
Order Decision

Inquiry held on 18 September 2018

by Barney Grimshaw BA DPA MRTPI(Rtd)

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

Decision date: 05 October 2018

Order Ref: ROW/3191253

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Suffolk County Council (Gipping Rural District Definitive Map and Statement)(Parish of Needham Market) Modification Order 2017.
- The Order is dated 12 July 2017 and proposes to modify the Definitive Map and Statement for the area by adding two footpaths as shown on the Order Map and described in the Order Schedule.
- There was 1 objection outstanding at the commencement of the inquiry.

Summary of Decision: I propose to confirm the Order subject to modifications that require advertising.

Procedural Matters

1. I held a public inquiry into this Order on Tuesday 18 September 2018 at the Internet Community Café, Needham Market. I made an unaccompanied site inspection on Monday 17 September when I was able to walk one of the Order routes and view the other. It was agreed by all parties at the inquiry that a further accompanied visit was not necessary
2. In writing this decision I have found it convenient to refer to points marked on the Order Map to which I have added an additional annotated point, Point Y. I therefore attach a copy of this map.

The Main Issues

3. The requirement of Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 (the 1981 Act) is that the evidence discovered by the surveying authority, when considered with all other relevant evidence available, should show that a right of way that is not shown on the definitive map and statement subsists along the Order route.
4. All of the evidence in this case relates to usage of the route. In respect of this, the requirements of Section 31 of the Highways Act 1980 (the 1980 Act) are relevant. This states that where it can be shown that a way over land has been enjoyed by the public as of right and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The period of 20 years is to be calculated retrospectively from the date when the right of the public to use the way was brought into question.

5. Common law also requires me to consider whether the use of the path and the actions of the landowners have been of such a nature that the dedication of the path by the landowners can be inferred.

Reasons

6. No documentary evidence indicating the status of the Order routes has been discovered by the OMA. Accordingly, the determination of this Order depends entirely on the evidence of public use of the claimed routes that is available and whether this indicates that public rights of way can be presumed to have been dedicated in accordance with the provisions of the 1980 Act (statutory dedication) or inferred at common law.

Statutory Dedication

Date when public use was brought into question

7. In 2014, the owner of No.32 Barking Road and most of the land crossed by proposed Footpath 20, erected fencing which prevented public use of the route. This action clearly brought public use into question and led directly to the application for the addition of the route to the definitive map being submitted by the town council. Evidence presented on behalf of the objector suggests that public use of the route may also have been brought into question earlier than 2014 as a result of challenges to users and frequent temporary obstructions of the route by the current landowner between 2010 and 2014. Reference was also made to challenges and the placing of signs by a previous landowner before 2010. I have therefore considered use in of this route in 20 year periods ending in 2014, 2010 and earlier.
8. I have seen no evidence of any specific event which may have brought public use of proposed Footpath 21 into question and this route was not included in the application made by the town council. I therefore conclude that use of this route was not brought into question until 2015 when the OMA sought evidence from local residents regarding this route. Accordingly, the relevant period of 20 years public use which would raise a presumption that this route has been dedicated as a public right of way in accordance with the provisions of the 1980 Act runs from 1995 to 2015 in this case.

Evidence of Users

9. A total of 37 User Evidence Forms (UEFs) were submitted in support of the application. These describe use of the Order routes from 1968 to 2014 or 2015. Nine path users also appeared at the public inquiry, two of whom had not previously completed a UEF. I have therefore been able to consider evidence of use of the Order routes provided by a total of 39 people.
10. All users claimed to have used proposed Footpath 20 and most to have also used proposed Footpath 21, although many had only begun to use this path after 2014 when proposed Footpath 20 was fenced off.
11. Most users claimed to have used proposed Footpath 20 on a daily basis. Roughly half of those claiming to have used proposed Footpath 21 also used it on a daily basis but others said they used it less frequently.
12. More than 20 people claimed to have used proposed Footpath 20 throughout the period from 1990 to 2010 and several more for some of that period. A

- slightly larger number of people claimed to have used the route in the period from 1994 to 2004.
13. With regard to proposed Footpath 21, only around 6 people claimed to have used it throughout the period from 1995 to 2015 but a large number of people said they had used it since 2014 when proposed Footpath 20 was obstructed.
 14. Users of both routes stated that they saw others using the routes.
 15. All users of both routes stated that they had not been challenged or obstructed in their use of the routes before the fence across proposed Footpath 20 was erected in 2014.
 16. Only one person recalled having seen any signs on the routes and he described a sign said to have been placed briefly on the wall of No. 30 Barking Road in 1979 (i.e.: before the building of No. 30a) reading "*NO PUBLIC RIGHT OF WAY*". He also stated that a similar sign appeared briefly on the wall of No.30a in around 1994. No others recalled such a sign and, in any event, the 1979 was not on the Order route and there is no evidence to suggest that the later sign was erected by an owner of land crossed by the Order route.
 17. A very small number of people referred to having permission to use a route but there is no evidence of any explicit permission having been given by landowners.
 18. Nearly all users said that they used the routes to get to the shops in Barking Road and some said they also used them to go to the High Street or other destinations. This raised the possibility, which was confirmed by most of those appearing at the inquiry, that the vast majority of use of proposed Footpath 20 was not in fact over the whole length of the Order route. Most people seem to have walked from Point X to the corner of No.30a Barking Road (Point Y) and then continued along the front of the shops or across the forecourt with very few people actually continuing on the Order route as far as Point A.
 19. It was argued on behalf of the objector that it would not be appropriate to record only part of proposed Footpath 20 (e.g.: Points X-Y) as a public right of way as it would have no link to a public highway at one end. However, there is no legal requirement for a right of way to join another public highway at both ends and no reason why a cul-de-sac path leading from a highway to a destination to which members of the public are likely to wish to go cannot be a public right of way. In my view, the parade of shops is such a destination.
 20. The existing shop at No.30a Barking Road was constructed in the early 1990s. Before then the land it now occupies was said to be open although the application for the construction of the shop states that it was laid out as pavement with three parking spaces set into it. This, along with the evidence of some of those who appeared at the inquiry, raises the possibility that path users may not have always followed the same route as, before 30a was built, the shortest route to the other shops would have been across the open land, so long as it was not obstructed by parked vehicles. By 1994 the construction of No. 30a would have been complete and deviation from the order route across the site would not have been possible.

Actions of landowners

21. The current owner of the land crossed by proposed Footpath 20 stated at the inquiry that between acquiring the land in 2010 and erecting fencing in 2014 he estimated that he had challenged users of the route on 5 or 6 occasions. He also said that during this period the route had sometimes been temporarily obstructed for periods of 2-3 weeks by vehicles, building materials and waste skips being used in connection with his renovation of his house and garden.
22. The current owner also stated that in 2010 there were 2 signs on the fence of the gardens of No.32 Barking Road reading "Private" and "Private Drive". Two other witnesses who appeared on behalf of the objector also stated that there had been a sign attached to a tree in the corner of the garden of No.32 also reading "Private".
23. The same two witnesses also stated that a previous owner of No.32, Mr Pemberton, had frequently challenged users of the route and one, a former owner of a neighbouring property with an interest in the route stated that she had occasionally also challenged users of the route.
24. This evidence is not consistent with that of users who stated that they had not been challenged or obstructed before 2014 and had not seen the signs referred to. Some users also referred to having spoken to Mr Pemberton when using the route and him raising no objection to their use of it.
25. No evidence was presented of any action by landowners of proposed Footpath 21 which might have brought public use of that route into question or indicated a lack of intention to dedicate it as a right of way.

Conclusions regarding Statutory Dedication

26. A route between Points X and Y was used on a regular and frequent basis by a significant number of people during the period 1994-2014. Although the present landowner stated that he had challenged users a limited number of times and had obstructed the route temporarily on occasions, these actions do not appear to have been sufficient to bring public use into question before 2014 or to indicate a lack of intention to dedicate the route as a public footpath. Nor do the signs said to have been in place or challenges made before 2010. Accordingly, it is my view that this route can be presumed to have been dedicated as a public footpath as a result of public use during the period 1994-2014 in accordance with the provisions of the 1980 Act.
27. The remainder of this route (Y-A) appears to have been little used during the same period or earlier periods and therefore cannot be presumed to have been dedicated as a right of way under the 1980 Act.
28. Proposed Footpath 21 appears to have been used by the public throughout the period 1995 to 2015 without any reported action by landowners to discourage public use and no objection to the Order has been made in respect of this route. It is therefore my view that this route can be presumed to have been dedicated as a public footpath in accordance with the 1980 Act.

Common Law

29. An inference that a way has been dedicated for public use may be drawn at common law where the actions of landowners (or lack of action) indicate that

they intended a way to be dedicated as a highway and where the public have accepted it.

30. In this case, there is evidence that members of the public used the Order routes over a considerable period but no specific evidence of action by landowners to indicate their intention to dedicate public rights of way. However, in the light of my conclusion regarding statutory dedication of the routes it is not necessary to pursue this matter any further.

Other Matters

31. A number of matters which lie outside the criteria set out in the relevant legislation were raised by both supporters of the Order and the objector. These include the convenience of the Order routes for local residents, past use of proposed Footpath 20 by vehicles, including HGVs, litter and fears regarding security. Although I understand the points that were made, I have been unable to afford them any weight in reaching my decision.

Conclusions

32. Having regard to these and all other matters raised, I conclude that the Order should be confirmed subject to modifications to amend the line of proposed Footpath 20 to run between Points X and Y rather than X and A.

Formal Decision

33. I propose to confirm the confirm the Order subject to the following modifications:

In the Schedule to the Order, Part I, amend the second paragraph to read:

"A footpath from a point at Ordnance Survey Grid Reference (OSGR) 60896,25453 (Point X) to a point at OSGR 60900,25453 (Point Y) as shown on the attached map, and"

In the Schedule to the Order, Part II, amend the second paragraph to read:

"Needham Market Footpath 20

Commencing at its junction with a footway leading from Hargrave Avenue at OSGR 60896,25453 and progressing in an easterly direction over a metalled surface for a distance of 29 metres to the footway in front of the shops at Nos. 16-30a Barking Road at OSGR 60900,25453"

Amend the Order Map accordingly.

34. The proposed modifications would have the effect of not showing as a highway part of a way which is shown in the Order. It is therefore required by virtue of Paragraph 8(2) of Schedule 15 to the 1981 Act that notice of the proposal to modify the Order be given and an opportunity for objections and representations to be made regarding the proposed modifications.

Barney Grimshaw

Inspector

DOCUMENTS

1. Opening Statement, SCC.
2. Proof of Evidence of Andrew Rogers, SCC.
3. Copies of 37 User Evidence Forms.
4. Statement of Case of Martin Barrell with supporting documents.
5. Statement of Martin Barrell with supporting documents.
6. Aerial photograph of surrounding area.
7. Closing submission on behalf of Martin Barrell.



PROPOSED PUBLIC FOOTPATHS 20 AND 21, NEEDHAM MARKET



Suffolk
County Council



Proposed Public Footpath
(X-A) (X-B)

Proposed Public Footpath

MAP NOT TO
ORIGINAL SCALE

Scale
1:1250

