



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: 7 November 2018

Order Ref: ROW/3188641

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Lincolnshire County Council (Amendment of Lindsey County Council (Urban District of Mablethorpe and Sutton) Definitive Map and Statement – Evidential Events) (No 1) Modification Order 1986.
- The Order is dated 18 November 1986 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 Lincolnshire County 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. Following the making of the Order one objection was received. However, the objection was subsequently withdrawn. The Council are taking a neutral stance in respect of the Order taking the view that the evidence available is not sufficient to show that a footpath subsists such that the Order can be confirmed. There are no supporters of the Order and I have therefore considered the Order 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.
2. The Council note that part of the land crossed by the Order route is unregistered in title and that dispensation in accordance with paragraph 3(4) of Schedule 15 (the Schedule) to the 1981 Act was not sought at the time the Order was made. Consequently no notice of the Order was served in respect of this land. Given that dispensation was not sought when the Order was made, and notice was not served, the requirements in respect of paragraph 3(2)(i) of the Schedule have not been complied with. The Council have subsequently sought dispensation although have not given notice in accordance with paragraph 3(4) of the Schedule. In view of this I requested that the Council gave notice in accordance with paragraph 3(4) of the Schedule. It should be noted that I am required to determine the Order based on the evidence before me regardless of whether or not the Council wish the Order to be confirmed. It is therefore necessary for the requirements of the Schedule to have been met before determination. Following the service of the notice no response was received from any landowner. Given that the appropriate notice has now been given there is nothing to suggest that anyone will have been prejudiced.

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 whether there is evidence of a statutory dedication 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.
5. 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

Background information

6. The Council has had regard to a number of items of documentary evidence but have concluded that this evidence is insufficient to show that the route has been recognised as a highway. I have considered the documentary evidence and conclude that it does not support the existence of a public footpath such as to show that such a way subsists.

Statutory dedication

7. In considering the statutory dedication of the way it is first necessary to identify a relevant twenty year period. The Council believe that the right to use the way was called into question in 1979 when initial enquiries were made to the Council; it is suggested that this may have been as a result of the demolition of the adjoining cinema. From my examination of the evidence it appears that in 1979 the Town Clerk submitted a number of evidence of use forms and requested that the County Council took the appropriate steps to record the route as a public right of way. Whilst the evidence is not substantial it is apparent that in 1979 questions were being raised as to the status of the route such that the right to use the route would have been brought into question. This sets a relevant twenty year period of 1959 to 1979.

8. The Council has submitted eight evidence of use forms which show use of a route between High Street and Broadway. However, none of the evidence of use forms include a map showing the route which was used. It is noted that three of the users mention Moreland Avenue as being a starting point or destination and therefore may not have used the full length of the Order route on every occasion. The route identified on the Order is on a different alignment to the route shown on a plan appended to a letter from the Town Council, dated 21 July 1979, which is said, by the Town Council, to show the right of way. Without further information as to the route used it is difficult to give the evidence of use forms any great weight in respect of a route between High Street and Broadway.
9. In addition to the above, none of the forms provide any indication as to whether the use was on foot. Some of the forms identify the status of the route as a footpath whereas others identify the status as being a 'road used as path'. However, this provides no evidence as to how the path was used by these individuals.
10. Whilst there is some evidence of use of a route between High Street and Broadway, 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.

Dedication at Common Law

11. I have set out the relevant criteria at paragraph 5 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 such that a right of way subsists.

Other Matters

12. The original objection suggests that the Order route could be re-sited and refers to the need to progress the sympathetic development of High Street. Whilst I note these matters my determination must be based on the evidence before me measured against the relevant tests as set out at paragraphs 3 to 5 above.

Conclusions

13. 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

14. I do not confirm the Order.

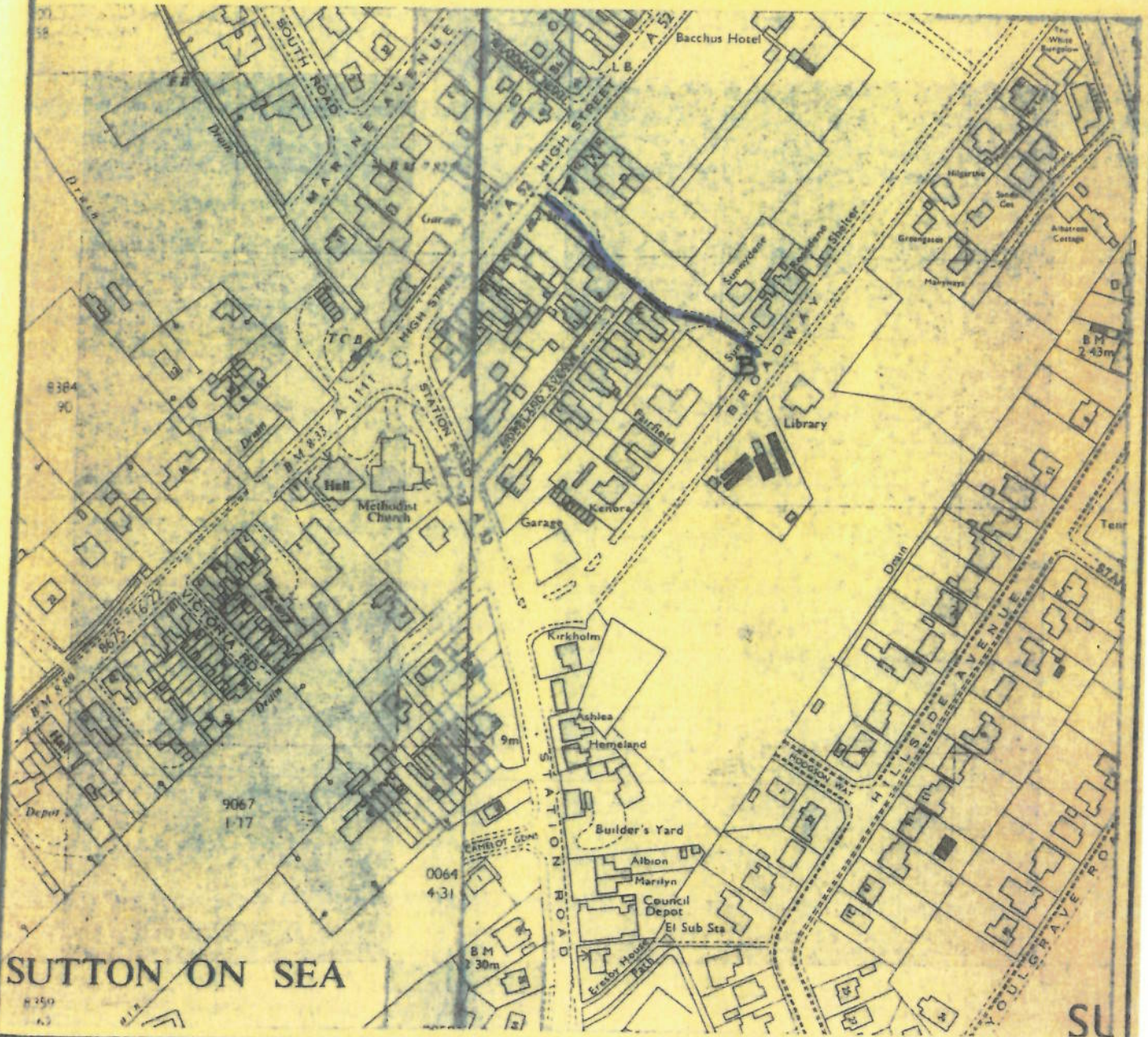
Martin Elliott

Inspector

LEGEND

A ————— B Claimed public footpath.

MAP NOT TO ORIGINAL SCALE



SUTTON ON SEA

SU

G N KEIGHLEY MSc., Dip.PE., CertEd.
DIRECTOR OF RECREATIONAL SERVICES

Lincolnshire

Dr/Date
9/85

Scale
1:2500

Checked

Approved

O.S. sheet reference
TF5081-5181 & TF5281

File/No.
PL/C/8/19

SUTTON ON SEA:- Lincolnshire County Council) Definitive Map Modification Order) Addition of claimed public footpath from High Street to Broadway.

Drawing No.
A4/1448/3

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