
Order Decision

Inquiry held on 17 October 2018

by Barney Grimshaw BA DPA MRTPI(Rtd)

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

Decision date: 26 October 2018

Order Ref: ROW/3185487

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Peterborough City Council Public Footpath Peterborough no.71 (Guildhall Walk) Modification Order (No.1) 2017.
- The Order is dated 7 June 2017 and proposes to modify the Definitive Map and Statement for the area by adding a footpath running between Priestgate and Church Street, Peterborough, as shown on the Order Map and described in the Order Schedule.
- There were 9 objections outstanding at the commencement of the inquiry.

Summary of Decision: The Order is not confirmed.

Procedural Matters

1. I held a public inquiry into this Order on 17 October 2018 at Peterborough Town Hall. I made an unaccompanied site inspection on Tuesday 16 October when I was able to walk the whole of the Order route. I made a further inspection on Wednesday 17 October accompanied by parties who appeared at the inquiry.
2. In writing this decision I have found it convenient to refer to points marked on the Order Map. I therefore attach a copy of this map.
3. The Order Making Authority, Peterborough City Council, chose to adopt a neutral stance at the inquiry. The case for confirmation of the Order was therefore led on behalf of Peterborough Civic Society, the applicant for the modification of the definitive map.

The Main Issues

4. 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.
5. 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.

6. 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

7. No documentary evidence indicating the status of the Order route has been discovered by the OMA. Accordingly, the determination of this Order depends entirely on the evidence of public use of the claimed route that is available and whether this indicates that a public right 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

8. In November 2015 Barclays Bank installed two sets of gates across the claimed route at Point C and north of Point B. These were closed and locked at night and clearly brought public use of the route into question at that time. The erection of the gates was subject to a planning condition that they be open between the hours of 08.00am and 18.00hrs Monday to Saturday and 09.00am to 17.00hrs on a Sunday.
9. On behalf of the bank evidence was also submitted that chains and signs were erected across the route at similar points to the current gates on at least one day per year from some time before 1988 until 2014. This action may also have brought public use into question, although users who provided evidence seemed generally to be unaware of the chains and signs ever having been in place.
10. 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 either 1995 to 2015 in this case or, possibly, from 1968 to 1988.

Evidence of Users

11. A total of 39 User Evidence Forms (UEFs) were submitted in support of the application for the footpath to be added to the definitive map. Six people who had completed UEFs also appeared at the inquiry along with one further person who had also used the route but had not completed a UEF. I have therefore been able to consider user evidence provided by a total of 40 people who described their use of the Order route from the 1940s, in one case, to 2015.
12. The frequency of use described varied between several times a day and only a few times per year. However, around half of the people providing evidence claimed to have used the route at least once per week.
13. Users generally stated that they had not been obstructed in their use, seen any signs discouraging use or received permission to use the route before 2015. However, several people referred to the presence of a vehicle barrier, which is still in place south of Point B, which has a gap alongside it allowing pedestrian

- access. One user reported having encountered a chain across the route in around 2001.
14. Thirty five people claimed to have used the route throughout the period from 1995 to 2015 and one for part of that period. Four people claimed to have used the route throughout the period from 1968 to 1988 and twenty five for part of that period. Only four people claimed to have used the route in the first few years of that period.
 15. Nearly all the use claimed seems to have been on foot but a few people also said that they used it with bicycles. However, the evidence of cycle use is not in my view sufficient to raise the possibility that the route might be a right of way of a higher status than footpath.
 16. The land crossed by the claimed route is owned by Barclays Bank, a branch of which is situated alongside the northern part of the route. The bank was completely redeveloped in the early 1970s in accordance with a planning permission granted in 1968. At that time the route in its present form, passing beneath the first floor of the bank, was created. Although four people claimed to have used the route before the redevelopment of the bank, this was questioned on behalf of objectors.
 17. A plan prepared in connection with proposed alterations to the bank dated August 1954 appears to show stairs descending from the first floor on the line of the claimed footpath. It seems likely that these stairs and the external wall alongside them would have prevented passage along the route although supporters maintained that a way through might still have been available. A photograph, said to be taken in the 1920s, was also said to show the claimed route obstructed but this is by no means clear from the copies I have seen.
 18. In addition, a report on the history of Guildhall Walk prepared by planning consultants Stride Treglown states that no evidence of the existence of a through route along the line of that claimed prior to the redevelopment of Barclays Bank in the early 1970s had been found. Indeed, various agreements between the bank and neighbouring owners seem to suggest that there was no through route and that the part of the route that was in existence was regarded as being private. Ordnance Survey maps from 1887 to 1968 do not show a through route. Supporters suggested that a route passing under the first floor of the building would not necessarily have been shown on these maps although other such passages under buildings in the vicinity are indicated by use of an "X" symbol.
 19. Only one person who claimed to have used the route before 1970 appeared at the inquiry and, when questioned, he could not recall what the route was like before the redevelopment of the bank.
 20. For some of the period between the early 1970s and 2015 there was a shop which was accessed by way of the Order route and a cash machine was situated alongside the route. It was suggested on behalf of objectors that much of the use of the route might have been by people visiting the bank or shop or using the cash machine and therefore should be regarded as having been by permission or licence and not 'as of right' as required by the 1980 Act. However, there was no way of quantifying the amount of such use and those users who appeared at the inquiry said they used the route for other purposes than to visit premises or facilities alongside it.

21. Despite the possibility that some use might not have been 'as of right', the amount and nature of public use of the claimed route between 1995 and 2015 was in my view such as to raise the presumption that the route had been dedicated as a public footpath in accordance with the provisions of the 1980 Act. However, this presumption might be rebutted if the actions of landowners during the same period were sufficient to bring such use into question or indicate a lack of intention to dedicate a public right of way.
22. The amount of use of the route throughout the period 1968 to 1988 was not in my view sufficient to raise a presumption that it had been dedicated as a right of way and there is some doubt as to whether the route actually existed before the early 1970s.

Actions of landowners

23. Mr Martin, now director at Barclays Bank, Peterborough, stated that when he first worked at the branch in 1988 it was already established practice for Guildhall Walk to be closed on at least one day each year by chains across the whole width with signs attached. The signs read "*This Private Thoroughfare is Closed, No Unauthorised Access, Trespassers will be Prosecuted*". The chains and signs were situated close to Point C and to the north of Point B. He said that this practice continued until 2014. A chain and sign said to be one of the ones used were displayed at the inquiry.
24. Three of the fixing points, said to be those to which the chains were attached, are still in place and on my second site visit a chain and sign were erected to demonstrate the way in which the chains were fixed and how they would have appeared.
25. An internal letter, dated 5 October 1992, from an Administrative Assistant at Barclays Peterborough Branch to Barclays Property Holdings confirms that "*Guildhall Walk access way was closed from 7.00am on the morning of Sunday 4th October until the 7.00am on Monday 5th October*". Four other letters from people familiar with the route also confirm that it was regularly chained off and, as previously mentioned, one person who completed a UEF also reported encountering a chain. In addition, Mr and Mrs Shield, who have lived alongside the route since 2003 also saw chains in place and Mr Shield enquired at the bank about their purpose and was informed that it was to prevent public rights being established.
26. Nearly all users of the route stated that they never encountered any obstruction. However, this is perhaps not so surprising if the chains were only in place for one day each year which may well usually have been on a Sunday.

Conclusions regarding Statutory Dedication

27. There was enough use of the Order route in the period 1995-2015 to raise a presumption that it had been dedicated as a public footpath but, there is also corroborated evidence of action taken by the landowner to close the route on at least one day each year throughout most of this period. The closure by means of chains was accompanied by clear signs indicating that the route was a private way. Although, this action appears not to have come to the attention of most of those users of the route who completed UEFs, it was in my view sufficiently overt and directed at actual users to indicate the landowner's lack

of intention to dedicate a public right of way if not to bring public use into question.

28. The evidence indicates that the closure of the route by chains took place from before 1988 until 2014 and in my view there was not sufficient public use of the route throughout any 20 year period prior to 1988 to raise a presumption that it had been dedicated as a public right of way and there is some doubt as to the existence of the route before the early 1970s.
29. It cannot therefore be presumed that the Order route has been dedicated as a public right of way in accordance with the provisions of the 1980 Act.

Common Law

30. 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.
31. In this case, there is evidence that members of the public have used the Order route at least since the early 1970s but no specific evidence of action by the landowner to indicate an intention to dedicate it as a public right of way. In fact, there is evidence that the landowner took steps to prevent public rights being established. It cannot therefore be inferred that the claimed route has been dedicated as a public right of way at common law.

Other Matters

32. The Order states that it is made under section 53(2)(a) of the 1981 Act whereas in fact it is made under section 53(2)(b). It also states that it was made as a result of an event specified in section 53(3)(c)(iii) of the Act whereas it was made as a result of an event under section 53(3)(c)(i). I do not believe that any party's interests have been prejudiced as a result of these errors as the proposed effect of the Order is perfectly clear.

Conclusions

33. Having regard to these and all other matters raised, I conclude that the Order should not be confirmed.

Formal Decision

34. I do not confirm the Order.

Barney Grimshaw

Inspector

APPEARANCES

For the OMA

Daniel Stedman Jones	Counsel, representing Peterborough City Council (PCC)
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Who called:

Lee Moore	Rights of Way Officer, PCC
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Supporters

Peter Lee	Peterborough Civic Society
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Who also called:

Peter Slinger	Path user
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Peter Waszak	Path user
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Duncan Hallam	Path user
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Toby Wood	Path user
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Kemel Mehmed	Path user
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Andrew Wilcox	Path user
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Kit Hubback	Path user
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Objectors

Robin Carr	Rights of Way Consultant, representing Barclays Bank
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Who called:

Tom Mills	Planning Consultant, Stride Treglown
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Graham Martin	Director, Barclays Bank
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Kevin Shield	Local resident
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Bernadette Shield	Local resident
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DOCUMENTS

1. Statement of Case of PCC with supporting documents.
2. Proof of Evidence of Lee Moore, PCC.
3. Statement of Case on behalf of Peterborough Civic Society.
4. Statement of Case on behalf of Barclays Bank with supporting documents.
5. Proof of Evidence of Bernadette Shield.
6. Proof of Evidence of Graham Martin.
7. Proof of Evidence of Kevin Shield.
8. Proof of Evidence of Thomas Mills, Stride Treglown.
9. Full size plans of proposed alterations to Barclays Bank, August 1954.
10. Larger copy of 1920s photograph.
11. Closing submissions on behalf of Barclays Bank.
12. Closing Statement on behalf of Peterborough Civic Society.

