

Order Decision

Site visit made on 18 April 2017

by Mark Yates BA(Hons) MIPROW

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

Decision date: 16 May 2017

Order Ref: FPS/A2470/7/7

- This Order is made under Section 53(2) of the Wildlife and Countryside Act 1981 ("the 1981 Act") and is known as the Rutland County Council District Council (Addition of Footpath E349 at Barbers Lane Preston) Definitive Map Modification Order 2006.
 - The Order was made by Rutland County Council District Council ("the Council") on 24 April 2006 and proposes to add a footpath ("the claimed route") to the definitive map and statement, as detailed in the Order Map and Schedule.
 - There were two objections outstanding when the Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.
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Decision

1. I confirm the Order subject to the modifications detailed in paragraph 9 below.

Main Issues

2. The Order relies on the occurrence of an event specified in Section 53(3)(b) of the 1981 Act. Therefore, if I am to confirm the Order, I must be satisfied that the evidence discovered is sufficient to raise the presumption of the dedication of a footpath. In considering this issue, regard should be given to whether the dedication of a public footpath has occurred in accordance with Section 31 of the Highways Act 1980 ("statutory dedication") or at common law. The burden of proof to be applied is the balance of probabilities.

Reasons

3. The Council believes that the status of the claimed route was brought into question for the purpose of statutory dedication in May 2003 when one of the objectors (Mr Noble) sought permission to erect a gate and fencing across the route. This is stated to have led to complaints from members of the public on the ground that it was a right of way. I also note that the application to add this route to the definitive map and some of the supporting user evidence dates back to 2003. Therefore, the relevant period to be considered in relation to statutory dedication is 1983-2003 ("the relevant period").
4. The Council says that twenty four user evidence forms were originally submitted in support of use of the claimed route but these have been misplaced. The use documented in the original forms is set out in a table compiled at the time of their completion and confirmed by the Council's Rights of Way Officer. He also carried out interviews with twelve of these users. Ten of the original users have completed replacement evidence forms and two forms have been provided from additional users of the route.

5. The evidence of use is not disputed and I accept that it is sufficient to raise the presumption of the dedication of a public footpath over the claimed route. Further, there is no evidence of action being taken during the relevant period to demonstrate to the public that there was a lack of intention by any landowner to dedicate a footpath. I therefore conclude on the balance of probabilities that a public footpath has been dedicated under statute.
6. The Council considers that the width of the claimed route should be taken to correspond to its historical boundaries and requests that the Order is modified to make this variable width clear. A supplementary plan has been provided showing the width of the route. It is also apparent that the reference to a bridleway within the heading in Part II of the Order Schedule is incorrect and should be modified. These modifications would address the technical objection of the second objector (Mr Kind). Mr Noble requests that a lesser width is recorded where the route passes over his land.
7. It is apparent that the claimed route proceeds between longstanding boundaries. The Council says there is insufficient evidence to show that the public did not use the full width of the route during the relevant period. Mr Noble draws attention to vegetation shown at the side of the route on photographs taken in 2004. However, as the Council points out these were taken after the end of the relevant period. The details regarding the claimed route in the evidence forms are generally supportive of it extending over a greater width than that identified by Mr Noble and more in line with the variable width on site between its boundaries.
8. Having regard to the above, I conclude that Part II of the Order Schedule should be modified in relation to the specified width of the claimed route and the reference to a bridleway. I do not consider it appropriate to replace the Order Map but the supplementary plan should be appended to the Order to show the extent of this variable width. There is nothing to show that any other modification should be made to the Order.

Modifications

9. The modifications to the Order are as follows:
 - Delete "*BRIDLEWAY*" within the heading in Part II of the Order Schedule and insert "*FOOTPATH*".
 - Delete the heading "*Minimum Width*" in Part II of the Order Schedule and insert "*Width*".
 - Delete "*3.5 metres*" underneath the above heading and insert "*Width varying between 3.5 to 7.0 metres as shown shaded on the 'Supplementary Plan' appended to this Order*".
 - *Append the Supplementary Plan to the Order.*

Mark Yates

Inspector

