Green

Opposing the Order (in part only)

Mr J Pratt

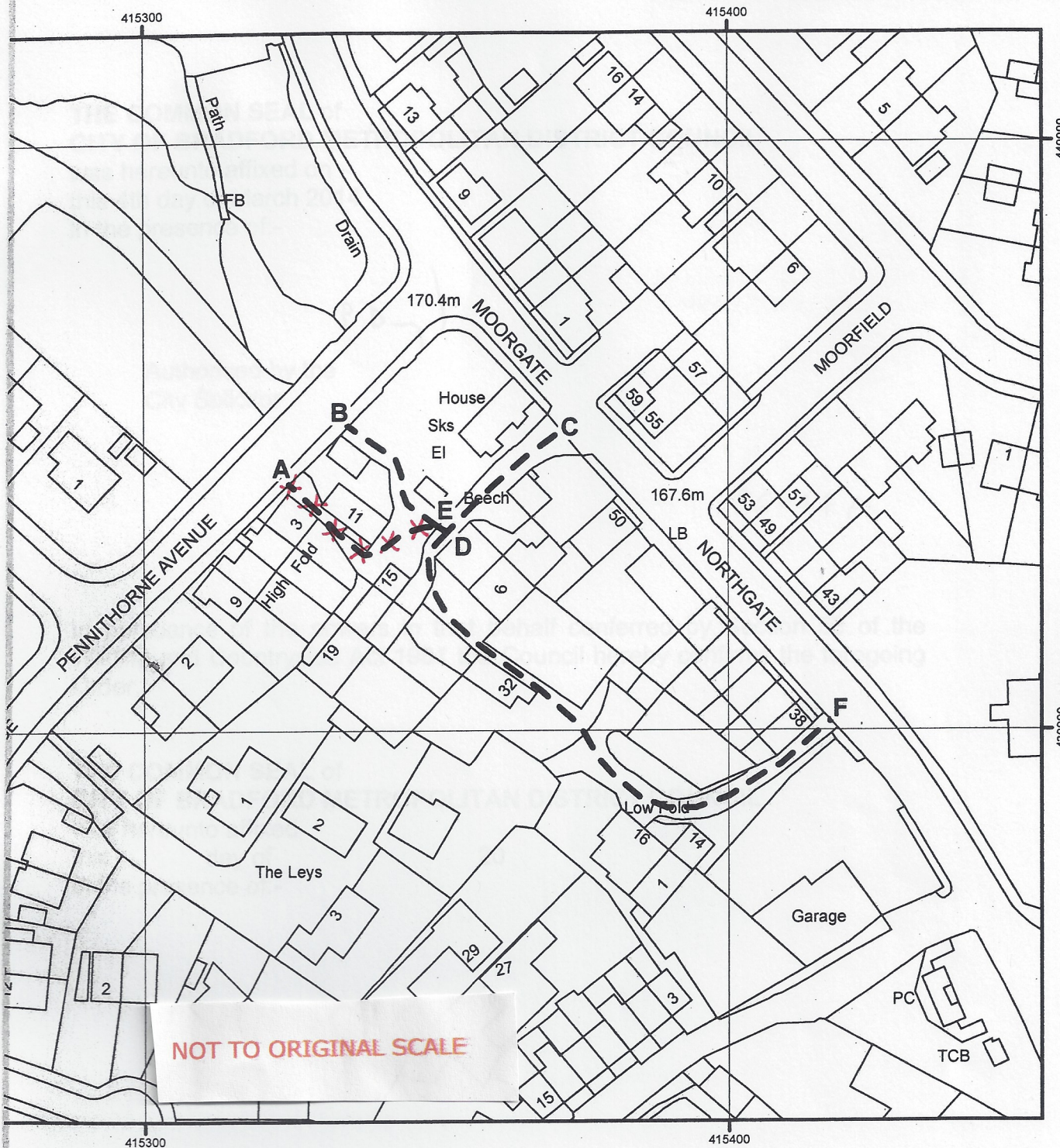
Mr D Gaunt

DOCUMENTS

1. Copy of the statutory objections
2. BMDC's statement of grounds for seeking confirmation with accompanying bundle of documents
3. Proof of evidence (and summary proof) of Ms J Benson submitted on 1 February 2019
4. Email to the Planning Inspectorate from Mr & Mrs Gaunt dated 2 January 2019

Submitted at the inquiry

5. Map showing the area around the Order route
6. Recent photographs of the Order route
7. Additional copy of the 1883 Sale Map
8. Statement from Mr M R Leyland



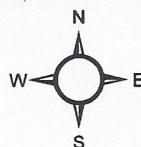
NOT TO ORIGINAL SCALE

Definitive Map Modification Order to add public footpath to the Definitive Map and Statement between Pennithorne Avenue, Moorgate and Northgate (via High and Low Fold), Baildon in accordance with section 53 Wildlife and Countryside Act 1981

P.D.

Legend

--- Footpath to be added



Scale	1:1000
OS Sheet	SE 1539 NW
Drawn By	FP
Checked By	JB
Date	11/02/2014

Reference: 66660/T52/OrderPlan