



Order Decision

Inquiry held on 10 October 2017

by Mark Yates BA(Hons) MIPROW

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

Decision date: 14 November 2017

Order Ref: ROW/3168851

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the 1981 Act") and is known as the Hertfordshire County Council (Kings Langley 47) Modification Order 2016.
- The Order was made by Hertfordshire County Council ("the Council") on 6 May 2016 and proposes to add a footpath ("the claimed route") to the definitive map and statement, as detailed in the Order Map and Schedule.
- There was one objection outstanding at the commencement of the inquiry.

Summary of Decision: The Order is proposed for confirmation subject to modifications set out below in the Formal Decision.

Procedural Matters

1. I held a public inquiry into the Order on 10 October 2017 at Kings Langley Services Club. I made an unaccompanied visit to the claimed route on 9 October 2017 and I revisited part of the site accompanied by the interested parties following the close of the inquiry.
2. The Council submitted its statement of case when the Order was referred to the Planning Inspectorate¹. This document was subsequently forwarded to the objector (Mrs McWilliams). However, Mrs McWilliams says that she did not receive the proof of evidence of the Council's principal witness (Ms Denton), which had been sent by the Planning Inspectorate on 15 September 2017. An additional copy was provided prior to the inquiry and she did not require any further time to consider this document.
3. All of the points referred to below correspond to those delineated on the Order Map.

Main Issues

4. The Order relies on the occurrence of an event specified in Section 53(3)(c)(i) of the 1981 Act. Therefore, if I am to confirm the Order, I must be satisfied that the evidence discovered shows that a footpath which is not shown in the definitive map and statement subsists. The burden of proof to be applied is the balance of probabilities.
5. The relevant statutory provision, in relation to the dedication of a public right of way, is found in Section 31 of the Highways Act 1980 ("the 1980 Act"). This requires consideration of whether there has been use of a way by the public, as of right and without interruption, for a period of twenty years prior to its status being brought into question and, if so, whether there is evidence that any landowner demonstrated a lack of intention during this period to dedicate a public right of way.

¹ On behalf of the Secretary of State for Environment, Food and Rural Affairs

6. The Council does not consider that a case can be made for the dedication of a footpath at common law.

Reasons

Background

7. The claimed route commences from the junction with Footpath 17 (point A). It generally follows the perimeter of a field and crosses Footpath 19 at point B. The route terminates on the northern boundary of the field to the south of Shendish Manor where it again meets Footpath 19 (point C). Properties located within the area known as Lady Meadow lie between the field and Rucklers Lane. Four properties presently have gated access onto the claimed route.
8. Mr J. Porter inherited the field from his father in 1989 and he sold it to a company in 1998. The field ceased to be used for arable purposes in 1999. Mrs McWilliams was a director of the relevant company before she personally acquired the field in 2008. The land has been left fallow and a significant amount of trees and other vegetation are now present in the field.

When the status of the claimed route was brought into question

9. There is a degree of symmetry between acts that constitute a lack of intention to dedicate a public right of way and action to bring the status of a route into question. The Council's position is that the status of the claimed route was brought into question in 2008, primarily due to the placing of notices by Mrs McWilliams and others. Mrs McWilliams believes that the route was brought into question in either 1998 or 2015.
10. Mrs McWilliams has consistently stated that notices were erected in 2008. This is supported by the written submissions of Ms Rowberry and Mrs Vaughan. Mrs Vaughan says that she typed and printed the notices and they were worded "*PRIVATE LAND. KEEP TO FOOTPATH*". She further confirms that the notices were erected at three locations. Two were located on the connecting public rights of way and the other was placed on the western boundary fence of the field crossed by the claimed route. A few of the users have referred to a private sign in the adjoining field in more recent years.
11. The users do not generally acknowledge the presence of the notices outlined above. However, there is evidence to indicate that they were erected but removed on occasions. Whilst Mrs McWilliams also refers to additional notices being erected in 1999, the information provided is vague in terms of the wording of these notices. Further, the structures mentioned, such as gates, were not located on the claimed route and access has been available via the connecting public rights of way.
12. I have concerns about the locations and wording of the 2008 notices. Firstly, two were not sited on the claimed route and the other was placed on a boundary fence. Secondly, I doubt whether a reasonable user would have interpreted the wording in this case to indicate that they should not be on the claimed route. It could indicate that people should not stray from the particular routes that were in use irrespective of whether they were recorded as public rights of way. Further, public rights of way will generally cross private land. Therefore, I do not consider on balance that these notices served to bring the status of the claimed route into question.

13. Reference has been made to Mrs McWilliams' attendance at the Annual General Meeting of the Lady Meadow Road Association. She recalls attending more than one meeting but information supplied by the Council indicates that she only attended the Annual General Meeting in 2011. It may be the case that she attended other meetings involving local residents in relation to the land in question. Nonetheless, Mrs McWilliams acknowledges that the matter of the claimed route was not discussed. The licence she wished some local residents to sign appears to generally relate to access for maintenance purposes.
14. Although Mrs McWilliams says she would have challenged people who strayed from the official footpaths, she accepts that she has not seen any use of the claimed route. No challenges are mentioned by Mr Porter. This means that there is doubt regarding whether the challenges mentioned by one of the users (Mrs Lambert) occurred on the claimed route prior to the application made by Mr Moore on 8 June 2015.
15. Having regard to the above, I find on balance that it was the application in 2015 that served to bring the status of the claimed route into question. This means the twenty year period to be considered for the purpose of Section 31 of the 1980 Act is 1995-2015 ("the relevant period").

Evidence of use by the public

16. Twenty user evidence forms ("UEFs") were completed on behalf of twenty-one people in support of use of the claimed route. Although the Council acknowledges that two of the users do not appear to have used the route in its entirety. Nine users² were subsequently interviewed and the information gathered is set out in the form of statements. Seven people gave evidence at the inquiry in relation to their use of the claimed route.
17. The Council has provided a range of aerial photographs but only two of these were taken during the relevant period. A photograph of 2000 shows a worn route along the northern boundary of the field. In contrast, the 2010 photograph shows a worn route around the perimeter of the field. Nonetheless, an issue will arise in determining what caused the worn tracks visible on the aerial photographs. Further, the absence of signs of a worn path does not necessarily mean that a particular route was not used by pedestrians. Finally, it needs to be borne in mind that photographs will only provide evidence regarding the nature of the site at a particular point in time. In my view, the aerial photographs are of limited value in this case.
18. The evidence of the users at the inquiry was that prior to 1999 they walked around the side of the field and not on the crops. One of the users, Mr Fidler, acknowledges that Mr Porter ploughed very much the whole field but he says there was always room at the side. Written submissions have been submitted by Mr Porter, or on his behalf, which aim to clarify particular matters. However, there are significant differences between the earlier and later submissions. For instance at different times he has stated "*we were happy to allow anybody to walk around the complete perimeter providing they did not walk on our crops*", "*I told the residents that they could use the path from numbers 1-2³ to make their way onto footpath 17*" and "*I would not allow people to walk over my field*". Whilst Mr Porter provided further clarification to

² Including two people who have not submitted a UEF

³ This appears to correspond to points A-B

- the Council on the day before the inquiry, the inconstancies in his submissions mean that I cannot place any significant reliance on this untested evidence.
19. There is conflicting evidence regarding whether people spoke with Mr Porter when using the claimed route on occasions or whether he acknowledged this use. However, even where there is a lack of observed use, this would not demonstrate that such use did not occur. Mr Porter confirms that he was only in the field for approximately a couple of weeks each year.
 20. I have carefully gone through the user evidence in light of the comments of Mrs McWilliams. In doing so I give the greatest weight to the evidence of the witnesses who spoke at the inquiry. They clarified particular matters such as the extent of their use of the claimed route. In this respect, I concur with the Council that the personal knowledge of the users regarding the status of the route is not relevant. Further, the issue to be determined is the extent of the use during the relevant period and not whether each individual used the route during the whole of this period.
 21. In many cases the specified use occurred on a daily basis for recreation, particularly for the purpose of dog walking, which often involved a circular route in conjunction with the existing public rights of way. In terms of the number of users and the degree of their use, I find that the level of use during the whole of the relevant period would be sufficient to raise a presumption of dedication. Clearly, there will be cases, such as this one, where the public use will be predominantly confined to local residents.
 22. It is apparent from looking at the maps with the majority of the UEFs and from hearing the evidence at the inquiry that the route used from the junction with Footpath 17 proceeded close to the boundaries of the properties. In this respect, the blackberry bush and privet bush mentioned may have subsequently forced people a little away from the boundary of the field. However, I view this to be a minor diversion. I distinguish this route from the one shown on the Order Map at point A. The latter does not reflect the route mainly used during the relevant period. Therefore, if confirmed, I consider that the Order should be modified to show the route predominantly used during this period.
 23. The width of the claimed route estimated by the users varies in a number of cases. It may be that a change in the nature of the land has impacted upon their perception of the width of the route. However, the evidence of the users at the inquiry was generally supportive of the claimed route having a narrower width than the varying width specified in the Order. This evidence suggests that the recorded width for the route should be no wider than 1.5 metres. Again, if confirmed, the Order should be modified on this issue.
 24. I now turn to the issue of whether the use was as of right⁴. Mr Moore clarified at the inquiry the reference in his UEF regarding permissive use. It is apparent that a few users may have considered that they had permission due to the lack of any challenge to their use by people working in the field. However, any acquiescence to the use of the route in these circumstances would not equate to permission. There is no evidence of implied or express permission being granted in terms of the public use of the claimed route.

⁴ Without force, secrecy or permission

25. It is apparent that Mrs McWilliams asked the people who have gates leading onto the claimed route to sign a licence for access purposes. The licence supplied does not point to any permissive use for the whole of the claimed route. Even if particular residents had signed the license, it would have been applicable to only a limited number of people.
26. The fact that people did not specifically inform Mrs McWilliams about their use of the claimed route when they met her at meetings would not in my view point to their use being in secret. The use outlined in the user evidence was clearly carried out in an open way. In terms of vandalism to gates and stiles, these features are not located on the claimed route. Further, the mowing of a strip of land outside of the adjacent properties would not constitute use by force. It is apparent that notices were removed on occasions, although two of these were not located on the claimed route. Nonetheless, it cannot be determined that this action was undertaken by those people who have provided evidence of use of the route.
27. Having regard to the above, I find on balance that the user evidence is sufficient to raise a presumption of the dedication of a public footpath. Therefore, the first part of the statutory test is satisfied.

Whether any landowner demonstrated a lack of intention to dedicate a footpath

28. I have addressed particular measures undertaken prior to 2015 when assessing whether they brought the status of the claimed route into question. For these reasons, I do not consider that they served to clearly indicate to members of the public that there was a lack of intention to dedicate a footpath.
29. It is my view, on balance, that the evidence is not supportive of any landowner taking sufficient action to communicate to the public that there was a lack of intention to dedicate a footpath over the claimed route during the relevant period.

Other Matters

30. I cannot consider the impact of the claimed route being recorded as a public footpath. Further, I do not find the conduct of people in relation to other matters to be relevant to my decision.

Conclusion

31. Having regard to these and all other matters raised at the inquiry and in the written representations I conclude that the Order should be confirmed with modifications. The requirement for these modifications to be advertised will enable any detail in the revised descriptions to be clarified.

Formal Decision

32. I propose to confirm the Order subject to the following modifications:
- Delete the grid reference specified for point A in the descriptions in Parts I and II of the Order Schedule and insert "TL0606 0398".
 - Delete the text after the heading "Width" within the descriptions for the claimed route in Parts I and II of the Order Schedule and insert "1.5 metres".

- Show the revised section on the Order Map and amend the map key accordingly.
- Remove the original section from the Order Map.

33. Since the confirmed Order would affect land not affected by the Order as submitted I am required by virtue of Paragraph 8(2) of Schedule 15 to the 1981 Act to give notice of the proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modifications. A letter will be sent to interested persons about the advertisement procedure.

Mark Yates

Inspector

APPEARANCES

For the Council:

Mr J. Darby

Barrister instructed by the Council

He called:

Ms H. Denton

Definitive Map Officer

Mr T. Fidler

Mr A. Gray

Mrs J. Gray

Mrs L. Luckham

Mr L. Moore

Applicant

Mr A. Anderson

Mrs S. Lambert

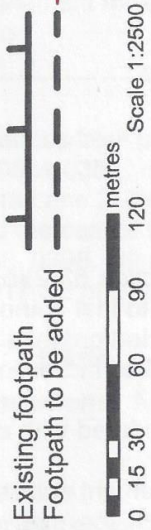
Objector:

Mrs A. McWilliams

DOCUMENTS

1. Points of clarification from Mr Porter's evidence
2. User summary provided by Mrs McWilliams
3. Photographs provided by Mrs McWilliams
4. Summary proof of evidence of Ms Denton
5. Minutes of the Lady Meadow Road Association Annual General Meeting of 2011
6. Summary proof of evidence of Mrs McWilliams

This Plan forms part of the Hertfordshire
County Council (Kings Langley 47)
Modification Order 2016



MAP NOT TO
ORIGINAL SCALE

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