



Order Decision

On papers on file

by Martin Elliott BSc FIPROW

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

Decision date: 14 September 2018

Order Ref: ROW/3199723

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Cumbria County Council (Parish of Workington: District of Allerdale) Definitive Map Modification Order (No 1) 2018.
- The Order is dated 16 January 2018 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 Cumbria County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed.

Procedural Matters

1. The sole objection to the Order did not raise any issues which can be taken into account in determining an order under the 1981 Act. The objector was advised of this and the objection was subsequently withdrawn.
2. 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

3. 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.
4. In determining the Order it is appropriate to consider the statutory dedication of the way under Section 31 of the Highways Act 1980 (the 1980 Act). 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.

Reasons

5. In September 2012 the landowner erected a locked gate across the route. The erection of the gate is recognised in the evidence of use forms as preventing the use of the way. The erection of the gate would have brought the right to use the way into question and sets a relevant twenty year period for the purposes of section 31 of the 1980 Act of 1992 to 2012.
6. The evidence of use forms show use by the public as of right and without interruption for the full twenty year period with some use extending from the 1950s. Forms refer to the fact that the way has been used by the public for a considerable period and that the way has always been accessible. There is nothing before me to suggest that the public have not used the route as of right and without interruption. Correspondence received as part of the consultation carried out by the Council, whilst referring to misuse of the route, refer to the route as a thoroughfare from Church Road and the route in the past being open to the general public.
7. Although the evidence is not substantial it is sufficient, on the balance of probabilities, and in the absence of evidence to the contrary, to raise a presumption of dedication of a public footpath. There is no evidence that any landowner took steps to demonstrate a lack of intention to dedicate and therefore the statutory dedication is made out.

Other Matters

8. The objection to the Order raises concerns in respect of the safety of the route and the effect on privacy of adjacent occupiers. Whilst I can appreciate these concerns issues relating to suitability, desirability and need are not matters which can be taken into account in determining an order made under the 1981 Act.

Conclusions

9. Having regard to these and all other matters raised in the papers on file I conclude that the Order should be confirmed.

Formal Decision

10. I confirm the Order.

Martin Elliott

Inspector

Legend

Footpath to be Added



Other Rights of Way



Grecian House

El Sub Sta

NORTH SHORE STREET

D = 299064 525357

C = 299068 525354

E = 299060 525350

Corpnation Ct

B = 299075 525348

Club

G = 299034 525342

Wesley Court

A = 299077 525346

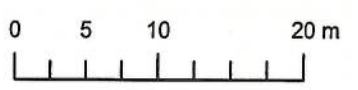
F = 299058 525347

MAP NOT TO ORIGINAL SCALE



Wildlife and Countryside Act 1981 Section 53
Definitive Map Modification Order
Grecian Terrace, Harrington

Scale 1:500 @ A4



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