



Order Decision

by Martin Elliott BSc FIPROW

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

Decision date: 02 August 2018

Order Ref: ROW/3188272

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Kirklees Council (Public Footpath Batley 71 – Hey Beck Lane, Woodkirk) Public Path Modification Order 2017.
- The Order is dated 15 May 2017 and proposes to modify the Definitive Map and Statement for the area by adding a public footpath as shown in the Order plan and described in the Order Schedule.
- There was one objection outstanding when Kirklees Metropolitan Borough 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. The Order arises following an application and appeal under Section 53(5) and Schedule 14 of the 1981 Act. The appeal was allowed in part and the Council were directed, on 20 March 2017, to make an Order; now the Order before me. The Council do not support the confirmation of the Order because it considers that there is insufficient evidence to support the existence of public rights. The Council has contacted the original applicants to ascertain whether they wish to make a case in support of confirmation of the Order and received no response. The Planning Inspectorate also contacted the applicants to enquire whether or not they wished to make a case in support of the Order. In response the agent for the applicant, whilst making reference to the appeal at the Schedule 14 stage, did not indicate that they wished to make a case in support of confirmation. In reaching my decision I have had regard to all of the evidence, including the evidence submitted with the original application which was considered by another Inspector at the Schedule 14 stage.
2. The sole objection does not raise any issues which I am able to take into account. Paragraphs 7(2A) and 8(3) of Schedule 15 to the 1981 Act provides that where none of the representations or objections relate to an issue which the inspector is able to consider, there is no obligation on the Secretary of State to hold an inquiry.
3. Bearing in mind the above I have reached my decision on the basis of the papers on file. I have not visited the site but I am satisfied that I am able to make my decision without the need to do so.

The Main Issues

4. The Order has been made under section 53(2)(b) of the 1981 Act in consequence of an event specified in section 53(3)(c)(i). The main issue is whether the discovery by the authority of evidence, when considered with all other relevant evidence, is sufficient to show that a right of way which is not shown in the map and statement subsists over the land in the area to which the map relates. The test to be applied to the evidence is on the balance of probabilities.
5. For an order to be made under section 53(3)(c)(i) it is only necessary for the right of way to be reasonably alleged to subsist; this was the basis of the direction to make the Order. However, confirmation requires that the higher test, that the route subsists, must be satisfied.
6. In determining the Order it is appropriate to consider the statutory dedication of the way under Section 31 of the Highways Act 1980. This provides that where a way, other than a way of such a character that use of it could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public, as of right and without interruption, for a period of twenty years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that the landowner demonstrated a lack of any intention during this period to dedicate the route. The 20 year period applies retrospectively from the date on which the right of the public to use the way was brought into question.
7. Should the case for a statutory dedication fail then it may be appropriate to consider dedication at common law. This requires consideration of three issues: whether any current or previous owners of the land in question had the capacity to dedicate a highway, whether there was express or implied dedication by the landowners and whether there is acceptance of the highway by the public. There is no evidence of any express dedication. Evidence of the use of a path by the public as of right may support an inference of dedication and may also show acceptance by the public. In a claim for dedication at common law, the burden of proving the owner's intentions remains with the claimant.

Reasons

Statutory dedication – Section 31 Highways Act 1980

When the right to use the way was brought into question

8. The Order route was obstructed in August 2012 effectively preventing use of the way. This would have brought the right to use the way into question and sets a relevant twenty year period of 1992 to 2012. However, the route was also obstructed between August 1992 and March 1993 and this would have interrupted use during this twenty year period. In view of this no statutory dedication can arise in consequence of use during the period 1992 to 2012. However, the obstruction of the route in 1992 would have brought the right to use the way into question and sets an earlier twenty year period of 1972 to 1992. It is in relation to this earlier period I consider the evidence of use.

Evidence of use 1972 to 1992

9. The evidence of use forms are limited with only two indicating use during the relevant twenty year period. A Richard Child used a route from point A on the Order map to the route of footpath 49 from 1960 to 1977. The route used shown on the plan accompanying the evidence of use form is not the Order route. Between 1960 and 1970 he used the path once a month but after that time used the path less often. Mr B Taylor used a route from point A to the continuation of footpath 49 (again not the Order route) from 1974 to 2014; this was on a weekly basis. The evidence of use forms refer to stiles and gates on the route and a signpost at the start of the route. Other evidence on file refers to the use of the Order route by others. However, this evidence is limited and lacking in detail; it is difficult to give this evidence much weight.
10. Taking all the evidence of use into account it is insufficient to raise a presumption of dedication of a footpath and, as such, any case for statutory dedication must fail. It follows that the evidence is insufficient to show that a right of way subsists. In view of this I have not considered the other elements of section 31 of the Highways Act 1980.
11. As noted above the individuals using a route during the relevant twenty year period did not appear to be using the Order route. It may be the case that the actual route used was not the Order route but another route. However, in respect of any route the evidence of use is insufficient to raise a presumption of dedication.

Dedication at Common Law

12. I have set out the relevant criteria at paragraph 8 above. As stated the burden of proving the owner's intentions remains with the claimant and no case has been put forward that there has been a common law dedication. Having regard to all the evidence before me I consider that it is in any event insufficient for me to reach a conclusion that the Order route has been dedicated at common law or that a right of way subsists.

Other Matters

13. The objection makes the point that neither the Order route nor the route of footpath 49 are ideal for landowners and suggests an alternative route. The objector requests dialogue with the Council in this respect. Whilst I note these matters the objection does not raise any issues which I can take into account. My determination must be based on the evidence before me measured against the relevant tests as set out at paragraphs 5 to 8 above.

Conclusions

14. Having regard to these and all other matters raised in the papers on file I conclude that the Order should not be confirmed.

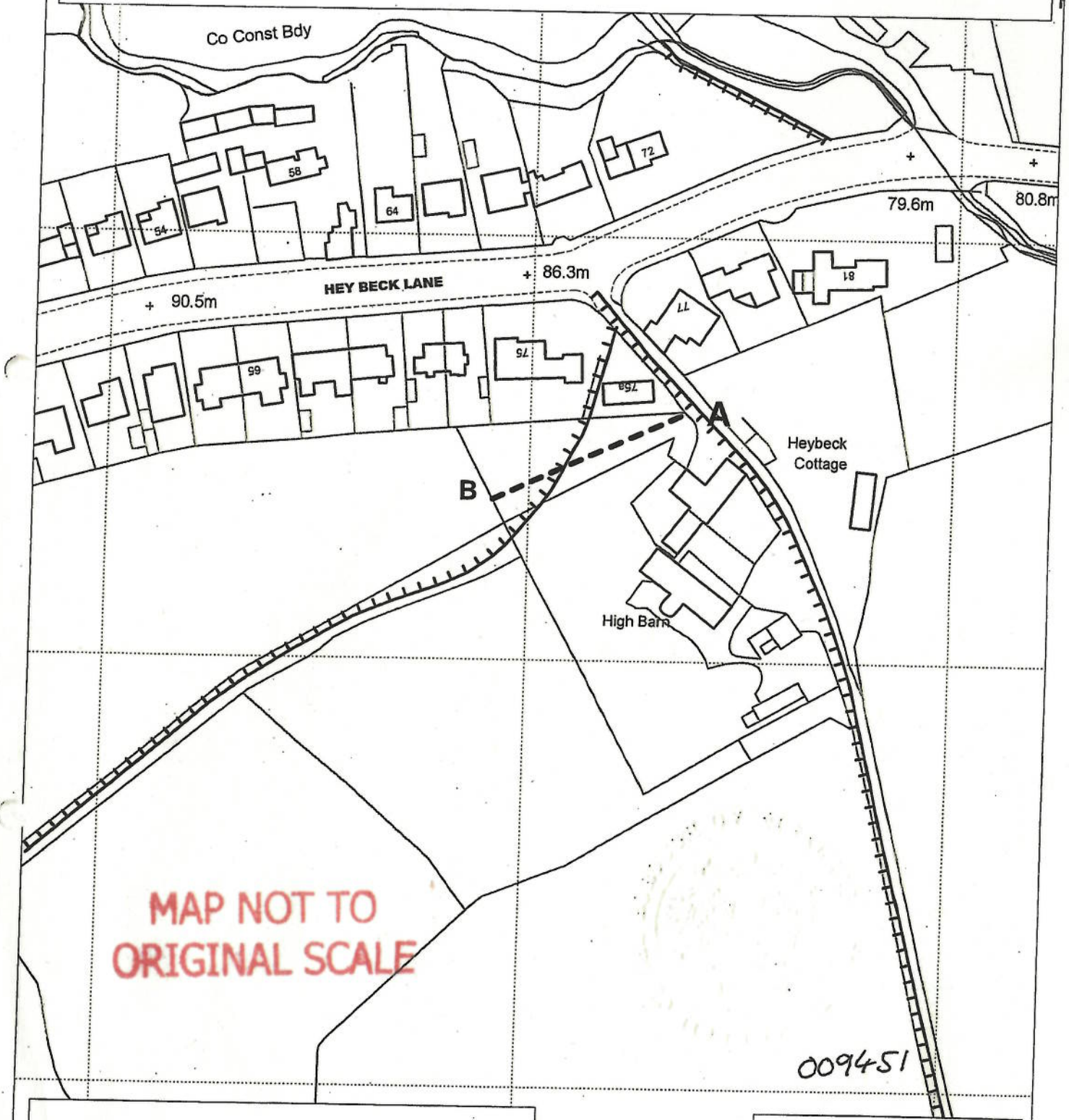
Formal Decision

15. I do not confirm the Order.

Martin Elliott

Inspector

**WILDLIFE AND COUNTRYSIDE ACT 1981, SECTION 53. KIRKLEES COUNCIL
(PUBLIC FOOTPATH BATLEY 71. HEY BECK LANE, WOODKIRK).
PUBLIC PATH MODIFICATION ORDER 2017**



Footpath to be added	A	B
Definitive footpaths		

Grid references
 Point A - SE 2743 2445
 Point B - SE 2739 2443



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