
Order Decision

Inquiry opened on 15 November 2017

by Barney Grimshaw BA DPA MRTPI(Rtd)

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

Decision date: 11 December 2017

Order Ref: ROW/3168342

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Suffolk County Council (Deben Rural District Definitive Map and Statement) (Parish of Hollesley) Modification Order 2016.
- The Order is dated 16 November 2016 and proposes to modify the Definitive Map and Statement for the area by adding a footpath running between Restricted Byway 54 and Public Footpaths 3 & 4 as shown on the Order Map and described in the Order Schedule.
- There was 1 objection outstanding at the commencement of the inquiry.

Summary of Decision: The Order is not confirmed.

Procedural Matters

1. I held a public inquiry into this Order on Wednesday 15 and Thursday 16 November 2017 at Hollesley Village Hall. I made an unaccompanied site inspection on Tuesday 14 November when I was able to walk the whole of the Order route. It was agreed by all parties at the inquiry that a further accompanied visit was not necessary
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. Much 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

Documentary Evidence

6. Although the Order Making Authority and supporters of the Order did not rely on documentary evidence, objectors submitted a number of copies of maps and aerial photographs.

Ordnance Survey (OS) Maps

7. OS maps from 1881, 1904 and 1973 show no evidence of the Order route or of a bridge over Black Ditch between Points G and J. On the other hand the 1973 map shows routes to the west and north of Point L which coincide with Footpaths 3 and 4 and several bridges over ditches in other locations. The 1881 map indicates a route on a different alignment between Points A and L but this does not appear on subsequent maps.

Aerial Photographs

8. Copies of aerial photographs taken between 1952 and 1996 were submitted by objectors. On these the full Order route cannot be discerned before 1993 although parts of it can be seen on a 1987 photograph. On 1970 and 1971 photographs there appears to be a route or linear gap in the trees running roughly parallel to the Order route between Points D and F but not on the same alignment. On a 1952 photograph there appears to be a route similar to A-B but to the north of the field boundary rather than the south.
9. These photographs provide no support for the confirmation of the Order but, because of their scale and the nature of the vegetation along the route it cannot be said with certainty that they show that no route existed before 1987.

Other documents

10. The route was not claimed by the parish council in the 1950s when the first definitive map was being prepared and I have seen no evidence of any objection being made to its omission from the map. In 1979 the parish held a meeting in connection with a review of the definitive map and responded to the county council but no claim was made in respect of the Order route.

Conclusions regarding Documentary Evidence

11. The documentary evidence that is available is consistent with the contention that the Order route was not in existence as a defined feature before the 1980s but is not sufficiently clear to demonstrate with certainty that the route did not exist.

Statutory Dedication

Date when public use was brought into question

12. In September 1997, a deposit was made by the owners of much of the land crossed by the Order under section 31(6) of the 1980 Act. This identified rights of way accepted to exist over the land which did not include the Order route.

This deposit was sufficient to bring public use of the route into question at that time.

13. Since 1982 Poplar Park has organised equestrian events for local riding clubs and the British Horse Society (now British Eventing). The original course did not affect the Order route but, in around 1986 the course was extended using the route between Points K-J-G-F-D. The work involved culverting the Black Ditch between Points J and G and erecting a footbridge at Point H. Since 1986 a two day international event has been held in March each year and around ten other events throughout the year. During events access to the course by spectators and others is controlled by stewards and physical barriers for health and safety reasons. Also the gate at Point B would be locked during events. Such restrictions are not compatible with the route being a public right of way and, with only a single exception, users of the claimed path themselves stated that they would not attempt to use it while events were taking place.
14. In addition, the course is used on a daily basis at other times for training for events and for teaching riders. These activities are essential to the business of the Poplar Park Equestrian Centre and it was argued on behalf of the owners that it was inconceivable that they would intend to dedicate a public footpath along part of the event course the use of which would be incompatible with equestrian activities. Jonathan Hardwick also described two incidents in which accidents had occurred as a result of riders encountering pedestrians with dogs on the route.
15. It is my view that the creation of an equestrian event course over part of the Order route in 1986 and its subsequent use for equestrian activities effectively called public use of it as a footpath into question at that time and has demonstrated a lack of intent on the part of the landowners to dedicate the route as a public right of way. Accordingly, the relevant 20 year period of public use which would raise a presumption that the route has been dedicated as a public right of way in accordance with the provisions of the 1980 Act runs from 1966 to 1986 in this case.

User Evidence

16. Evidence of use of the Order route has been provided by more than 50 people who completed User Evidence Forms (UEFs) and/or appeared in person at the inquiry. This evidence describes claimed use of the route from 1938 to 2015. Fifteen people only claimed to have used the route after 1986. However, nineteen claimed to have used it throughout the 20 year period from 1966 to 1986 and a further eighteen for some of this period.
17. The frequency of use claimed varied considerably from once or twice per year to daily although most claimed to have used the route monthly or more frequently.
18. Some UEFs did not have maps attached showing the route used and many others only had a small scale map (1:10,000) with a thick line marked which meant it was not possible to discern the precise route claimed. Also, the forms generally did not include a description of the route although one was requested.
19. User evidence is inconsistent with regard to the width of the claimed path with widths varying between 1m (3ft) and 4.5m (15ft) being stated. It is not clear

- however whether this apparent discrepancy reflects imprecise recollection of the path or that its width actually varied over its length and/or over time.
20. It is accepted that Black Ditch was culverted between Points G and J and the present footbridge at Point H was constructed in around 1986 which raises the question as to how path users crossed Black Ditch before then. Some users stated in UEFs that there was no bridge but most referred to the existence of a simple plank bridge or bridges whereas landowners past and present have stated that there was no bridge between Points G and J.
 21. There is some evidence to suggest that a few users may not always have used the whole of the claimed route. Some said for example that they used to visit the 'bluebell wood', the area largely to the south of Points B-C-D and then returned to the village rather than continuing to Point L.
 22. There is thus some inconsistency in the user evidence, which is perhaps not surprising when people are recalling events during a period beginning more than 50 years ago over land which is known to have changed considerably in appearance in more recent years. Nevertheless, it is my view that the available evidence from users indicates an amount of use during the period from 1966 to 1986 which might raise a presumption that the Order route has been dedicated as a public footpath if the use was enjoyed in accordance with the provisions of the 1980 Act.
 23. However, there is evidence adduced by objectors which could suggest that this was not the case. Most commonly a number of witnesses gave evidence that before 1986 all or parts of the claimed route did not exist and that it would have been difficult or impossible for people to have consistently followed the Order route.
 24. Caroline Drury who lived at Poplar Park from 1960 until 1976 and whose husband owned it from 1974 to 1976 stated that to her certain knowledge there was no track through the woods along the line C-D-F-E-C as this area was overgrown by gorse and brambles and was impenetrable. She also said there was no bridge between Points G and J. Kenneth Drury gave similar evidence and also stated that when the woods were used for shooting it was necessary to cut a way through. Mr Baker, who organised shoots in the 1970s, also stated that there were no paths through the woods. He further stated that there was no access at Point B and that before 1986 the land west of Black Ditch was a 'no go area' comprised of gorse, brambles, scrub and bog. He did however say that temporary plank bridges were installed over various ditches to facilitate shoots.
 25. George Collins who used to work at Box Hall in the 1960s and lived in Hollesley described the route he took to get to work on foot which was significantly longer than would have been the case if he had followed the Order route. He said that no more direct route existed.
 26. Victor Silverton and Deborah Maddock, who both had occasion to travel between Point L and Hollesley village in the 1970s stated that it would not have been possible to use the Order route and they therefore used significantly longer routes.
 27. James Leggett, whose family owned Poplar Park Farm from 1980, stated that a gate was installed at Point B soon after acquiring the land and that this was

locked when not required for use by the farm or equestrian centre staff. He also stated that there was no bridge between Points G and J before 1986. A few users also recalled encountering a locked gate at Point B but stated that they either by-passed it or climbed over.

28. Michael Lloyds, Michael Hallows and Michael Paveley, who have all been involved with equestrian events since before 1986, stated that parts of the Order route were inaccessible until the equestrian course was constructed and that there was no bridge between Points G and J.
29. Members of the Hardwick family, who have owned Poplar Park Farmhouse since 1978 and currently run the equestrian centre stated that before 1986 the area of woods known as Black Ditch Plantation through which the Order route (Points C-G) runs was completely overgrown and impenetrable and there was no bridge between Points G and J.
30. Some references were made to challenges having been made to users of the Order route and to signs having been in place discouraging access. However, these were generally not specific with regard to when and where they occurred.

Conclusions regarding Statutory Dedication

31. There is clearly a significant conflict in the evidence relating to use of the claimed route. A considerable number of people say that they walked along the route on the same alignment as it now follows whereas a number of others, some who have or had close involvement with the land, state that this could not have been the case. In view of the fact that the relevant 20 year period under consideration runs from 31 to 51 years ago and the appearance of the land has altered significantly since the end of that period, it is perhaps not surprising that recollections vary. Nevertheless, it is necessary to reach a conclusion as to whether or not a right of way can be presumed to have been dedicated under the 1980 Act.
32. I have therefore considered all the evidence carefully and conclude that on the balance of probability, even though parts of the land crossed by the claimed route may well have been overgrown and/or boggy, it is possible that people still managed to make their way through. However, I cannot discount the evidence of others, several of whom had close involvement with the management of the land, which suggests that it is unlikely that throughout the relevant period there was a defined track which followed the alignment of the Order route or that there was a bridge over the Black Ditch between Points G and J.
33. Overall, it is my view on the balance of probability that it is unlikely that during the period 1966 to 1986 the public consistently followed the route described in the Order and therefore it cannot reasonably be presumed that the route has been dedicated as a public footpath in accordance with the provisions of the 1980 Act.

Common Law

34. 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.

35. In this case, although there is some evidence of public use over a lengthy period, there is not in my view any substantive evidence of action on the part of landowners to indicate an intention to dedicate a public right of way. Owners of the land since 1960 have in fact indicated that they did not intend to dedicate a right of way and Robin Alderson, whose grandfather owned the land from the 1920s until 1960, gave evidence that his grandfather would have regarded the existence of a footpath as an intrusion on his private land.
36. It is therefore my view that it is not reasonable to infer that the Order route has been dedicated as a public footpath under common law.

Conclusions

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

Formal Decision

38. I do not confirm the Order.

Barney Grimshaw

Inspector

APPEARANCES

For the OMA

David Holt or Jonathan Lockington (part of 15/11 pm) Solicitors, Suffolk County Council (SCC)

who called:

David Last Definitive Map Officer, SCC

Supporters

Tom Daley Hollesley Parish Council and path user

who also called:

Eliza Shelcott	Path user
Karen Langdon	Path user
Alan Shelcott	Path user
Robin Baker	Path user
Paul Finlay	Path user
Keith Bailey	Path user
Tony Cheale	Path user
Angela Sorkin	Path user
Cyril Stammers	Path user
Hazel Hughes	Path user
Jonathan Shelcott	Path user
Nicholas Mason	Path user
Michael Sorkin	Path user
Andrew Catchpole	Path user
Helen Lewis	Path user
Pauline Cheale	Path user
Peter Scopes	Path user
Harriet Culling	Path user
Jim Cole	Path user

Objectors

Andrew Pym Chartered Surveyor

who called:

Caroline Drury	Former occupant of affected land
Kenneth Drury	Former landowner
Clive Baker	Organiser of shoots
Michael Lloyds	Involved with equestrian events
Michael Hallows	Involved with equestrian events
Michael Paveley	Involved with equestrian events
Victor Silverton	Local resident
James Leggett	Landowner
Robin Alderson	Former occupant of affected land
Jonathan Hardwick	Landowner
Antonia Hardwick	Occupant of affected land
Patricia Hardwick	Landowner
James Hardwick	Occupant of affected land

DOCUMENTS

1. Proof of Evidence of David Last, SCC.
2. Statement of Case of Hollesley Parish Council.
3. Statement of Case on behalf of the Hardwick Family.
4. Proofs of Evidence of James Hardwick, Patricia Hardwick. Jonathan Hardwick. Antonia Hardwick, James Leggett, Caroline Drury, Kenneth Drury, Michael Lloyds, Serena Greenwell, Deborah Maddock, Michael Hallows, Michael Paveley, Clive Baker, Victor Silverton, George Collins and Robin Alderson.
5. Written Statement of Christine Leggett.
6. Letter (undated) from Erica Cumming.
7. Letter (undated) from Zoe Day.
8. Letter (undated) from Celia Tordoff.
9. Photographs and letter from Helen Lewis.
10. Comparison of features shown on OS maps and Order Map, A Pym on behalf of the Hardwick Family.
11. Time line of events, A Pym on behalf of the Hardwick Family.
12. Opening Statement, SCC.
13. Closing Statement, SCC.
14. Closing Statement on behalf of the Hardwick Family.

