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## Order Decision

Site visit made on 28 July 2015

**by Barney Grimshaw BA DPA MRTPI (Rtd)**

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

Decision date: 13 August 2015

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### Order Ref: FPS/U4610/7/2

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as The Footpath 234 (Coventry) Modification Order 2013.
- The Order is dated 12 September 2013 and proposes to modify the Definitive Map and Statement for the area by adding a footpath running between Athol Road and Darwin Close, Coventry, as shown on the Order Map and described in the Order Schedule.
- There were 4 objections outstanding when Coventry City Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

### Summary of Decision: The Order is confirmed.

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#### Procedural Matters

1. I made an unaccompanied site inspection on 28 July 2015 when I was able to walk the Order route.
2. I attach a copy of the Order Map for reference purposes.

#### The Main Issues

3. 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.
4. 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.
5. 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

### ***Evidence of Presumed Dedication under the 1980 Act***

#### *Date when public use was brought into question*

6. In February 2011 a wire fence was erected which blocked the Order route and subsequently two brick walls were built at either end of the route and the wire fence removed. These actions clearly brought public use of the route into question.
7. Prior to the closing of the route in February 2011, its width had been reduced by the erection of another fence. However, part of the width remained available to path users and it does not seem that the erection of this fence brought public use into question before February 2011.
8. One objector refers to a notice stating that the route was private having been in place in 1965 but that it was vandalised and removed in the same year. No users of the route mention having seen such a sign.
9. Planning approval was granted for the erection of the brick walls in 2010 but it seems that users of the route did not become aware of this until the walls were actually erected in 2011.
10. Overall, there is little substantive evidence that public use of the Order route was brought into question before February 2011 and, accordingly, the relevant 20 year period of public use before dedication of the route as a public footpath can be presumed in accordance with the provisions of the 1980 Act runs from February 1991 to February 2011 in this case.

#### *Evidence of Users*

11. Eighty four User Evidence Forms (UEFs) were submitted in support of the application for the Order route to be added to the definitive map. These describe use of the route between the 1960s and 2011.
12. From my analysis it appears that 61 people claim to have used the route throughout the 20 year period from 1991 to 2011 and a further 19 for some of that period. Two people claimed to have only used it before 1991 and two did not state when they used it.
13. The frequency of use claimed is high with over half of users stating that they used it on a daily basis and all users state that they encountered no obstruction or challenge before 2011 nor did they see any signs relating to their use of the route.
14. It is arguable that some use of the route took place in connection with visits to a hairdresser's salon with access from the route and therefore should not be regarded as having been 'as of right' for the purposes of the 1980 Act. However, this appears to have been only a relatively small proportion of the total use of the route.
15. No evidence has been put forward by objectors to suggest that the use claimed did not take place but, it was suggested that the evidence of people who live some distance away from the Order route should be afforded less weight than that of people living close to it. However, the distance that a person lives from the Order route is not a relevant consideration in cases such as this. Public

rights of way are, by definition available to all members of the public on an equal basis.

16. Overall, it is my view that the amount of public use of the Order route between 1991 and 2011 was clearly enough to raise the presumption that the route had been dedicated as a public footpath in accordance with the provisions of the 1980 Act unless there is sufficient evidence that there was no intention during that period to dedicate it.

#### *Evidence of lack of intention to dedicate*

17. There is very little evidence of action on the part of landowners before 2011 to indicate a lack of intention to dedicate a public footpath. One objector states that there was a sign present in 1965 stating that the route was not a public right of way but he also indicated that this sign was not in place for very long. There is no indication that any such sign was in place during the relevant 20 year period.

#### *Conclusions regarding Statutory Dedication*

18. On balance, it is my view that the available evidence raises the presumption that the Order route was dedicated as a public footpath as a result of public use during the period from 1991 to 2011 and that action by landowners during the same period was not sufficient to negate this presumption.

#### **Common Law**

19. 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.
20. In this case, there would appear to have been public use of the Order route over a period of more than 20 years and there is little evidence of action by the landowner to discourage such use before 2011. However, in the light of my conclusions regarding dedication of the route in accordance with the provisions of the 1980 Act, I have not pursued this matter any further.

#### **Other Matters**

21. Objectors point out that prior to its closure in 2011, the Order route and adjacent properties were subject to many incidents of vandalism and various forms of illegal and anti-social behaviour. Since the closure, they state that these problems have been eliminated at the cost of very little inconvenience to the public as alternative routes to local facilities exist by way of footways alongside nearby roads. They also argue that the main purpose of the route was to provide access to shops which no longer exist and that therefore there is now no need for a footpath. I understand these arguments but, as they lie outside the criteria set out in the relevant sections of the 1980 and 1981 Acts, I have not afforded them any weight in reaching my decision.
22. Objectors were also understandably puzzled and concerned that the city council had given planning approval for the erection of walls in 2010 and yet was also pursuing the re-opening of the footpath by means of the current Order. Again, I understand this concern but, the granting of planning permission does not also have the effect of extinguishing a public right of way that is found to

subsist, even when that right was not recorded at the time of the permission. Accordingly, I have not afforded any weight to the existence of the planning consent in reaching my decision.

23. It was also suggested that the Order should not be confirmed on the grounds that the intention of Parliament in enacting the 1981 Act was “...to preserve rights of way giving access to the countryside for walkers and horse riders” and the current Order route is not such a way. I think the quotation referred to is part of a judgement in a case specifically concerning a Byway Open to All Traffic<sup>1</sup> and not strictly applicable to the current Order. Also, the relevant sections of neither the 1980 Act nor the 1981 Act impose any such qualification on the type of way to which they apply.
24. In the Order the width of the Order route is described as varying between 4.4 metres and 9.90 metres which represents all of the available space between existing buildings and walls. One objector suggests that this is a much greater width than is required for the convenient passage of walkers and that a 2 metre wide path would be quite adequate. This may well be true but, in cases such as this, where dedication of a way is presumed as a result of use by the public, it is the actual width that was used that determines the extent of the path. The UEFs completed in this case included a question “How wide is the path?” which was answered by nearly all users with estimates ranging from 6’ to 28’. In these circumstances it seems reasonable to presume that people were seeking to describe the entire available width as having been used and the evidence provides no basis for the substitution of an alternative width.

### **Conclusions**

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

### **Formal Decision**

26. I confirm the Order.

*Barney Grimshaw*

**Inspector**

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<sup>1</sup> Masters v the Secretary of State of the Environment, Transport and the Regions [2000] 4 All ER 458.

