



## Order Decision

Site visit made on 21 July 2016

**by Michael R Lowe BSc (Hons)**

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

**Decision date: 15 February 2017**

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### **Order Ref: FPS/R4408/7/17**

- This Order is made under section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Metropolitan Borough of Barnsley (West Riding of Yorkshire County Council Definitive Map and Statement) (Wombwell) Modification Order (No. 12) 2015.
  - The Order is dated 24 August 2015 and proposes to modify the Definitive Map and Statement by adding a footpath from Highgate to Everill Gate Lane, Broomhill, Wombwell, as detailed in the Order map and schedule.
  - There were three objections and five representations outstanding when Barnsley Metropolitan Borough Council (the Council) submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.
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### **Decision**

I confirm the Order.

### **Main Issue**

1. The Order has been made under section 53(2)(b) of the 1981 Act relying on the occurrence of events specified in section 53(3)(c)(i). The main issue is therefore whether the evidence is sufficient to show, on the balance of probabilities, that a public footpath which is not shown in the map and statement subsist on the route in question such that the definitive map and statement require modification.
2. In the context of section 53 of the 1981 Act the requirements of section 31 of the Highways Act 1980 (the 1980 Act) are namely;
  - a) the date on which the right of the public to use the claimed footpath was brought into question;
  - b) whether the claimed route was of such character that its use could not give rise at common law to any presumption of dedication; and
  - c) whether the claimed footpath was actually enjoyed by the public 'as of right' (without force, secrecy or permission) and without interruption for a full period of 20 years ending on the date on which their right to do so was brought into question; and if so
  - d) whether there is sufficient evidence that there was, during this period, no intention to dedicate the claimed footpath.
3. Whether, in the alternative, the evidence is such, again on the balance of probabilities, as to establish dedication at common law.

4. Section 32 of the 1980 Act, requires me to take into account any map, plan or history of the locality or other relevant document and to give such weight to it as is justified by the circumstances.

### **Background and Reasons**

5. The claimed footpath is a convenient short cut between two streets in the settlement of Broomhill. The Ordnance Survey maps between 1854 and 1948 indicate the claimed route also provided access to a row of parallel terraced houses, with the link to Everill Gate Lane shown as a narrow path. Later Ordnance Survey maps after 1960 indicate that, although this row of houses had been demolished, a well-defined path still existed along the claimed route. Various aerial photographs between 1972 and 2013 are consistent with the existence of a path along the claimed route.
6. Correspondence in the Council's files indicates that in 1976, when South Yorkshire County Council was the Highway Authority, a query was raised by the owners of 180 Everill Gate Lane. The County Council received evidence of public user and was satisfied that a public right of way on foot had been established with evidence statements from some 20 persons, 15 of whom stated they had used the route for over twenty years on a regular basis. The County Council informed the owners of 180 Everill Gate Lane of their conclusion that the route was an established public footpath, had been maintained on occasions by the Wombwell Urban District Council and been previously lit by gas lights. Later correspondence in 1977 and 1980 indicates that the owners of 180 Everill Gate Lane did not dispute the existence of the public footpath.
7. In about 1989 the Council installed public footpath signs at the road junctions and a 'no motor cycles' sign and access barrier at the Highgate junction. In July 2002 a formal application was made to the Council to record the claimed footpath on the definitive map and statement together with statements of evidence from some 26 persons familiar with the claimed route. A further four user statements were submitted in 2008, apparently concerned with the overgrown state of much of the route, a condition that remained at the time of my site visit.

### ***Presumed Dedication of a footpath under the Highways Act***

*Whether the claimed route was of such character that public use could not give rise at common law to any presumption of dedication*

8. There is no evidence to suggest that the character of the way would prevent any presumption of dedication at common law.

*The date on which the right of the public to use the claimed footpath was brought into question*

*Whether the claimed footpath was actually enjoyed by the public 'as of right' (without secrecy, force or permission) and without interruption for a period of not less than 20 years, and if so*

*Whether there is sufficient evidence that there was during the 20 year period no intention to dedicate the claimed footpath*

9. Several of the statements submitted in 1976 indicate that the then owner of 180 Evergill Gate Lane challenged public use of the claimed path at that time. That is consistent with the statements of evidence submitted to the Council at

that time seeking to establish a public footpath. I am satisfied that 1976 is the date when the claimed footpath was brought into question.

10. During the 20 year prior to 1976 there is good evidence that the claimed path was frequently used by a substantial number of people and that such user was without secrecy, force or permission. There is also evidence that the Urban District Council has previously maintained the footpath and provided lighting. There is no evidence that any owner indicated a lack of intention to dedicate.

*Conclusion relating to presumed dedication under section 31 of the 1980 Act*

11. The character of the claimed routes is not inconsistent with the common law principles of implied dedication. The date upon which the right of the public to use the claimed footpath was first brought into question was 1976. During the 20 year period before 1976 I am satisfied that the claimed footpath was sufficiently used by the public as of right and without interruption. There is no evidence that there was during the 20 year period no intention to dedicate the claimed public footpath.

12. I therefore conclude that the claim on the basis of section 31 of the 1980 Act succeeds.

*Whether, in the alternative, the evidence is such as to establish dedication under common law*

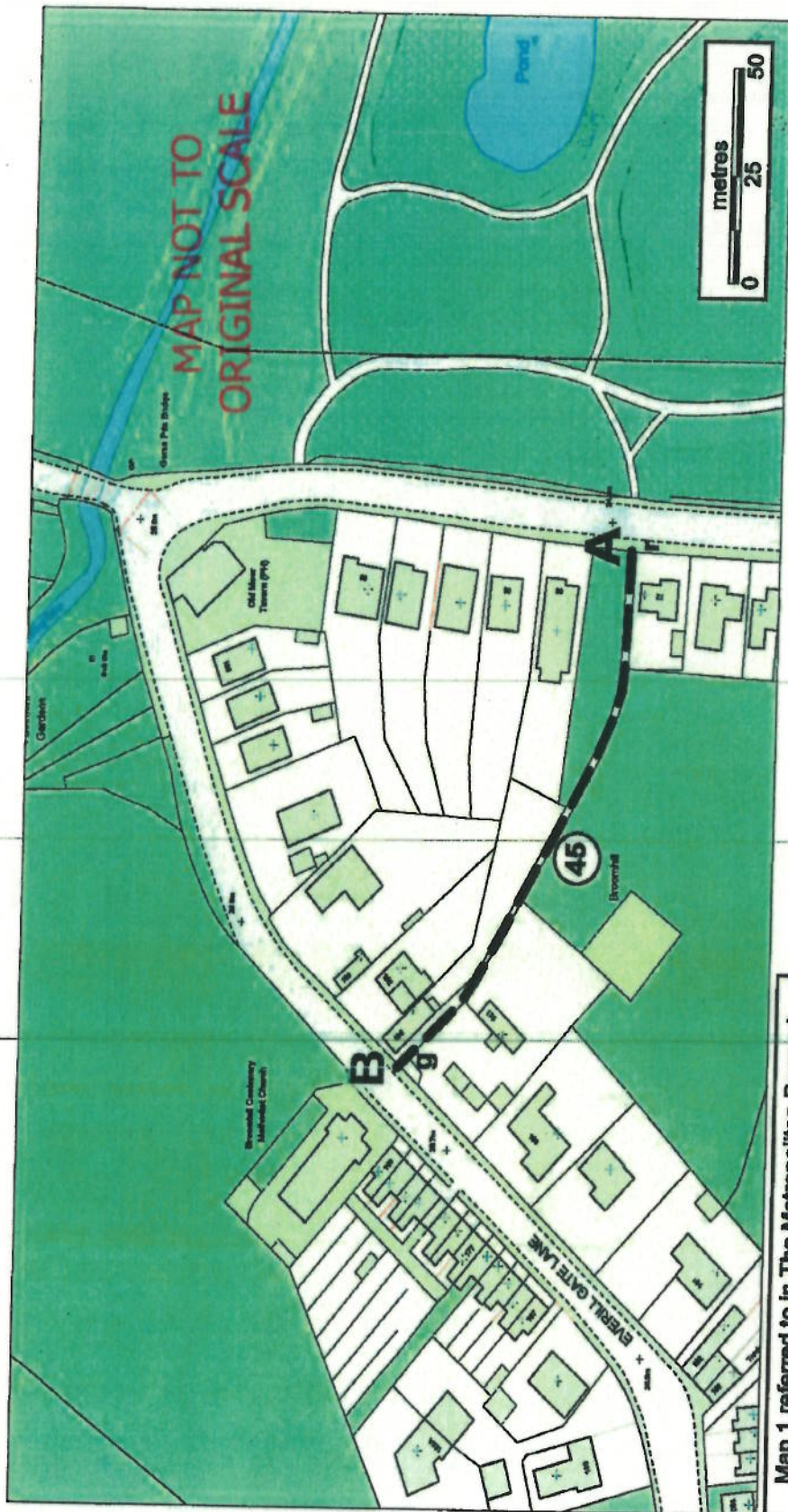
13. In the light of my conclusions above as to the requirements of section 31 of the 1980 Act, this proviso need not be considered.

**Conclusion**

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

*Michael R Lowe*

INSPECTOR



Footpath to be added

Map 1 referred to in The Metropolitan Borough  
of Barnsley (West Riding of Yorkshire County  
Council Definitive Map and Statement)  
(Wombwell) Modification Order (No. 12) 2015

Drawn by BMBC

Map 1

Scale 1 : 1250