



Order Decision

Site visit on 28 May 2018

by Mark Yates BA(Hons) MIPROW

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

Decision date: 24 August 2018

Order Ref: ROW/3175719

- The Order is known as The Sheffield City Council (Definitive Map and Statement) Modification Order (No 59) 2016.
- The Order was made by Sheffield City Council ("the Council") on 18 August 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 when the Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.

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

Procedural Matters

1. This Order was scheduled to be determined by way of a public inquiry. However, in light of the absence of a statement of case or proof of evidence from the objector (Mr Winstone) and the lack of response from him to correspondence sent by the Planning Inspectorate regarding the inquiry, it was decided that the matter should be determined from the written submissions of the parties. In this respect, I have had regard to the objection made to the Order and Mr Winstone's previous comments. I made an unaccompanied visit to the site on 28 May 2018.
2. The Council draws attention to an error in the Order regarding the title of the definitive map to be modified and the fact that the Order is stated to take effect on the date it is made rather than when it is confirmed. Further, I sought clarification from the Council regarding the reference in the Order to it being made under Section 53(2)(a) and (b) of the Wildlife and Countryside Act 1981 ("the 1981 Act"). It is evident that reliance is placed on 53(2)(b) of the Act. Nothing is apparent to me to suggest that any party was prejudiced by these errors. I therefore take the view that, if confirmed, the Order should be modified accordingly.

Main Issues

3. The Order, in accordance with Section 53(2)(b) of the 1981 Act, relies on the occurrence of an event specified in Section 53(3)(c)(i) of the Act. Therefore, if I am to confirm the Order, I must be satisfied that the evidence discovered shows that a right of way, which is not shown in the map and statement, subsists. 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
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public, as of right¹ 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 also arise 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 has accepted the dedication.

Reasons

Statutory Dedication

When the status of the claimed route was brought into question

6. The Council does not explicitly state what it considers brought the status of the claimed route into question. User evidence forms ("UEFs") have been submitted at various times but no formal application was made to add the route to the definitive map. A large proportion of the forms were submitted in 2013 and a petition, stated to have been signed by 394 people, was tendered in April 2013 requesting that the route is recorded as a public right of way. I note that some of the people who have completed a UEF refer to the erection of the present gates during this period. It is not clear what prompted the submission of the earlier UEFs.
7. It seems to me most likely that the status of the route was brought into question in 2013 when the petition and a large proportion of the UEFs were tendered. It is also apparent that more substantial gates were erected around this time. Therefore, the relevant twenty year period to be considered for the purpose of statutory dedication is 1993-2013 ("the relevant period").

Evidence of use by the public

8. Approximately 58 UEFs² were submitted in support of use of the claimed route. A number of the copies of the maps and photographs accompanying the UEFs, which were supplied by the Council, are of a poor quality. However, from looking at the remainder of the information in the forms, it is apparent that the specified use generally relates to the claimed route. This evidence of use dates back over a number of years prior to the commencement of the relevant period. The use documented in the forms largely occurred on a regular basis.
9. There is evidence of the existence of structures at times near to point A on the Order Map. However, the user evidence is not supportive of the use being interrupted during the relevant period. Whilst the present gates were open at the time of my visit, a gap exists at the side which could facilitate access for pedestrians when the gates are closed. The fact that people were not given permission to use the route would be supportive of the user being as of right.
10. Having regard to the above, I find 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.

¹ Without force, secrecy or permission

² This figure takes into account those people who have completed more than one form

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

11. The Council says the land crossed by the claimed route has been owned since 1988 by Messrs Whiting and Biggins. A letter from a Council Officer to the landowners of 12 January 1989, which followed a site meeting, states that it is understood that the owners did not prevent walkers from using the route at the time. There is nothing to suggest that the landowners have taken any action to demonstrate a lack of intention to dedicate a footpath.
12. Mr Winstone has not substantiated his assertions regarding the locking of gates over a number of years. Nonetheless, there is evidence from some of the users of another structure previously being in place. It is also apparent that this was close to the site of the present gates. Overall the evidence points to it being possible to stride over the previous structure or pass to the side of it. I note that an old low level barrier is evident on a photograph supplied by the Council. Such a barrier, when locked or closed, would have clearly prevented access for vehicular traffic but not necessarily pedestrians. In such circumstances, the gap and gate would constitute limitations to the public use and the Order should be modified to make this clear. It would not in my view demonstrate a lack of intention to dedicate a footpath.
13. Although reference has been made in support of the objection to "*Private Property*" or "*Private Road*" signs at times, this wording alone would not indicate that there was no public right of way over the claimed route. A few of the users also mention a "*No Trespassing*" sign in 2010. However, there is no other information regarding this sign. It also needs to be borne in mind that there is no evidence that any signage was erected on behalf of the landowners.
14. Overall I conclude on balance that the evidence is not supportive of sufficient action being taken to communicate to the public that there was a lack of intention by the landowners to dedicate a footpath over the claimed route during the relevant period.

Conclusions

15. I have concluded above that the evidence of use is sufficient to raise a presumption that the claimed route has been dedicated as a public footpath. In addition, I found on balance that the landowners did not take sufficient action to demonstrate to the public that there was a lack of intention to dedicate the route during the relevant period. Therefore, I conclude on the balance of probabilities that a public footpath subsists and the Order should be confirmed with modifications. 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

16. I appreciate Mr Winstone's safety concerns given the vehicular use of the claimed route. However, this is not something that I can take into account in reaching my decision.

Overall Conclusion

17. Having regard to these and all other matters raised in the written representations I conclude that the Order should be confirmed with modifications.

Formal Decision

18. I confirm the Order subject to the following modifications:

- Delete the heading "*Definitive Map and Statement Beighton, Sheffield*" towards the top of the first page of the Order and insert "*Definitive Map and Statement (Former Derbyshire County Council Area, Definitive Map for the Parish of Beighton, Sheffield)*".
- Delete in the first line of the Order, "53(2)(a) and (b)" and insert "53(2)(b)".
- Delete "*made*" in the first line in paragraph 3 of the Order and insert "*confirmed*".
- Insert within the column headed "*General*" in Parts 1 and 2 of the Order Schedule, "*Limitations*".

Mark Yates

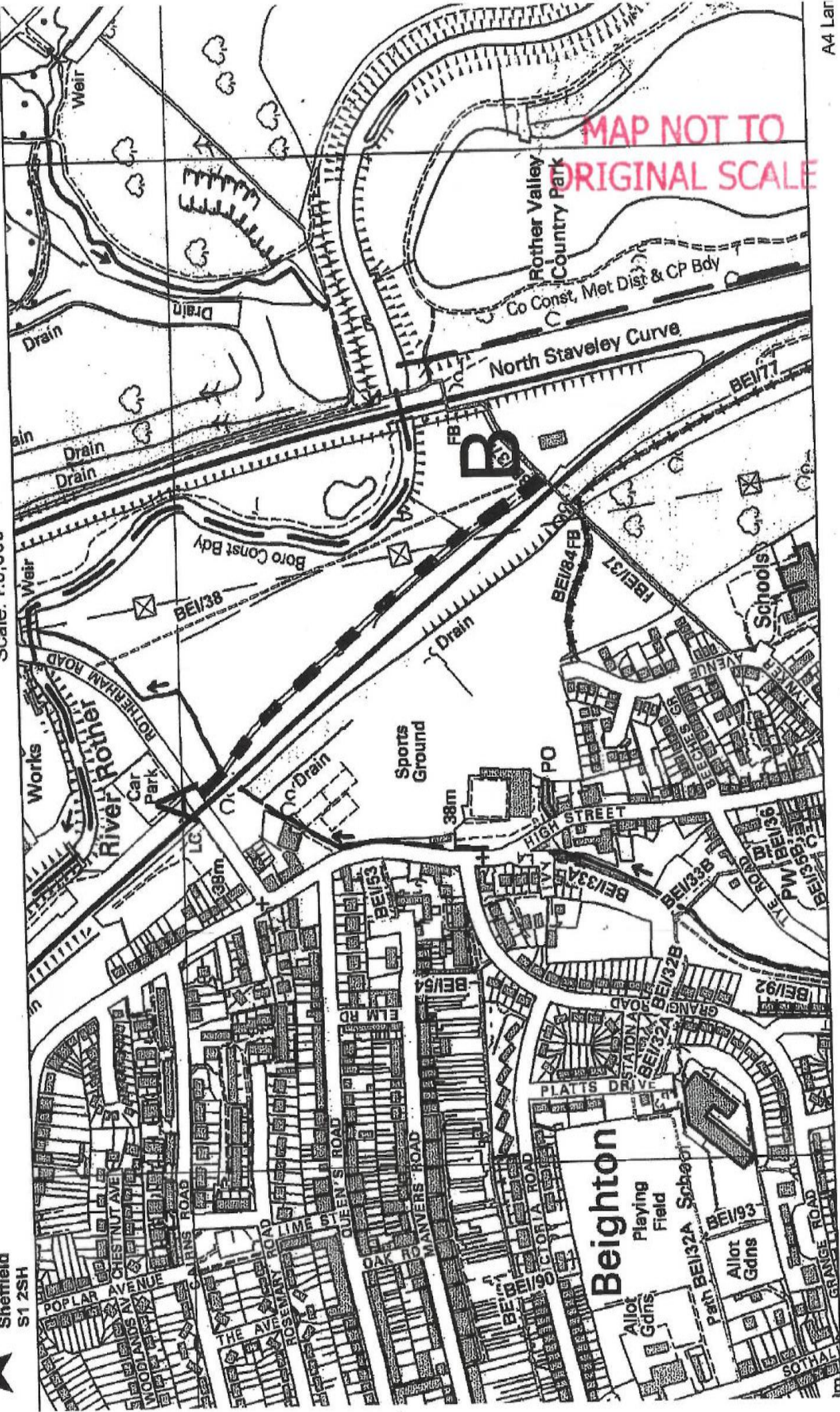
Inspector

Ordnance Survey Grid Ref: Point A 444372 383980
Point B 444677 383622

Scale: 1:5,000

Footpath No. 95 Beighton

PRoW Unit
Sheffield City Council
Howden House
Union Street
Sheffield
S1 2SH



MAP NOT TO ORIGINAL SCALE