



Order Decision

Inquiry held on 1 May 2018

by **Michael R Lowe** BSc (Hons)

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

Decision date: 20 February 2019

Order Ref: ROW/3184773

Redcar & Cleveland Borough Council

- This Order is made under section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the **Redcar & Cleveland Borough Council Wilton Public Footpath No.231 Definitive Map & Statement Modification Order 2017**.
 - The Order is dated 27 March 2017 and proposes to modify the Definitive Map and Statement by adding a linking footpath between Footpaths 230 (Wilton) and a junction with footpaths (Wilton) and 228 (Kirkleatham) in Dunsdale Wood, as detailed in the Order map and schedule.
 - There were 5 objections when Redcar & Cleveland Borough Council (the Council) submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.
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Decision

1. I confirm the Order.

Preliminary Matters

2. I held a public inquiry into the Order at Redcar & Cleveland Leisure & Community Heart, Redcar on 1 May 2018. I visited the locality on 30 April, viewing the claimed footpath from the established adjoining footpaths.
 3. In January 2017 Mr Peter Lees made an application to the Council to add a footpath to the Definitive Map and Statement of Public Rights of Way. Following the Council's investigation into the application the Council published the Order in April 2017. Prior to the Inquiry, the Council had taken a neutral stance with respect to the confirmation of the Order. However, in their closing statement the Council concluded that there was sufficient evidence of use and limited evidence of challenges, such that the balance of probabilities was in favour of confirmation.
 4. The application by Mr Lees was for a single footpath, as shown in the Order map. Some objections to the Order sought to establish another footpath in the vicinity of the Order route, called the meadow path. That route is the subject of a separate application to the Council. The question of the existence of public rights of way, other than the Order route, is not a matter before me.
 5. Section 32 of the Highways Act 1980 requires me to take into account any map, plan or history of the locality or other relevant document and to give such weight to it as is justified by the circumstances.
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Main Issue

6. The Order has been made under section 53(2)(b) of the 1981 Act relying on the occurrence of events specified in section 53(3)(c)(i). The main issue is therefore whether the evidence is sufficient to show, on the balance of probabilities, that a public footpath which is not shown in the map and statement subsists on the route in question such that the definitive map and statement require modification.
7. In the context of section 53 of the 1981 Act the requirements of section 31 of the Highways Act 1980 (the 1980 Act) are namely;
 - a) whether the claimed route is of such character that public use could not give rise at common law to any presumption of dedication; and
 - b) the date on which the right of the public to use the claimed footpath was brought into question;
 - c) whether the claimed footpath was actually enjoyed by the public 'as of right' (without force, secrecy or permission) and without interruption for a full period of 20 years ending on the date on which the right to do so was brought into question; and if so
 - d) whether there is sufficient evidence that there was, during this period, no intention to dedicate the claimed footpath.
8. Whether, in the alternative, the evidence is such, again on the balance of probabilities, as to establish dedication at common law.

Reasons

Presumed Dedication of footpaths under the Highways Act

Whether the claimed route is of such character that public use could not give rise at common law to any presumption of dedication

9. Mr Frank Waugh gave evidence that the Order route was an old carriage drive to Wilton Castle dating back to the 19C. The Order route is clearly defined on the 1938 Ordnance Survey Map and more recent editions. I am satisfied from this evidence and the other witness statements that the claimed footpath is sufficiently defined and is distinct from wandering generally around the field alongside which the path traverses. I am also satisfied that the character of the claimed footpath, linking two existing footpaths, is consistent with the common law principles of implied dedication.

The date on which the right of the public to use the claimed footpath was brought into question

Whether the claimed footpath was actually enjoyed by the public 'as of right' (without secrecy, force or permission) and without interruption for a period of not less than 20 years, and if so

Whether there is sufficient evidence that there was during the 20 year period no intention to dedicate the claimed footpath

10. Fifteen statements of evidence were submitted giving personal accounts of local residents knowledge and personal use of the claimed footpath. Twelve

statements were submitted with Mr Lees' application and a further 3 submitted to the Inquiry. Seven of these, mainly local residents, gave evidence at the Inquiry. The evidence of the current landowners, previous tenants and gamekeepers were submitted as written statements.

11. In October 2016 a structure across the beck, point B on the Order plan, was removed. The structure is variously described as a footbridge or metal gantry. Mr & Mrs Crane acquired Dunsdale Farm, including the land shown A - B on the Order plan, in February 2016 and they state that they have challenged persons found on the Order route since that time. They state that they removed the structure across the beck, erected a sign saying 'Private Land - No public right of way - No trespassing' and dug a ditch across the claimed footpath in October 2016. Many of the local residents of Dunsdale cited the removal of the structure across the beck as the event bringing to their attention a challenge to the use of the Order route as a public footpath.
12. The Council state that a deposited map was lodged by a previous landowner, under section 31(6) of the 1980 Act, in August 1996 and by Mr & Mrs Crane in August 2016. However, no subsequent statutory declarations were made to complete the process.
13. In my view the events of October 2016 were a clear challenge to the right of the public to use the claimed footpath. The earlier deposited maps and action did not appear to have been effective in bringing home to the public that their right to use the claimed footpath was brought into question. I therefore conclude that the right of the public to use the claimed footpath was brought into question in October 2016. The 20 year period therefore ended in October 2016.
14. Seven witnesses at the Inquiry gave cogent evidence of their use of the Order route as a footpath. Five of these witnesses and many of the written statements gave evidence of public use of the way for the full 20 year period. The evidence was of a local footpath, used mainly by the residents of Dunsdale for dog walking, along which the users would occasionally meet other local residents. None of these written statements or witness accounts gave any indication of being challenged before October 2016 or of anything else to question their use of the way as a public footpath.
15. A former tenant of part of the land (A - B on the plan) between 1991 and 2015 made a statement that he was aware of the public use of the Order route, that he did not grant any permission or prevent such public user.
16. A former gamekeeper between 1968 and 2006, the current gamekeeper and Mr Wardman, the owner of the Order route between B and C on the plan, all made statements that they had challenged persons encountered on the Order route at times during the 20 year period before 2016. As the objectors to the Order were not present at the Inquiry, I questioned all the user witnesses to check the veracity of their evidence. In particular, I questioned any encounters with the gamekeeper or Mr Wardman, but nobody recalled any encounters other than passing-by without challenge.
17. In my view there is cogent evidence that the public used the Order route as a footpath throughout the relevant 20 year period and that the use was without force, secrecy or permission. I consider that the use was sufficient for a reasonable landowner to have been aware of the use. I do not consider that

there is sufficient evidence to indicate that any landowner did not intend to dedicate a public right of way.

18. With regard to the deposited maps made in 1996 and August 2016 as the first part of the process under section 31(6) of the 1980 Act; the second part of the process, the statutory declarations, was not fulfilled. Therefore, I do not consider that the deposits comprise sufficient evidence of no intention to dedicate the claimed footpath.

Conclusion relating to presumed dedication under section 31 of the 1980 Act

19. The character of the claimed route is not inconsistent with the common law principles of implied dedication. The date upon which the right of the public to use the claimed footpath was first brought into question was October 2016. During the 20 year period before October 2016 I am satisfied that the claimed footpath was sufficiently used by the public as of right and without interruption. There is insufficient evidence that there was during the 20 year period no intention to dedicate the claimed public footpath.

20. I therefore conclude that the claim on the basis of section 31 of the 1980 Act succeeds.

Whether, in the alternative, the evidence is such as to establish dedication under common law

21. In the light of my conclusions above as to the requirements of section 31 of the 1980 Act, this proviso need not be considered.

Conclusion

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

Michael R Lowe

INSPECTOR

APPEARANCES

Redcar & Cleveland Borough Council

Tony Gordon

Strategic Transport Officer

In support of the Order

Peter Lees

The applicant for the Order

Philip G Thompson

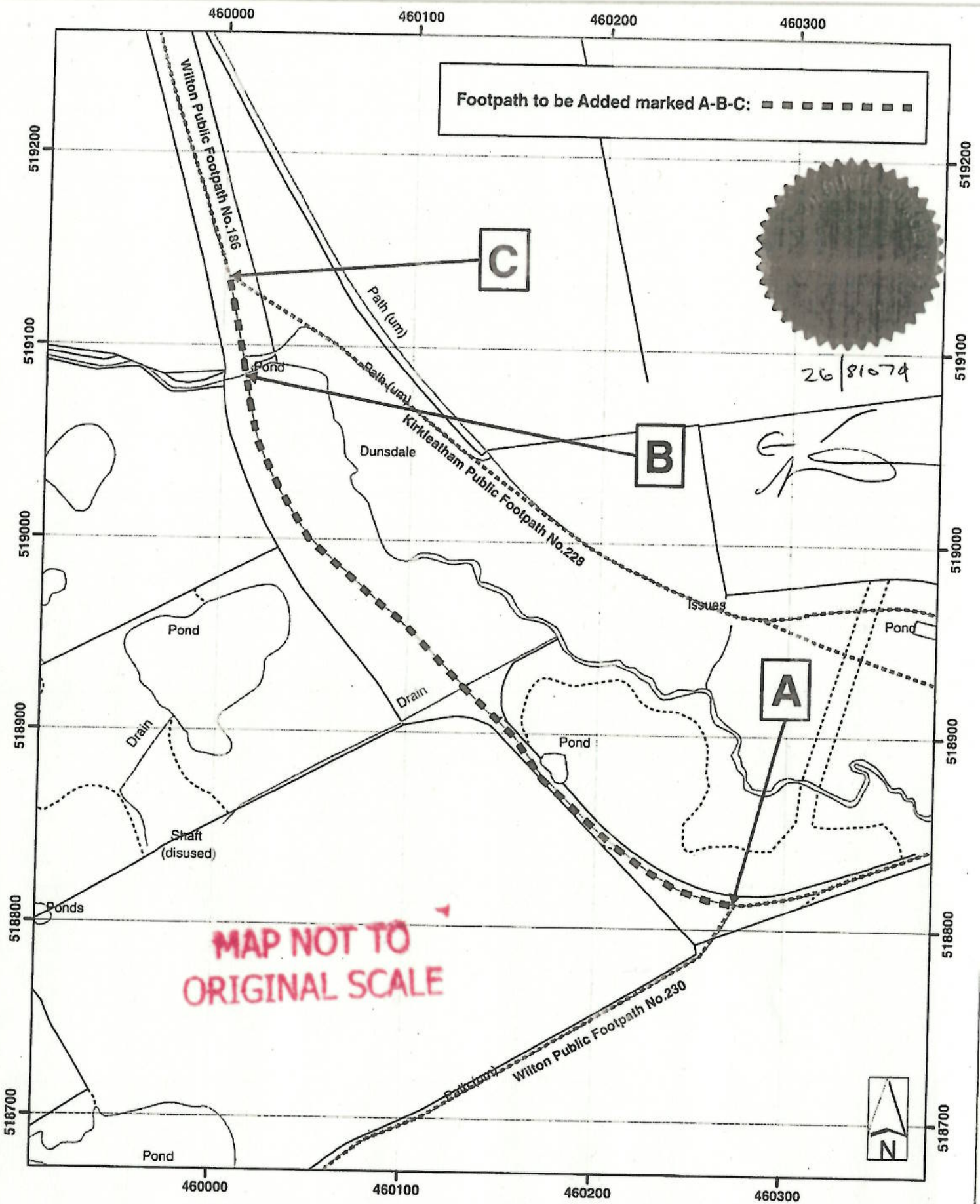
Jayne Breakwell

Sharon McDonald

Frank Waugh

Mrs Norma Carman

Elizabeth Anne Curtis



MAP NOT TO ORIGINAL SCALE



Section 53 Wildlife & Countryside Act 1981
The Redcar and Cleveland Borough Council Wilton Footpath No.231
Definitive Map & Statement Modification Order 2017.
 Scale = 1:2500

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