



## Order Decision

Hearing held on 9 May 2018

**by Mark Yates BA(Hons) MIPROW**

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

**Decision date: 10 July 2018**

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### **Order Ref: ROW/3176479**

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the 1981 Act") and is known as the Norfolk County Council (Norwich) Modification Order 2016.
- The Order was made by Norfolk County Council ("the Council") on 11 November 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 were three objections outstanding at the commencement of the hearing.

**Summary of Decision: The Order is confirmed.**

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### **Procedural Matters**

1. I held a hearing into the Order on 9 May 2018 at the Sprowston Diamond Centre, Norwich. I made a visit to the site prior to the hearing and I conducted a further visit accompanied by the interested parties following the close of the hearing.
2. The Council has adopted a neutral stance in respect of the Order and the case in support was primarily presented at the hearing by the applicant (Mr Drummond). One of the objections was submitted by Mr White who owns the majority of the land crossed by the claimed route.

### **Main Issues**

3. The Order is made under Section 53(2)(b) of the 1981 Act, relying on the occurrence of an event specified in Section 53(3)(b) of the Act. Therefore, if I am to confirm the Order, I must be satisfied that there has been the expiration, in relation to any way in the area covered by the map and statement, of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path. The burden of proof to be applied is the balance of probabilities.
4. 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 ("statutory dedication"). This requires consideration of whether there has been use of a way by the public, as of right<sup>1</sup> 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.
5. An implication of dedication can be shown at common law if there is evidence from which it may be inferred that a landowner has dedicated a right of way and that the public have accepted the dedication.

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<sup>1</sup> Without force, secrecy or permission

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## **Reasons**

### ***Statutory Dedication***

#### *When the status of the claimed route was brought into question*

6. Mr Drummond considers it more likely that this occurred in 2013 when it is acknowledged that Mr White obstructed the route. It was this action that prompted Mr Drummond to make the application to add the claimed route to the definitive map. Whilst it is also accepted that fencing was erected across the route in 2012, this was viewed by the supporters as a temporary arrangement. They state that it was in place for a short period of time to enable works to be undertaken to an adjacent property. Mr Marshall says people did not use the route at this time for health and safety reasons.
7. I accept that the action taken in 2013 would have brought the status of the claimed route into question and take it as the starting point for the consideration of the user evidence. The relevant twenty year period for the purpose of statutory dedication ("the relevant period") would therefore be 1993-2013.

#### *Evidence of use by the public*

8. Nineteen user evidence forms ("UEFs") were completed on behalf of twenty-one people in support of use of the claimed route. The user evidence is supportive of it being regularly used by local residents as a short cut between Anthony Drive and Sprowston Road. Some of these people attended the hearing and clarified matters arising from their use of the route. Mr White does not contest that the route has been used by the public. However, he asserts that action has been taken on occasions to obstruct the claimed route and this served as an interruption to the public use. Further, he says that action taken to remove the obstructions constituted user by force. In this respect, Mr White states barriers were removed soon after they were erected.
9. In the circumstances, I do not view the fencing erected in 2012 to constitute an interruption for the purpose of statutory dedication. The evidence provided by Mr White is supportive of incidents involving the removal of fencing being reported to the police from the summer of 2013. He also specifically refers to the erection of a fence on his behalf in the late 1990s and he believes his business tenant (Mr Bennett) erected a fence in 1991/2. However, the latter would fall outside of the relevant period. Mr Bennett generally corroborates the evidence of Mr White in terms of the erection and removal of barriers. The existence of fencing prior to 2012 is not acknowledged by the users. Although Mr Marshall accepts that a mound was put in place near to point B on the Order Map, he says this was done to stop travellers accessing the land and it did not prevent use by pedestrians.
10. I note from the file provided by the Council that a photograph, stated to have been taken in 1998<sup>2</sup>, appears to show a structure across the claimed route. It cannot be determined from the photograph whether this structure prevented access. Nor is it evident how long it remained in place. Nonetheless, Mr White outlined at the hearing that the obstructions that were put in place were erected at point B as he could not interfere with the private rights of access between Sprowston Road and the entrance to the adjacent land. It is apparent that the structure in the photograph was located before point B, when

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<sup>2</sup> At page 265 of the bundle

travelling from the direction of Sprowston Road. No reference has been made to gates, whether locked or otherwise, on the route.

11. I am not satisfied that a skip placed by Mr Bennett at around point B, or parked vehicles on occasions, would have prevented people from continuing over the route. On this issue, I note Mr Cubitt says the skip never obstructed the claimed route due to the width of the route.
12. There is evidence of action being taken on occasions to obstruct the claimed route. However, it is apparent that any such measures were relatively short-lived in their duration. None of the users accept that they were prevented from using the route until the temporary fencing in 2012 or the obstructions in 2013. It cannot be determined whether any obstructions were removed by the longstanding users of the route during the relevant period.
13. Overall I find on balance that the evidence is not sufficient for me to find that the public use was interrupted to any significant extent during the relevant period. Nor has it been shown that the people who have provided evidence in support of use of the route did so by force. It is not alleged that the use was conducted in secret or by way of permission.
14. Having regard to the above, I find that the 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*

15. I have addressed the action taken to obstruct the claimed route above. For the same reasons I consider it unlikely that it was sufficient to demonstrate a lack of intention by the landowner to dedicate a public right of way during the relevant period.
16. Mr White says he has challenged people on occasions and erected signs worded along the lines of "*No Unauthorised Persons Beyond This Point*" at either end of the claimed route. His evidence is supported by the written submissions of Mr Bennett. Mr White cannot recall when the signs were erected but estimates that he did so on two or three occasions. He says they were vandalised within a day or so.
17. Mr Drummond is adamant that he and other people were never stopped on the route and this is endorsed by the user evidence. The only challenges mentioned by the supporters occurred after the end of the relevant period. None of the users acknowledge the existence of any signs during this period.
18. It cannot be determined that challenges were issued during the relevant period to people walking along the claimed route. There is also uncertainty regarding when signs were erected and Mr White acknowledges that they were in place for a short period of time on a few occasions. Further, there is doubt regarding whether the wording of the notices indicated that the route was not a public right of way.
19. In terms of the case of *R (on the application of Godmanchester Town Council) v Secretary of State for Environment, Food and Rural Affairs 2007*, the House of Lords judgment makes it clear that a lack of intention to dedicate needs to be communicated to the public by way of some form of overt action. I agree with the submission on behalf of Mr White that a landowner does not have to take action, such as the placing of appropriate notices, throughout the relevant

period. However, when set against the evidence of the users, I not find on balance that Mr White has shown that he took sufficient steps to inform the public that there was no intention to dedicate a public footpath at times during the relevant period.

### *Conclusions*

20. I took the action taken in 2013 to bring the status of the claimed route into question and concluded that the evidence of use during the relevant period is sufficient to raise a presumption that the route has been dedicated as a public footpath. In addition, I do not consider that the evidence shows on balance that Mr White took sufficient action to demonstrate to the public that there was a lack of intention to dedicate a footpath during the relevant period. If I had taken the temporary fencing of 2012 to have brought the status of the claimed route into question I would have reached the same conclusions from the evidence. Therefore, I conclude on the balance of probabilities that the test in paragraph 3 above is satisfied. In light of this conclusion, there is no need for me to address the user evidence in the context of common law dedication.

### **Other Matters**

21. I note the concerns raised regarding the impact of the claimed route being recorded as a public footpath. However, such matters are not relevant to my decision.

### **Overall Conclusion**

22. Having regard to these and all other matters raised at the hearing and in the written representations I conclude that the Order should be confirmed.

### **Formal Decision**

23. I confirm the Order.

*Mark Yates*

**Inspector**

## **APPEARANCES**

### **Supporters:**

Mr J. Drummond	Applicant
Mr G. Cubitt	
Mr D. Marshall	
Mr F. Fuller	

### **Objector:**

Mr A. White	Landowner
Assisted by Mr P. Hyde	

### **Interested Party:**

Mr I. Sharman	Definitive Map Officer for the Council
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## **DOCUMENTS**

1. Letter of 18 April 2018 from Mr Bennett
2. Letter of 22 April 2018 from Mr White
3. Closing submission on behalf of Mr White

**Modification Order for the addition of a public  
footpath in the city of Norwich**

**Public footpath to be added (A to B to C)**

Norfolk County Council  
County Hall  
Marineau Lane  
Norwich  
NR1 2SG  
Tel: 0344 800 8020

