
Order Decision

Site visit made on 23 November 2020

by Barney Grimshaw BA DPA MRTPI(Rtd)

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

Decision date: 08 December 2020

Order Ref: ROW/3229106

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as The Buckinghamshire County Council (Parish of Great Missenden) Definitive Map Modification Order 2016.
- The Order is dated 26 September 2016 and proposes to modify the Definitive Map and Statement for the area by adding a Public Footpath running from Widmere Field to a junction with Footpath GMI/48(F)/2 and Bridleways GMI/43/1 and GMI/48(BW)/3, as shown on the Order Map and described in the Order Schedule.
- There was 1 objection outstanding when Buckinghamshire County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed.

Procedural Matters

1. I made an unaccompanied site inspection on 23 November 2020 when I was able to walk the whole of the Order route.
2. In writing this decision I have found it convenient to refer to points marked on the Order Map. I therefore attach a copy of this map.
3. The sole objector to this Order when it was made later withdrew her objection as it is understood she ceased to own the land crossed by the claimed route. As a result, the public inquiry that had been arranged to consider the Order was cancelled and it was decided that the Order should be determined by the Written Representations procedure. Subsequently, the new owner of the land lodged an objection and copies of this were circulated to other parties. I have considered all submissions made.

The Main Issues

4. The requirement of Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 (the 1981 Act) is that the evidence discovered by the surveying authority, when considered with all other relevant evidence available, should show that a right of way that is not shown on the definitive map and statement subsists along the Order route.
5. All of the evidence in this case relates to usage of the route. In respect of this, the requirements of Section 31 of the Highways Act 1980 (the 1980 Act) are relevant. This states that where it can be shown that a way over land has been enjoyed by the public as of right and without interruption for a full period of 20

years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The period of 20 years is to be calculated retrospectively from the date when the right of the public to use the way was brought into question.

6. Common law also requires me to consider whether the use of the path and the actions of the landowners have been of such a nature that the dedication of the path by the landowners can be inferred.

Reasons

7. No documentary evidence supporting the confirmation of the Order was submitted.
8. Accordingly, the determination of this Order depends entirely on the evidence of public use of the claimed route that is available and whether this indicates that a public footpath can be presumed to have been dedicated in accordance with the provisions of the 1980 Act (statutory dedication) or inferred to have been dedicated at common law.

Statutory Dedication

Date when public use was brought into question

9. In 2002, a Woodland Grant Scheme was entered into with regard to the land crossed by the claimed path between Points B and C. A condition of this scheme was that the general public should be allowed to walk over the land. It is understood that signage was erected on the land to reflect this and, this being the case, it would seem that public access from 2002 onwards may have taken place by permission rather than 'as of right' as required under the 1980 Act. The scheme itself would not have brought public use into question as it was not in the public domain but, if signs that were erected made it clear that use of the path was by permission, this would have been sufficient.
10. In 2003, a walks leaflet was published by the Prestwood Forum for Farming and the Countryside which depicted the order route as a permissive path. It has been confirmed by the then landowner that she gave permission for the route to be shown in such a manner.
11. In 2004, a deposit under Section 31(6) of the 1980 Act was made by the owner of land between points B and C. This effectively indicated that it was not intended that the route should be a public right of way.
12. In 2014, fencing and a locked gate were erected across the route at Point A by the owner of the land crossed by the route between Points A and B. In the same year a further deposit was made under Section 31(6) of the 1980 Act by the owner of the land between Points B and C.
13. When making the Order, Buckinghamshire County Council, the Order Making Authority (OMA), took the view that public use of the section of the claimed route between Points B and C was brought into question in 2002 and use of the section between Points A and B in 2014. However, the OMA now accepts that the route should be considered as a whole as there is no suggestion that any part of the route was used as a cul de sac path or that there was any place of public resort in the area of Point B which people may have wished to visit and

then retrace their steps. Users who provided evidence all stated that they had used the whole route.

14. On balance, it is my view that public use of the whole Order route was brought into question in 2002 and accordingly the relevant 20 year period which would raise a presumption that the route has been dedicated as a public footpath in accordance with the provisions of the 1980 Act runs from 1982 to 2002 in this case.

Evidence of Users

15. Twenty six User Evidence Forms (UEFs) were submitted in support of the claim for the path to be added to the definitive map. Six people who had completed forms were subsequently interviewed by the OMA and provided further details of their use. People described their use of the path from the 1950s onwards, although most use did not commence before the mid-1970s. Most people claimed to have used the route more than once per month and several much more frequently. Users generally stated that they had not met with any obstruction before 2014, had not seen signs restricting use, had not been challenged and had not received permission.
16. In addition, a further 38 copies of communications from people claiming to have used the route were submitted by the Prestwood Village Association. Two of these were from people who had also completed UEFs and some were from people who had only used the route after 2002 or did not provide dates of their usage. Nevertheless, even if those submissions are discounted, 28 people claimed to have used the route during the period 1982-2002 and provided varying amounts of detail regarding their use.
17. In total, more than 50 people claim to have used the route for some or all of the period from 1982 to 2002 and more than 20 during any single year of that period. I have seen no evidence to indicate that any of these users did not use the route 'as of right' as required under the 1980 Act. In my view, this use raises a presumption that the route has been dedicated as a public right of way unless there is sufficient evidence that there was no intention to dedicate it on the part of landowners during that same period.

Actions of landowners

18. On behalf of the owner of the land crossed by the claimed route between Points A and B, it is stated that this was fenced and access was only possible because the fence was repeatedly broken down at Point A. However, users of the route state that they met no obstructions before the erection of a metal fence and gate in 2014 and I have seen no substantive evidence of the existence of an obstruction at this point.
19. The former owner of the land between Points B and C stated that she and her husband regularly submitted notices under section 31(6) of the 1980 Act but she was unable to state whether this had occurred before 2002 and the earliest record of such a notice held by the council was submitted in 2004.
20. Overall, it is my view that there is not sufficient evidence of actions by landowners indicating their lack of intention to dedicate the Order route as a public footpath in the period 1982-2002 to rebut the presumption that it had been so dedicated.

Conclusions regarding Statutory Dedication

21. There is a significant quantity of evidence of public use of the Order route throughout the period from 1982 to 2002 which is sufficient to raise the presumption that it has been dedicated as a public footpath in accordance with the provisions of the 1980 Act. No substantive evidence that might rebut this presumption has been submitted and accordingly I conclude that the route has been dedicated as a public footpath as a result of use by the public during the period 1982 to 2002.

Common Law

22. An inference that a way has been dedicated for public use may be drawn at common law where the actions of landowners (or lack of action) indicate that they intended a way to be dedicated as a highway and where the public have accepted it.
23. In this case, there is some evidence of public use from the 1950s onwards and no substantive evidence of actions by landowners that would indicate a lack of intention to dedicate it as a public right of way before 2002. It is therefore arguable that dedication of the Order route might be inferred at common law. However, in the light of my conclusion regarding presumed statutory dedication it is not necessary to pursue this matter further.

Other Matters

24. A number of concerns were raised by objectors related to the possibility of vandalism, fly tipping and other damage to the environment that might result from the Order route becoming a public right of way to which access could not be controlled by landowners. I understand these concerns but as they lie outside the criteria set out in the relevant legislation, I can give them no weight in reaching my decision.
25. Concern was also expressed by one landowner that occasional forestry activity would require temporary closure of the path for safety reasons. Again, this is a matter to which I can ascribe no weight in reaching my decision, but I note that it is possible for landowners to divert rights of way for up to 14 days in such circumstances.

Conclusions

26. Having regard to these and all other matters raised, I conclude that the Order should be confirmed.

Formal Decision

27. I confirm the Order.

Barney Grimshaw

Inspector

