



Order Decision

Inquiry held on 10 October 2017

by Mark Yates BA(Hons) MIPROW

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

Decision date: 12 March 2019

Order Ref: ROW/3168851M

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the 1981 Act") and is known as the Hertfordshire County Council (Kings Langley 47) Modification Order 2016.
- The Order was made by Hertfordshire County Council ("the Council") on 6 May 2016 and proposed to add a footpath ("the claimed route") to the definitive map and statement, as detailed in the Order Map and Schedule.
- The Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.
- In accordance with Paragraph 8(2) of Schedule 15 to the 1981 Act I have given notice of my proposal to confirm the Order with modifications.

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

Procedural Matters

1. This decision should be read in conjunction with my interim decision ("ID"), dated 14 November 2017, with the numbers in square brackets representing particular paragraphs in the ID. I proposed to confirm the Order subject to modifications to the alignment¹ and width of the claimed route.
2. Correspondence has been received from Mrs McWilliams which I deemed on balance to be an objection to the modified and unmodified parts of the Order. I have considered the objection following an exchange of written representations between the parties.
3. I addressed the Council's statement of case for the inquiry in the ID [2]. The statements of the Council's witnesses were also submitted in advance of the inquiry. In terms of the minutes of the Lady Meadow Road Association Annual General Meetings, these were copied and circulated at the inquiry. An adjournment was taken to give the parties an opportunity to look at them. The extent to which Mrs McWilliams attended these meetings was immaterial as she acknowledged that the claimed route was not discussed [13].
4. A former landowner (Mr Porter) was unable to attend the inquiry and there was no practical means of hearing evidence from him by telephone. He has nonetheless provided additional comments in response to the ID.

Main Issues

5. I outlined the main issues in relation to the Order, as made, in the ID [4-6]. In reaching my final decision I shall have regard to the further submissions and new evidence provided as well as the evidence presented at the inquiry.

¹ In the locality of point A on the Order Map

Reasons

When the status of the claimed route was brought into question

6. I concluded in the ID that it was the application of 2015 that served to bring the status of the route into question [15]. This conclusion was reached following consideration of the evidence presented at the inquiry and the views of the parties. No new evidence or argument has been provided to persuade me that I should take an earlier date as bringing the status of the claimed route into question.

Evidence of use during the relevant period

7. The issue to be determined from the evidence is whether there was use by the public as of right during the relevant period (1995-2015). In terms of Mrs McWilliams concerns about being able to address the evidence for this period, she has had an opportunity to do so as part of the exchange of written representations.
8. I have looked at the user evidence again in light of the assessment undertaken by Mrs McWilliams and her comments regarding particular users. However, it remains my view that the written evidence endorsed by the oral evidence is supportive of use of the claimed route throughout the relevant period. I find this to be the case irrespective of the alleged motives behind the application. I note that Mrs McWilliams expresses concerns about the way the nine written statements were compiled but seven of these people gave evidence at the inquiry and this was subjected to cross-examination. The applicant (Mr Moore) has provided further information in support of his use of the claimed route.
9. Mr Porter has clarified that he generally ploughed to the edge of the field and the evidence at the inquiry pointed to a narrower width than the one specified in the Order [23]. Whilst Mrs McWilliams questions the use of such a path, for instance in the dark and during inclement weather, this will be no different to other field edge footpaths.
10. I considered that limited weight should be attached to the aerial photographs [17]. There are some signs of wear visible in the gaps between the trees that could correspond to the claimed route on the photographs of 2000 and 2010. On this point, I note that Mrs McWilliams believes that the route is not shown and she refers to the presence of other features. She also draws attention to the statement of Mr Higgins that he mowed the field in 2002 and 2003 and saw no sign of a path over the claimed route. However, this evidence does not in my view outweigh the clear evidence of use that has been provided.
11. In respect of whether the user was as of right, I addressed the issue of permission generally in the ID [24]. I also addressed the licence produced by Mrs McWilliams [25]. The permission granted by Mr Porter did not apply to the people who have provided user evidence and included other activities. It remains my view that the user was as of right.
12. I find on balance that the evidence is sufficient to raise a presumption of the dedication of a footpath.

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

13. Mrs McWilliams confirms that she has owned the land crossed by the claimed route since 1998. She also highlights the position of the public footpaths in respect of her land. In terms of the notices [10], it may be more appropriate to state that two of these were placed adjacent or near to the existing public footpaths. Mrs McWilliams makes the point that the public footpaths were well marked and people straying from them knew they were trespassing. Nonetheless, I am not satisfied on balance that the wording and locations of the notices were sufficient to inform the public that there was a lack of intention to dedicate the claimed route.
14. There is no evidence of Mr Porter taking action to challenge or prevent use of the claimed route. Mrs McWilliams now says that she asked people to stay on the public footpaths at the annual general meeting held in 2008. This is a departure from the evidence she gave at the inquiry and is not supported by any other evidence.
15. In light of the above, it remains my view on balance that no landowner took action during the relevant period that was sufficient to demonstrate a lack of intention to dedicate a public footpath.

Other Matters

16. In reaching my decision I cannot have regard to the suggested alternative route put forward by Mrs McWilliams.

Conclusion

17. Having regard to these and all other matters raised at the inquiry and in the written representations I conclude that the Order should be confirmed with the modifications proposed in the ID.

Formal Decision

18. I confirm the Order subject to the following modifications:
 - Delete the grid reference specified for point A in the descriptions in Parts I and II of the Order Schedule and insert "*TL0606 0398*".
 - Delete the text after the heading "*Width*" within the descriptions for the claimed route in Parts I and II of the Order Schedule and insert "*1.5 metres*".
 - Show the revised section on the Order Map and amend the map key accordingly.
 - Remove the original section from the Order Map.

Mark Yates

Inspector

This Plan forms part of the Hertfordshire
County Council (Kings Langley 47)
Modification Order 2016

Existing footpath
Footpath to be added



MAP NOT TO
ORIGINAL SCALE

Shown on DM sheet no. 75

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A41

