



Order Decision

Inquiry held on 31 October 2018

Site visit made on 30 October 2018

by Susan Doran BA Hons MIPROW

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

Decision date: 13 March 2019

Order Ref: ROW/3195150

- This Order is made under Section 53(2)(a) of the Wildlife and Countryside Act 1981 and is known as the London Borough of Hillingdon Definitive Map Modification Order 2017 No 3.
- The Order is dated 5 October 2017 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 were 4 objections outstanding at the commencement of the inquiry.

Summary of Decision: The Order is confirmed subject to modifications set out below in the Formal Decision

Procedural Matters

1. This case concerns the addition of a public footpath at Azalea Walk, Eastcote, running from the southern end of Azalea Walk between Nos. 43 and 46 (point A on the plan attached to the Order) and passing in front of a row of garages then through a gateway to its junction with Footpath R154 (point B).
2. I carried out an unaccompanied pre-Inquiry visit to the Order route. At the Inquiry, the case in support of the Order was made by the Applicant, and the case against was made by the Azalea Walk Residents Group ('the AWRG').
3. The preamble to the Order refers to Section 53(2)(a) but should refer to Section 53(3)(b). Further, the event under which it is made, Section 53(3)(c)(i), is incorrectly quoted. I agree with the parties that these are minor drafting errors and that no-one has been prejudiced, as the Order's purpose is clear. However, if I confirm it, I shall modify the Order as necessary. The Supporters requested a further modification to remove reference to a metal gate in the path's description. I consider this further below.

The Main Issues

4. Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 ('the 1981 Act') requires me to consider whether, on a balance of probabilities, the evidence shows that a footpath subsists over the Order route.

5. The Applicant relies on public use and the tests laid down in Section 31 of the Highways Act 1980 ('the 1980 Act') having been met. This requires me to establish the date when the public's right to use the Order route was brought into question. The evidence can then be examined to determine whether use by the public has been as of right (without force, secrecy or permission) and without interruption for a period of not less than 20 years ending on that date. If the tests are met, then a presumption of dedication arises, but this can be rebutted through actions sufficient to demonstrate a lack of intention to dedicate on behalf of the landowners during the 20-year period.

Reasons

When use of the Order route was brought into question

6. On 16 July 2012 a gate was locked at point B. This followed notices in early July advising a fence and locked gate were to be installed. It was the locking of the gate that led some users to seek its removal, followed by submission of the definitive map modification application.
7. Prior to this, in February 2012, a letter had been sent by the AWRG to residents of the estate advising it was their intention to install a fence and gate at point B, the latter to be locked. There is nothing to suggest this letter came to the attention of non-resident users.
8. Nevertheless, there is nothing to suggest that the residents of Azalea Walk had a private or permissive right to use the Order route, albeit some believed they did. Garage owners were permitted to pass over the land - they had a right to access their garage and to grant permission to others to access their garage - but there is nothing to indicate that other residents collectively or individually enjoyed such rights. I heard from 2 users and former residents of Azalea Walk neither of whom had been informed of any private or permissive right when buying their properties. On balance, I consider it more likely than not that the residents did not enjoy a private right of access over the Order route through their property deeds (unless expressly conveyed or granted). As such, I would regard the residents claiming use here as 'the public'.
9. I consider the letter demonstrated a lack of intention to dedicate the Order route as a public right of way and at the same time came to the attention of at least some of the users, as residents of Azalea Walk, thereby bringing the public's right to use the way into question. This gives a 20-year period of February 1992 to February 2012 to consider.

Use by the public

10. Some 39 people claimed use during the 20-year period. I heard from 11 witnesses. I attach the greatest weight to the first-hand evidence that has been subject to testing through the Inquiry process.
11. As well as their own use, users had seen other people they did not know on the Order route, perhaps monthly, or people who were not residents of Azalea Walk more regularly, for example school children, people carrying shopping and dog walkers. Witnesses spoke of having themselves been seen there by others, including more likely than not by the owners of the garages,

although few witnesses had seen these in use. Most used it alone, some with other people including a rambling group, or spoke of its use by family members.

12. It was used as a short cut, for example by office workers to get from High Road to the shops in Eastcote via Footpath R154, to get to Eastcote station, to visit the Park, to go shopping and access other local facilities, to visit friends, as part of a circular walk, taking children to school, for leisure, or to and from Blackhorse Parade.
13. One witness had previously lived on Azalea Walk (towards the High Road end) and had been told by the vendor that the Order route 'had always been open', whilst other local people had confirmed it had been in use for many years, indicating residents from other nearby streets used it. Others had learnt about it from friends or neighbours.
14. None spoke of using force to access it during the 20-year period. Many referred to the gap at B from the existing public footpath leading to the garages and onto Azalea Walk, which was described as wide enough to push a 'buggy' through. Several described a 'step' or change in the level of the surface here. None spoke of having been challenged in their use of the Order route until after 2012. None recalled having seen any signs. There is evidence that some use continued after 2012, although this reflects a period when the lock and/or gate had been removed for a short time.
15. Claimed use covered periods commencing before the 20-year period (from 1969, the later 1960s/early 1970s, 1978, 1985 and 1986), and during it, from 1994, 1997, 1999 and 2009. Frequency ranged from 300-400 times a year, twice a day to and from work, at weekends, up to 4 times a week during term times, weekly, or more often, 20-30 times a year, 30-35 times a year, 30-50 times a year, between 2 and 4 times a month, and occasional use. For many their pattern of use altered over the years as children grew up, working arrangements altered, or they retired. The time of day also varied with use taking place during the lunch hour or mid-morning on weekdays and occasionally on Saturdays, any day of the week, at any time of the day or early evening, sometimes late in the evening. Such patterns of use lead me to conclude that use during the 20 year period was open.
16. As stated above (paragraph 8), some Azalea Walk residents believed permission to use the Order route had been conveyed by the free holder or lease holder or was in exercise of private rights set out in property deeds. Some had been told the garage area was private, but that residents of Azalea Walk had permission to walk through it. However, the available evidence points to individual garage owners having rights to access their garage and to grant permission to others to access it. It follows in my view that the use attested to by residents and/or former residents amounts to use by the public without permission.
17. I find the pattern of use described above was frequent and regular throughout the 20-year period. This contrasts with the view maintained by some that use during this time was relatively light or infrequent, although it was not possible to differentiate between that by residents and by the public. It was acknowledged that use had increased with the development of nearby housing from 2006. I accept that it would not always have been obvious if

users were residents of Azalea Walk or people who did not live there. Also, some of those who witnessed little use, and who were out at work during the day, would not have been there to observe patterns of use. On the available evidence, I do not subscribe to the view that claimed use is insufficient to give rise to a presumption of dedication.

18. On balance, I conclude that use was as of right and without interruption during the 20-year period and of sufficient quantity and quality to satisfy the tests.

The evidence and actions of the landowners

19. There was some confusion regarding landownership at B: it may form part of the freehold of No.34 Azalea Walk or fall within a larger freeholding whose agents support the Order. As for the remainder of the Order route, there are several freeholders and some leaseholders, mainly for the garages. In any event, the land crossed by the Order route is privately owned, although this would not prevent a public right of way having become established subject to the tests being met.
20. Landowners had lived in Azalea Walk for varying periods from 1967, 1973 and 1976 and included owners or lessees of the garages from 1997. The residents of Azalea Walk, including No.34, and the main freeholder were aware that the Order route was being used by the public. One resident had spoken to people walking past from his front garden and told them it was private property, although this was not on the Order route.
21. The February 2012 letter sent to residents by the AWRG confirmed that access to Footpath R154 had been provided in the mid-1960s when the estate was built, but that the gate there had fallen into disrepair and had been removed in the 1980s, leaving a gap. The need to reinstate the gate at B had arisen over concerns relating to anti-social behaviour in more recent years. I consider the 2012 letter demonstrated there was no intention on behalf of those who owned land crossed by the Order route to dedicate it. This included 2 of the garage owners. However, whilst one said she had no intention to dedicate her land for use by the public, there is nothing to indicate that such an intention was effectively communicated to users during the 20-year period.
22. Similarly, there is nothing to indicate that any notices directed at the public were in place prior to those put up in or around July 2012. Residents believed that covenants and restrictions relating to the estate prevented the erection of signs, for example those relating to tradesmen, or property sales, although this may not have been relevant in terms of the 1980 Act¹. I accept that it would not have been possible for access to the garages to have been blocked as a means of preventing or challenging public use.
23. On balance I find that there is no, or insufficient, evidence on behalf of the landowners to demonstrate a lack of intention to dedicate the Order route during the 20-year period.

¹ Section 31(4)

Metal Gate

24. There is no evidence that a metal gate (nor any gate) was present during the 20-year period in question. This is supported both by the 2012 letter to residents and the recollections of witnesses who described a dilapidated gate in the early years after Azalea Walk was built. It follows that, if confirmed, the Order should be modified to remove reference to the gate, since none existed at the relevant time.

Conclusions on presumed dedication

25. I have concluded that during the relevant 20-year period use was as of right and without interruption thereby raising a presumption of dedication. Further, the actions of the landowners during this period were insufficient to rebut that presumption. It follows that the necessary tests are met.

Other matters

26. Concerns were raised in submissions about the desirability and suitability of the Order route as a public right of way, alleged anti-social or criminal behaviour, a reduction in property values, and so forth. Whilst I understand these issues and their importance to those raising them, in reaching my decision I am unable to take them into account under the legislation. It follows that I have not done so. Neither is the existence of alternative routes a material factor.

Conclusions

27. Having regard to these and all other matters raised both at the Inquiry and in written representations, I conclude that the Order should be confirmed with modifications that do not require advertising.

Formal Decision

28. I confirm the Order subject to the following modifications:

- In the preamble to the Order, in line 2, replace "(a)" with "(b)", to read "Section 53(2)(b)"
- In the preamble to the Order, at the end of the first paragraph, delete "of a hitherto unrecorded right of way" and replace with "which (when considered with all other relevant evidence) shows that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates"
- In Parts I and II of the Schedule to the Order, in the description of the path, delete the words "through a metal gate onto" and replace with "on"

S Doran

Inspector

APPEARANCES

Order Making Authority

Richard Kane

London Borough of Hillingdon

Supporters

Sue Rumfitt

Sue Rumfitt Associates, *representing* Stuart Taylor (Applicant)

who called

Vivienne Colbeck

Jeffrey Gillet

Hilary Gotham

George Holland

Janet Ingram

Philip Ingram

Sylvia Ladyman

Joel Lindop

Renee Marshall

Sandra Morris

Stuart Taylor

Objectors

Robin Carr

Robin Carr Associates, *representing* the Azalea Walk Residents Group

who called

Chris Calver

Alan Gibson

Helga Mann

Jackie Ricketts

Helen Ronchetti

Others who spoke in support

Richard Dalling

John Coombe

DOCUMENTS

1. Caselaw submitted by the Supporters: R (oao Godmanchester Town Council and Drain) v Secretary of State for the Environment, Food and Rural Affairs [2007] UKHL 28; R v Inhabitants of the Parish of St Benedict, Cambridge [1821]; R v Inhabitants of Bradfield [1874]; Holloway v Egham UDC [1908] Ch D; Mildred v Weaver [1862]
2. Front cover of Halsbury's Laws of England, Fifth Edition 2012, Volume 55, submitted by the Supporters
3. Signed Statement of George Holland
4. Statement of Richard Dalling
5. Closing submissions on behalf of the Azalea Walk Residents Group
6. Closing submissions on behalf of the Applicant



Point B
Grid Ref: 5106 1883

Point A
Grid Ref: 5106 1883



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