



Order Decision

Site visit carried out on 29 March 2017

by Peter Millman BA

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

Decision date: 07 April 2017

Order Ref: FPS/U3100/7/37

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the 1981 Act") and is known as the Oxfordshire County Council Blewbury Bridleway No. 41 and Blewbury Bridleway No. 42 Modification Order 2015.
- The Order is dated 18 May 2015 and proposes to modify the Definitive Map and Statement for the area as shown on the Order plan and described in the Order schedule.
- There were nine statutory objections outstanding when Oxfordshire County Council ("the County Council") submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: I have confirmed the Order.

Main issue

1. The main issue is whether the evidence shows that a public right of way on horseback exists on the route shown on the Order map between points A and F (copy of Order map appended below).
 2. The statutory test for confirmation of modification orders is set out in section 31 of the Highways Act 1980. It reads as follows: *(1) Where a way over any land... has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. (2) The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question...* The standard of proof is the balance of probabilities.
 3. Each of the nine almost identical statutory objections to the Order was clearly based on the misconception that it proposed to create a public bridleway. The Order, in fact, proposes to record a bridleway on the County Council's Definitive Map. The County Council's case is that the evidence shows that public bridleway rights have already come into existence on the route shown on the Order map.
 4. Because of this misconception, the objections to the Order addressed the tests for confirmation of creation orders set out in section 26 of the 1980 Act. These tests, for example whether there is a need for a right of way, and whether it would add to the convenience of local people, are fundamentally different from the tests for the confirmation of a modification order, set out in paragraph 2 above. I cannot give the objections significant weight, therefore, in deciding whether to confirm this Order.
-

Reasons

5. The Order route, known as Pilgrims Way, leads south for about 50 metres from London Road in Blewbury, then turns east to run roughly parallel to London Road, before turning north to rejoin it after around 400 metres. It is a long-established route, having been shown on maps since the late 18th century. It is not registered with the Land Registry, and none of the adjoining landowners consulted by the County Council claims to own any of it.
6. Section A – B of the Order route is currently shown as a footpath on the County Council's Definitive Map. The remainder, B – F, is not recorded as having any public rights. The application to show A – F as a bridleway on the Definitive Map was made in August 2002. Because no event had occurred at that time which could have brought the public's right to use the route on horseback into question (see paragraph 2 above) the date of bringing into question must be taken as the date of application. The relevant 20 year period for the purposes of s31 of the 1980 Act is therefore August 1982 to August 2002.
7. The application for a modification order was supported by 24 completed user evidence forms. Ten of those who had completed them were interviewed by officers of the County Council. Twelve people stated that they had used the Order route on horseback for more than 20 years. The County Council concluded that their evidence, which was unchallenged, was sufficient to show that the public had used the route throughout the period 1982 to 2002 with no significant interruption, and that this use had been as of right, i.e. it had not been by force, by permission of the landowner, or in secret. Two objectors stated that the route was 'regularly closed to members of the public by way of putting obstacles at each end, in order to host residents only gatherings', but no further details of when this occurred, or how often, have been forthcoming. I can see no reason to disagree with the County Council's conclusion.
8. Since the freehold ownership of the land over which the Order route passes is unknown, and the only person who could dedicate public rights over the Order route is the freehold owner, it is not surprising that no evidence of a lack of intention to dedicate (see again paragraph 2 above) has been discovered.
9. I conclude that the test in section 31 of the 1980 Act has been met.

Conclusion

10. Having regard to these and all other matters raised in written representations I conclude that the Order should be confirmed.

Formal Decision

11. I confirm the Order.

Peter Millman

Inspector




Wildlife and Countryside Act

**The Oxfordshire County Council
Blewbury Bridleway No. 41 and
Blewbury Bridleway No. 42
Modification Order 2015**

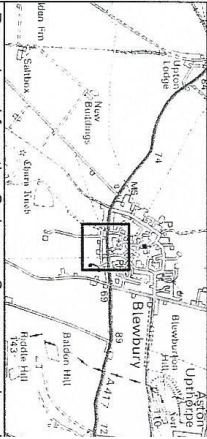
**Upgrade footpath 19 (part) to
Bridleway No. 41:**

A - B 
Length: 54m Width: 2.5m

**New route to be added as
Bridleway No. 42:**

B - C - D - E - F 
Length: 430m
Width: B-C: 2.5m C-D: 1.8m D-F: 2

**Approximate route
of unaffected footpaths:**



Reproduced from the Ordnance Survey mapping with permission of the Controller of Her Majesty's Stationery Office Crown Copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings.
Oxfordshire County Council Licence No. 100023343

OS Reference: SU 5285 & 5385 Scale 1:2500

Drawn By: AH Date: 1 May 2015
Drawing No. WCA8/13/14a

Sue Scane, Director, Environment and Economy
Oxfordshire County Council
Signal Court
Old Station Way
Eynsham, OX29 4TL

