



## Order Decision

Site visit on 31 October 2018

**by Mark Yates BA(Hons) MIPROW**

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

**Decision date: 31 December 2018**

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### Order Ref: ROW/3196319

- The Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the 1981 Act") and is known as the Derbyshire County Council (Footpath from Green Lane to Footpath 41 – Parish of Killamarsh) Modification Order 2014.
- The Order was made by the Derbyshire County Council ("the Council") on 5 June 2014 and proposes to add a footpath ("the claimed route") to the definitive map and statement, as detailed in the Order Map and Schedule.
- There were two objections 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.**

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### Procedural Matters

1. It became apparent that the objectors (Mr and Mrs Aldous) did not wish to pursue their objections at the scheduled public inquiry. However, I did not consider their objections to be withdrawn as this was conditional on me being satisfied about particular matters.
2. After consulting with the parties it was decided that the inquiry would be cancelled and the case could be determined from the written representations, including the objection letters from Mr and Mrs Aldous. I did not find a late submission from Mr Johnson to provide any further assistance with my decision and therefore it has not been circulated to the other parties.
3. Whilst I note the concerns expressed regarding how the application was investigated under Schedule 14 to the 1981 Act, an Order has now been made. My role is to consider whether the Order should be confirmed in accordance with Schedule 15 to the Act. Nor is it relevant to my decision that Mr Johnson has agreed to take the case forward as the original applicant (Mrs Cawkwell) has passed away.

### Main Issues

4. The Order, made 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 test to be applied is the balance of probabilities.
5. 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 public, as of right<sup>1</sup> and without interruption, for a period of twenty years prior to its status being brought into question and, if so, whether there is evidence

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<sup>1</sup> Without force, secrecy or permission

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that any landowner demonstrated a lack of intention during this period to dedicate a public right of way.

6. Alternatively, an implication of dedication may be shown at common law if there is evidence from which it can be inferred that a landowner has dedicated a right of way and that the public has accepted the dedication. The evidence in support of the dedication of a right of way under common law may relate to a different period to that identified for the purpose of statutory dedication.

## **Reasons**

### ***Statutory dedication***

*When the status of the claimed route was brought into question*

7. I find there to be no specific action that challenged use of the claimed route. In reaching this conclusion I have had regard to the notice addressed in paragraph 13 below. Therefore, I take the application of 27 February 2012 as the event that served to bring the status of the route into question. This means that the relevant twenty year period to be considered is 1992-2012 ("the relevant period").

*Evidence of use by the public*

8. Thirty-three user evidence forms ("UEFs") were submitted in support of use of the claimed route. This evidence of use dates back over a number of years prior to the commencement of the relevant period. Nine people have submitted a witness statement, five of whom had not completed a UEF. In terms of statutory dedication, four of these people had ceased to use the route by the onset of the relevant period and another did not use the route until 2013. The use documented in the forms largely occurred on a regular basis.
9. The objectors consider the application to be an attempt to frustrate development in the locality. It is apparent that some of the UEFs were completed by supporters of the action group known as RAGE<sup>2</sup>. However, the issue to be determined is whether the evidence is sufficient to raise the presumption of the dedication of a public footpath. Nothing is evident from my examination of the UEFs to suggest any widespread collusion between the users in terms of the information included in the forms.
10. There are conflicting views regarding whether there is evidence of a worn route that can be attributed to public use during the relevant period. Mr Aldous has provided photographs in support of his assertion that there was no public use during this period. I do not place much weight on the evidence of the existence or otherwise of signs of wear at times when set against the clear evidence of use provided. Nor does a lack of observed use signify that the route was not used. However, the evidence of the presence of features such as stiles indicates that the public use of the claimed route would have been generally limited to pedestrians. There is nothing to suggest that the use of the claimed route was interrupted during the relevant period or that the user was not as of right.
11. I have some concerns about the estimated frequency of use by those people who state that they used the route over significant periods of time given that patterns of use may change over time. However, in terms of the relevant

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<sup>2</sup> Killamarsh Residents Against Greenbelt Erosion

period, the evidence is supportive of fairly widespread use by people living near to the claimed route for purposes such as dog walking. The footpath sign at the eastern end of the connecting Footpath No. 41 and the means of access at the field boundaries would have served to encourage and facilitate use of the route.

12. 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.

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

13. There is evidence of notices being erected by one of the landowners<sup>3</sup> in 2010, which stated "*Private Land Keep to the Public Footpath*". One of these notices appears to correlate with point A on the Order Map. I agree with the Council that the notice is unlikely to demonstrate to people walking from point A that there was a lack of intention to dedicate a footpath. It indicates that people should not stray off the path in this location.
14. Overall I conclude on balance that the evidence is not supportive of action being taken that was sufficient 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.
16. In light of the above conclusion, there is no need for me to address the documentary and user evidence in the context of common law dedication. Nonetheless, I note the acceptance by Mr Aldous that the route was used prior to 1992. Whilst I do not need to decide the point, the user evidence could potentially support the dedication of the route prior to the onset of the relevant period.

**Other Matters**

17. Some issues have been raised regarding the presence of other public footpaths in the area and problems with crime and anti-social behaviour. However, such matters are not relevant to my decision.

**Overall Conclusion**

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

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<sup>3</sup> The Harworth Estates

**Formal Decision**

19. I confirm the Order.

*Mark Yates*

**Inspector**



**Wildlife and Countryside Act 1981 S.53**  
**The Derbyshire County Council**  
**(Footpath from Green Lane**  
**to Footpath No. 41**  
**- Parish of Killamarsh)**  
**Modification Order 2014**

**KEY**

Footpath to be added    - - - - -

Existing footpaths        - - - - -



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