
Order Decision

Hearing held on 9 August 2016

by Barney Grimshaw BA DPA MRTPI(Rtd)

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

Decision date: 30 August 2016

Order Ref: FPSN4720/7/31

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Leeds City Council (Footpath Alongside Leeds Road Allotments, Allerton Bywater) Modification Order 2015.
- The Order is dated 10 February 2015 and proposes to modify the Definitive Map and Statement for the area by adding a public footpath running between Leeds Road, Allerton Bywater and Great & Little Preston Bridleway No. 26, as shown on the Order Map and described in the Order Schedule.
- There were 5 objections outstanding at the commencement of the hearing.

Summary of Decision: The Order is not confirmed.

Procedural Matters

1. I held a public hearing into this Order on 9 August 2016 at Vicars' Court, Allerton Bywater. I made an unaccompanied site inspection on 8 August when I was able to walk part of the Order route and view the remainder. I made a further visit on 9 August accompanied by all the parties attending the hearing.
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.

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. Most 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, other than a way of such character that use of it by the public could not give rise at common law to any presumption of dedication, 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

Documentary Evidence

6. Ordnance Survey (OS) maps prepared between 1892 and 1908 show a route similar to the Order route for much of its length from Point A southwards but branching in a south-easterly direction from a point roughly two thirds of the way along rather than continuing in a straight line to Point C. From 1953 onwards OS maps began to show two routes in this southern section, that shown on older maps and the Order route to Point C. OS maps prepared between 1907 and 1956 also show a footpath to the south of the railway line commencing opposite the route shown on the early maps and not on the line of a current right of way.
7. In the survey carried out in 1950 as part of the process of preparing the first definitive map, the Order route was identified as a footpath and described as being 2½ ft. wide and in good condition. However, in the section of the schedule requesting the identification of features of the path, it states '*Approx 20 yds side of allotments to boundary edge*'. I am not clear as to how this statement should be interpreted. The reason why it was thought to be public was given as '*over 40 years used by the public*'. However, despite having been identified in this way, the path was not included on the definitive map and the reason for its omission is not known.
8. A previous map dated 1932 with additions in 1938 appears to show the path on the alignment shown on the early OS maps. I do not know the status of this map.
9. The limited amount of historic documentary evidence that is available shows that a route similar to the Order route has existed on the ground since before 1892 and that the whole Order route came into existence at some time between 1908 and 1953 but possibly not until after 1938. Although OS maps provides good evidence of the existence of routes at the time they were surveyed they do not indicate the status of them or whether the public had rights over them. The 1950 survey suggests that public rights were then considered to exist but this was not apparently accepted by the council responsible for preparing the definitive map. Overall, it is my view that the documentary evidence that is available does not assist in determining the correct current status of the Order route.

Evidence of Statutory Dedication

Date when public use was brought into question

10. In 1984, evidence suggests that a fence and earth bund were erected across the Order route a short distance to the north of Point C. Also, the landowners, the National Coal Board (NCB), invited Mr Townend, who had occupied allotments adjacent to the route since 1973, to extend his allotments across the route and block it off, which he did. These actions brought public use of the route into question.

11. At that time the route and adjacent allotments were owned by the NCB and land south of the fence was occupied by rail lines used for the transport of coal and colliery waste. The railway remained in use until the late 1980s. The NCB were said to have been concerned that the Order route was being used in connection with the theft of coal from railway trucks and that was why this action was taken at the time which coincided with a miners' strike.
12. However, Mr Townend and others have stated that prior to 1984 there was a gate across the route at the boundary of the railway and a sign reading '*Private no trespassing*'. Mr Bonson, another allotment holder stated in a written submission that the gate was kept locked. It was also stated that residents of two cottages to the south of the railway had permission from the NCB to cross the tracks to draw water from a tap near Leeds Road. There is no evidence regarding when the gate and sign were first installed.
13. Whilst it is clear that public use of the Order route was brought into question in 1984, it also seems possible that it was brought into question before then by a gate and sign at the boundary of the railway. However, people claiming to have used the route until 1984 do not report having been obstructed or seeing a sign.

Evidence of users

14. Sixteen User Evidence Forms (UEFs) were submitted in support of the claim for the route to be added to the definitive map. These give details of use of the route from the 1930s in one case until 1984. Eleven people claimed to have used the route throughout the period from 1964 to 1984 and the remainder for part of that period.
15. Four people claimed to have used the route on a daily basis, five more than once per month and seven on an occasional basis. No users reported having been obstructed or having seen signs on the route before 1984, although one user stated that the path was blocked by a locked gate at the disused railway end.
16. The evidence of use that is available is limited which is unsurprising given the amount of time that has elapsed since the route was blocked. Nevertheless, the user evidence might be sufficient to raise a presumption that the route had been dedicated as public right of way if the use was uninterrupted and 'as of right'. However, in this case the Order route led on to what was an active railway line at a point where there is no evidence that a crossing was provided. So, unless users stopped short of Point C and retraced their steps, which is not suggested by the evidence, they must have proceeded on to and across the railway lines. Even if any fencing that had been in place had been broken down and any signs were not seen, I still have doubts as to whether such use can reasonably be regarded as giving rise to a presumption of dedication as a result of the character of the route.

Evidence of lack of intent to dedicate

17. The only available evidence of specific action taken by the landowner to indicate a lack of intention to dedicate the Order route as a public right of way relates to a gate and sign close to Point C which were apparently not seen by users of the route. However, as Point C lies on what was during the relevant 20 year period an active railway line it seems to me unlikely that the NCB would

have intended to dedicate a public footpath leading on to the line or a cul de sac path leading to the boundary of the railway.

Conclusions regarding Statutory Dedication

18. It is my view that on balance the available evidence does not give rise to a presumption that the Order route has been dedicated as a public right of way of any sort.

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 is some evidence of use of the Order route from the 1930s. However, prior to the route being blocked in 1984 it was the access route to allotments owned by the NCB and terminated on an active rail line also owned by the NCB. There is no evidence of any action by the NCB which would indicate an intention to dedicate the route as a public footpath and it seems unreasonable to me to infer that the NCB had any intention of dedicating a route leading on to the rail line.

Other Matters

21. A number of concerns were raised by objectors to the Order including, loss of security for allotment holders and neighbouring properties if the route is recorded as a public right of way, expenditure required to open up the route despite alternative routes being available nearby and the possibility of litter, fly tipping and other forms of anti-social behaviour. I understand these concerns but, as they lie outside the criteria set out in the relevant legislation, I have given them no weight in reaching my decision.
22. It was also pointed out that the applicant for the addition of the path to the definitive map in 2000, Allerton Bywater Parish Council, had subsequently sought to withdraw the application and now opposed the confirmation of the Order. However, on behalf of the OMA it was stated that, having discovered evidence indicating that an unrecorded route subsisted or was reasonably alleged to subsist, it had a duty to make the Order which then had to be determined in accordance with proper procedures.

Conclusions

23. Having regard to these and all other matters raised, I conclude that the Order should not be confirmed.

Formal Decision

24. I do not confirm the Order.

Barney Grimshaw

Inspector

APPEARANCES

For the OMA

Angela Cookland

Leeds City Council (LCC)

Claire Tregombo

LCC

Objectors

Andrew Robinson

Landowner

Peter Townend

Tenant of affected land

Interested Parties

John Taylor

Allerton Bywater Parish Council

DOCUMENTS

1. Statement and associated documents of Mr A Robinson.
2. Statement and associated documents of Mr P Townend.

