



## Order Decision

Unaccompanied site visit made on 5 June 2015

**by Mark Yates BA(Hons) MIPROW**

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

**Decision date: 21 August 2015**

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### **Order Ref: FPS/P0240/7/6**

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the 1981 Act") and is known as the Central Bedfordshire Council (Definitive Map and Statement for Bedfordshire) (Harlington: Footpath No 29) Modification Order 2012.
- The Order was made by the Central Bedfordshire Council ("the Council") on 13 April 2012 and proposes to add a footpath ("the claimed route") to the definitive map and statement, as detailed in the Order Map and Schedule.
- There was one objection and one representation outstanding when the Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.

**Summary of Decision: The Order is confirmed subject to the modifications set out below in the Formal Decision.**

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### **Procedural Matters**

1. As there was uncertainty regarding the ownership of an area of land crossed by a section of the claimed route, following the submission of the Order to the Secretary of State, the Council sought and was granted a dispensation to place notices on site addressed to the owner or occupier of the land in question<sup>1</sup>. No additional objections or representations were received in response to the re-advertisement of the making of the Order.

### **Main Issues**

2. The Order is made under Section 53(2)(b) of the 1981 Act, citing the provisions contained in Sections 53(3)(b) and 53(3)(c)(i) of the Act. However, the Council confirms that this is an error and reliance is only placed on the latter. No apparent prejudice arises out of this issue and the Council's position regarding the evidence relied upon is clearly stated in its submissions. Nevertheless, if confirmed, it would be appropriate to modify the Order in relation to this issue.
3. In light of the above, for me to confirm the Order, I must be satisfied that the evidence shows that a right of way which is not shown in the map and statement subsists. The burden of proof to be applied is the balance of probabilities.
4. The relevant statutory provision, in relation to the dedication of a public right of way, is found in Section 31 of the Highways Act 1980 ("the 1980 Act"). This requires consideration of whether there has been use of a way by the public, as of right<sup>2</sup> and without interruption, for a period of twenty years prior to its status being brought into question and, if so, whether there is evidence that

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<sup>1</sup> In accordance with paragraph 3(4) of Schedule 15 to the 1981 Act

<sup>2</sup> Without force, secrecy or permission

any landowner demonstrated a lack of intention during this period to dedicate a public right of way.

5. If the statutory test fails, consideration should be given to common law dedication. An implication of dedication may be shown at common law if there is evidence from which it may be inferred that a landowner has dedicated a right of way and that the public has accepted the dedication.

## **Reasons**

### ***Statutory dedication***

#### *When the status of the claimed route was brought into question*

6. I concur with the Council that the status of the claimed route was brought into question by the erection of a fence across the route in January 2011. This means that the period for the purpose of statutory dedication ("the relevant period") is 1991-2011.

#### *Evidence of use by the public*

7. I have been supplied with thirty-seven user evidence forms ("UEFs") in support of use of the claimed route during the relevant period. The Council also conducted interviews with a proportion of the users. I note that the objector (Mr Nicholls) disputes this evidence of use based on his observations over a four week period and he questions how these forms were collated. However, there is nothing to suggest that the information contained in the UEFs is not bona fide. The signed UEFs provide evidence of significant use on foot throughout the relevant period along with observed use by others.
8. The evidence of use would be sufficient to raise a presumption of the dedication of a public footpath but consideration needs to be given to whether any of this use was of a permissive nature. Any people who had permission to use the claimed route would not have been using the route as of right and should be discounted from my assessment of the user evidence. Mr Nicholls alleges that the residents of Bunyans Walk have a permissive right of way.
9. Fourteen of the users live, or have lived, in Bunyans Walk but the majority live elsewhere. Nonetheless, the more significant use appears to have been by the residents of Bunyans walk or visitors to these properties. It is apparent that some of these residents believe that they have a private right of way and eight of the users appear to have seen the sign that is addressed in paragraphs 12-14 below. However, the Council says that such a right is not evident from information supplied by the Land Registry. In respect of the private right of way detailed in an abstract of title provided by one of the applicants for the Order (Mr McCartney), it does not appear to me to correspond to the same alignment as the claimed route. I do not find that the use by the residents of Bunyans Walk can be described as being of a permissive nature on the basis of the information supplied to me.
10. Overall, I consider that the evidence is sufficient to demonstrate on balance that there was use of the claimed route during the relevant period to such a degree to raise a presumption of the dedication of a public footpath in accordance with Section 31 of the 1980 Act.

*Whether any landowner demonstrated a lack of intention to dedicate a footpath*

11. There is evidence of verbal challenges being issued by the former owner of No. 3 Churchills, the late Mr N. Clarke. However, these challenges are stated to have ceased on his death in the mid-1980s. The evidence indicates that other members of the Clarke family did not subsequently take action to challenge use of the route.
12. As outlined above, there is no apparent recorded permissive right of access for the residents of Bunyans Walk. However, the Council acknowledges that a sign near to the eastern end of the claimed route, which is believed to have been erected by the late Mr Clarke, was in place during the relevant period. Mr Nicholls believes that another sign was located at the Bunyans Walk end but there is no evidence to corroborate the existence of a second sign. He also says that he was informed that the claimed route was private on one occasion in 2007.
13. The sign is stated to have been worded "*Private Footpath Bunyans Walk Residents Only*" and this is supported by a photograph supplied by the Council. This photograph shows the majority of the wording to be visible and written on a wooded board attached to a wall. However, the word "*only*" appears to have been covered by ivy. During the time of my visit the sign was no longer clearly visible.
14. Clearly this sign could have indicated to those people who saw it that the claimed route was a private footpath for the benefit of the residents of Bunyans Walk only. However, I have concerns about how effective it was in communicating a lack of intention to dedicate a public footpath. The vast majority of the users did not see the sign and doubts exist regarding its visibility in light of its location and the growth in ivy. As the Council points out it would only have been visible from one direction. A further issue arises in that the sign may have been placed by the late Mr Clarke on land outside of his ownership.
15. Overall, I do not find on balance that the sign was sufficient to communicate to the public that there was a lack of intention by the landowner to dedicate a public footpath.

*Conclusions*

16. For these reasons I conclude on the balance of probabilities that the claimed route has been dedicated as a public footpath in accordance with Section 31 of the 1980 Act and the test set out in paragraph 3 above is satisfied. This means that there is no need for me to address the evidence in the context of common law dedication.

**Other Matters**

17. Mr Nicholls raises a number of issues in his objection, including the existence of alternative highways, public expense and safety concerns. However, these issues are not relevant to the determination of whether a right of way subsists.

**Overall Conclusion**

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

**Formal Decision**

19. I confirm the Order subject to the following modifications:

- Delete "53(3)(b)(c)(i)" from the fifth line in the first page of the Order and insert "53(3)(c)(i)".
- Delete the sixth-eighth lines in the first page of the Order.

*Mark Yates*

**Inspector**