
Order Decision

Site visit made on 11 April 2017

by Barney Grimshaw BA DPA MRTPI(Rtd)

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

Decision date: 25 April 2017

Order Ref: FPS/Q2371/7/55

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as The Lancashire County Council Definitive Map and Statement of Public Rights of Way (Definitive Map Modification) Public Footpath from St Paul's Terrace to Edisford Road, Clitheroe Order 2014.
- The Order is dated 22 October 2014 and proposes to modify the Definitive Map and Statement for the area by adding a public footpath running between St Paul's Terrace and Edisford Road, Clitheroe, as shown on the Order Map and described in the Order Schedule.
- There were 4 objections outstanding when Lancashire 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 an unaccompanied site inspection on Tuesday 11 April 2017 when I was able to walk the whole of the Order route.
2. On my visit I noted that the area to the south-west of the path between Points A and C has recently been developed for housing but that the claimed path was still passable and separated from the housing development by a substantial fence roughly 1.8m high.
3. An application was made for the addition of the Order route to the definitive map in 2011. This was refused by Lancashire County Council, the Order Making Authority (OMA) in July 2013. However, following an appeal against this decision, the Secretary of State directed the OMA to make the current Order. Accordingly, the Order was made in 2014 but the OMA has indicated that it does not support its confirmation and has now adopted a neutral stance.
4. 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

5. 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.

6. 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.
7. 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

8. All of the evidence submitted in support of the application related to public use of the Order route. No further evidence has been submitted in support of the Order itself.

Statutory Dedication

9. The landowner, the Blackburn Diocesan Board of Finance, has stated that the Order route was closed by the locking of a gate at Point B in 2009. This is corroborated by the evidence of users of the path which was collected in 2010, soon after the path had been closed. 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 1989 to 2009 in this case.
10. Fifteen User Evidence Forms (UEFs) were submitted in support of the application. These describe use of the Order route from the 1950s until 2009. Six of the forms describe use throughout the 20 year period from 1989 to 2009 and six for part of it (two only describe use before 1989 and one does not specify).
11. The frequency of use claimed generally varies between once per week and daily and users claim not to have been obstructed or challenged regarding their use. However, none of the UEFs is accompanied by a plan showing the route used and more than half of them do not describe it either. Also several of the forms are incomplete in other respects. In addition, one user stated that his use had been from the parish hall to church with a group of scouts and this use is likely to have taken place with permission.
12. On behalf of objectors, Canon Rodney Nicholson, who described himself in 2014 as the recently retired vicar of St Paul's, has stated that when he came to the parish in 1990 there was no evidence of the Order route but that the path was constructed in 1995 by church members as a means of access between the church and the parish hall (now demolished). Three long standing residents of the area also confirmed that before the present path was built there was only an unofficial path through the field to enable people to get from the church to the former Sunday School.
13. Part of the Order route runs through the churchyard of St Paul's church (Points C to D) and is said to cross consecrated ground. It is arguable that it might not be possible to presume the dedication of a public right of way across consecrated ground as the sentence of consecration would have set the land

aside for sacred purposes only. Any other use of the land would require the grant of a faculty from the Chancellor of the diocese. In this case I have seen no evidence of the existence of such a faculty and, although in some circumstances it may be possible to presume the existence of a so-called 'lost faculty' it is not clear whether a faculty could dispose of a permanent interest in the land or simply grant a licence for its use which could be revoked by another faculty at some time.

Conclusions regarding Statutory Dedication

14. The available evidence of public use of the Order route during the 20 year period from 1989 to 2009 is somewhat limited and weakened by the incompleteness and imprecision of the evidence forms. Also, there is evidence that the current path was only constructed in 1995 and that this and any previous path was only intended for use in connection with church activities. In addition, there is in my view some doubt as to whether part of the route could reasonably be presumed to have been dedicated as a public right of way as it crosses consecrated ground.
15. Overall, it is my view that on the balance of probability it cannot be presumed that the Order route has been dedicated as a public footpath in accordance with the provisions of the 1980 Act.

Common Law

16. 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.
17. In this case, there is some evidence of public use of the Order route but also indications that the landowner did not intend to dedicate it as a public right of way. In these circumstances it would not be reasonable to infer the dedication of the route as a public footpath at common law.

Conclusions

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

Formal Decision

19. I do not confirm the Order.

Barney Grimshaw

Inspector

