
Order Decision

Site visit made on 5 July 2016

by Barney Grimshaw BA DPA MRTPI(Rtd)

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

Decision date: 27 July 2016

Order Ref: FPS/U1050/7/97

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Derbyshire County Council (Footpath between Clough Lane and Slack Lane – Parish of Hayfield) Modification Order 2012.
- The Order is dated 22 March 2012 and proposes to modify the Definitive Map and Statement for the area by adding a footpath running between Clough Lane and Slack Lane, Hayfield, as shown on the Order Map and described in the Order Schedule.
- There was 1 objection outstanding when Derbyshire County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is not confirmed.

Procedural Matters

1. I made a site inspection on Tuesday 5 July 2016 when I was accompanied by Mr P Lally (Clough Mill Management Company), objector, Ms L Anderson and Mrs J Ainsworth, applicants, Mrs A Greatorex, Derbyshire County Council and a few other interested parties.
2. Derbyshire County Council, the Order Making Authority (OMA), adopted a neutral stance regarding the determination of the Order.
3. 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 to which I have added one further point (Point X).

The Main Issues

4. 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.
5. 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 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.

6. 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

7. A number of Ordnance Survey (OS) maps were considered by the OMA. On the 1880 map, a route similar to the Order route, but not identical, appears to be unobstructed and a bridge is shown in roughly the same position as D-E. The 1898 and 1922 maps also show a bridge in the same position but not an unobstructed route similar to the Order route. The 1938 map shows the bridge and a possible unobstructed route similar to the Order route. The 1968 map shows an unobstructed route between Points A and D but no bridge at D-E but does show a bridge at X which was not shown on earlier maps.
8. A map prepared in connection with the Finance Act 1910 shows a route from the western end of Clough Lane (Point A) to the entrance of Clough Mill near Point D as being excluded from taxable landholdings. This route does not continue to Point E.
9. It is my view that the limited amount of documentary evidence that is available does not help in the determination of the current status of the Order route. It is however of relevance that the former bridge at D-E appears to have disappeared between 1938 and 1968.

Evidence of Statutory Dedication

Date when public use was brought into question

10. The available evidence indicates that public use of the Order route was brought into question in 1990 or 1991 when a cattle grid was installed across the route near Point B and a gate at Point C was locked. These events seem to have triggered the application for the route to be added to the definitive map that was submitted to the OMA in 1991. 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 1970/71 to 1990/91 in this case.

Evidence of Users

11. Twenty six User Evidence Forms (UEFs) were submitted in support of the application describing use of the Order route from the 1930s until 1991. Nineteen people claimed to have used the route throughout the relevant 20 year period and the rest for part of the period. The forms used did not include details of the frequency of use.
12. The Order route is described in the Order as crossing a stream by way of the bridge between Points D and E. However, the current bridge at this point was not erected until 1989 and, although there was previously a footbridge in a similar location this seems to have disappeared at some time before 1968 as it is not shown on the 1968 OS map. Therefore for most of the relevant period people could not use this part of the Order route. Instead, walkers apparently passed between The Lodge and Clough Mill and used a bridge at point X which was removed after the construction of the new bridge at D-E. In addition, it

was stated by some users of the route that it was obstructed during the time that the mill was being converted in around 1989/90.

13. Also, it was stated by a number of users that, from the early 1970s, there was a barrier across most of the route at Point C before the erection of the current gate. However this was erected to prevent vehicular access and a gap was left alongside the barrier which allowed pedestrian access to continue.

Conclusions regarding Statutory Dedication

14. The evidence indicates that the Order route could not have been used by the public for most of the period from 1970/71 to 1990/91 as there was no bridge at D-E. Accordingly, it cannot be presumed that the route has been dedicated as a public footpath in accordance with the provisions of the 1980 Act.

Common Law

15. 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.
16. In this case, there is some evidence of use of the Order route from the 1930s until the footbridge at D-E disappeared. If this use was such that it could be inferred that the route had been dedicated as a public footpath before the footbridge disappeared then it might still subsist, as the disappearance of the bridge (reportedly as a result of flooding) would not extinguish pre-existing public rights. However, it is not known exactly when the footbridge disappeared, although this would appear to have happened before 1968 and evidence of use before 1968 is limited. There is no specific evidence to suggest that the landowner took any action to indicate an intention to dedicate a public footpath although there is also no evidence of any action to prevent public use. In these circumstances, it is my view that on the balance of probability it would not be reasonable to infer that the Order route was dedicated as a public footpath at common law before the footbridge disappeared.

Other Matters

17. Supporters of the Order and the objector requested that, if the Order was to be confirmed it should be modified so as not to specify a gap at Point C. All parties would prefer the current arrangement whereby there is a gate which is not kept locked thereby allowing access but preventing cyclists from speeding through endangering walkers. In view of my conclusions regarding the evidence of use, this issue is now academic but I would comment that, if the evidence had indicated that a public footpath had been established as a result of public use by way of the gap, there would have been no basis on which such a modification could be justified.
18. A number of concerns were raised by the objector regarding the claimed route. These related to safety and security and possible interference with parking arrangements. However, whilst I understand these concerns, they lie outside the criteria set out in the relevant legislation and therefore I have given them no weight in reaching my decision.
19. On the other hand, it has been stated on behalf of the objector that the Clough Mill Management Company has no intention of preventing current use of the

Order route continuing on a permissive basis by way of the unlocked gate at Point C as it has done for the last 15 years. Again, this is a matter which lies outside the relevant criteria and I have given it no weight in reaching my decision.

Conclusions

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

Formal Decision

21. I do not confirm the Order.

Barney Grimshaw

Inspector

