
Order Decision

Site visit made on 31 July 2017

by Barney Grimshaw BA DPA MRTPI(Rtd)

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

Decision date: 09 August 2017

Order Ref: FPS/P2935/7/56

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as The Northumberland County Council Definitive Map Order (No 19) 2015.
- The Order is dated 16 December 2015 and proposes to modify the Definitive Map and Statement for the area by adding a footpath running from Blyth Valley Public Footpath No 128 to the U9721 road (Mare Close Road), Seaton Delaval, as shown on the Order Map and described in the Order Schedule.
- There was 1 objection outstanding when Northumberland County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed.

Procedural Matters

1. I made an unaccompanied site inspection on Monday 31 July 2017 when I was not able to walk the Order route which was obstructed at both ends but I was able to view the route from a number of publicly accessible points.
2. I attach a copy of the Order Map for reference purposes.

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. All 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.
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

Statutory Dedication

6. New fencing was erected in 2014 by the present owner of most of the land crossed by the claimed path and this clearly brought public use of it into question and led to the submission of an application for the route to be added to the definitive map. The relevant 20 year period of public use which would raise a presumption that the route had been dedicated as a public right of way in accordance with the provisions of the 1980 Act therefore runs from 1994 to 2014 in this case.
7. Forty-five User Evidence Forms (UEFs) were submitted in support of the application describing use of the claimed path from the 1960s until 2014. Twenty-six people claimed to have used the path throughout the period 1994-2014 and nineteen for part of that period. At least 30 people claimed to have used the route in any single year of the period.
8. Most people who completed UEFs claimed to have used the route on foot on a weekly or more frequent basis and none had been obstructed or challenged in any way in respect of their use nor had they had permission to use the route.
9. Some UEFs were submitted by members of the Seghill and Cramlington Walking Group stating that they had used the path. The objector pointed out that no walking organisation had included the path in any publication. In my view, it is not necessarily of significance that walking groups did not include a route which was not recorded as a public right of way in publications. In fact, they might have been criticised if they had.
10. In a written statement in 2014, Mr M Davison stated that his family acquired Mares Close Farm (which includes most of the land crossed by the claimed route) in 1963 and that he took sole control of it in 1998 and farmed the land until 2008 after which time it was farmed by Philip Watson & Sons on a Farm Business Tenancy. Mr Davison also stated that *"In all that time there has never been a footpath along the route and I maintained fences and hedges to keep out trespassers (especially youths on illegal off road motorbikes)"*. Mr P Watson, also in a written statement made in 2014, stated that *"For the last 14 years I have farmed the fields and there has never been a public footpath around the field, we have always ploughed and sowed to the edge of the secure fields"*.
11. Notwithstanding these statements, no substantive evidence has been submitted of any specific action taken by landowners before 2014 to prevent or discourage public use of the Order route or to indicate a lack of intention to dedicate it as a public right of way. No users had been obstructed and some specifically stated that there was always a headland at the edge of the fields on which they could walk.
12. The applicant, Mr R Pickering, in a UEF completed in 2014 stated that he had spoken to the farmer (not named) 15 years earlier and had been told that he (the farmer) believed the path to be a public footpath and treated it as such.
13. A number of aerial photographs said to be taken between 2002 and 2012 are interpreted differently by Mr N Boath, current owner of most of the land crossed by the claimed route, and Mr Pickering. However, the copies of the photos that I have seen are not in my view clear enough for it to be concluded

with any certainty whether or not a path existed on the claimed route at the time they were taken.

14. A petition signed by 152 people opposing the confirmation of the Order was submitted by the objector. However, none of the signatories provided any additional substantive evidence which might rebut a presumption that the claimed path had been dedicated as a public right of way. Similarly, a statement signed by 10 residents of St Stephen's Close states that they believe the claimed path to be a footpath/bridleway but also contains no additional substantive evidence.
15. The objector expressed concerns regarding the level of use of the claimed path indicated in the UEFs and the location of the route actually used. Officers of Northumberland County Council, the Order Making Authority (OMA), therefore contacted 9 people who provided evidence and were subsequently satisfied that the information they had given was correct and related to the Order route. In addition, the applicant obtained further signed statements from 27 people which stated that the information given on the UEFs they had submitted was a true recollection of their use and related to the Order route. He said that he had been unable to contact others who had completed UEFs.

Conclusions regarding Statutory Dedication

16. The available evidence indicates in my view that on the balance of probabilities there was public use of the Order route during the 20 year period from 1994 to 2014 of an amount and nature which raises a presumption that the route has been dedicated as a public footpath in accordance with the provisions of the 1980 Act. It is also my view that the available evidence which might indicate a lack of intention on the part of landowners to dedicate a right of way during the same period is not sufficient to rebut this presumption. It follows therefore that it can be presumed that the claimed path is a public footpath.

Common Law

17. 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.
18. In this case, there is some evidence of public use of the claimed path for more than 20 years prior to 2014 although evidence of use before around 1990 is limited. There is also little substantive evidence of action by landowners before 2014 that might indicate a lack of intention to dedicate a right of way. However, in the light of my conclusion regarding the statutory dedication of the footpath, it is not necessary to pursue further the possibility that similar dedication might also be inferred at common law.

Other Matters

19. The landowner has approached Northumberland police and been advised that 'Secured by Design' guidance states that public footpaths should not run to the rear of and provide access to gardens or dwellings and that the recognition of the claimed path as a right of way would constitute an additional risk. However, consideration of this Order is not concerned with the creation of a new right of way but with determining whether a footpath already exists and this must be done only in accordance with the criteria set out in the relevant

legislation. Accordingly, whilst I understand the intention of the 'Secured by Design' guidance, it is not a matter to which I can afford any weight in making my decision.

20. Other concerns expressed by the objector included:

- the possible interference of footpath users with the operation of the equestrian centre now based on the land and the possible danger to walkers and horse riders;
- the potential adverse effect of the right of way on the landscape and recently planted trees;
- the costs of opening up and maintaining the path;
- the possibility that the path might attract anti-social behaviour;
- the lack of any need for the path so close to other existing rights of way.

I understand these concerns but, again, they lie outside the criteria set out in the relevant legislation and therefore cannot be afforded any weight in reaching my decision.

Conclusions

21. Having regard to these and all other matters raised, I conclude that the Order should be confirmed.

Formal Decision

22. I confirm the Order.

Barney Grimshaw

Inspector

