
Order Decision

Inquiry held on 18 June 2019

by Barney Grimshaw BA DPA MRTPI(Rtd)

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

Decision date: 12 July 2019

Order Ref: ROW/3206860

- 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 and Cleveland Borough Council Skelton Public Footpath No.232 Definitive Map & Statement Modification Order 2018.
- The Order is dated 19 March 2018 and proposes to modify the Definitive Map and Statement for the area by adding a footpath running between High Street Lingdale and Skelton Footpath No.31, as shown on the Order Map and described in the Order Schedule.
- There were 2 objections outstanding at the commencement of the inquiry.

Summary of Decision: The Order is not confirmed.

Procedural Matters

1. I held a public inquiry into this Order on Tuesday 18 June 2019 at Redcar Leisure and Community Heart. I made an unaccompanied site inspection on Monday 17 June when I was able to view the whole of the Order route. I made a further inspection of part of the route on Tuesday 18 June accompanied by parties who appeared at the inquiry.
2. Redcar and Cleveland Borough Council, the Order Making Authority (OMA), decided to take a neutral stance in respect of the Order and support for it was led by the applicant for the addition of the footpath, Mrs Judith Barber.
3. In writing this decision I have found it convenient to refer to points marked on the Order Map. I therefore attach a copy of this map.

The Main Issues

4. The requirement of Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 (the 1981 Act) is that the evidence discovered by the surveying authority, when considered with all other relevant evidence available, should show that a right of way that is not shown on the definitive map and statement subsists along the Order route.
5. Much of the evidence in this case relates to usage of the route. In respect of this, the requirements of Section 31 of the Highways Act 1980 (the 1980 Act) are relevant. This states that where it can be shown that a way over land has been enjoyed by the public as of right and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to

dedicate it. The period of 20 years is to be calculated retrospectively from the date when the right of the public to use the way was brought into question.

6. Common law also requires me to consider whether the use of the path and the actions of the landowners have been of such a nature that the dedication of the path by the landowners can be inferred.

Reasons

7. No documentary evidence supporting the confirmation of the Order was submitted.
8. Accordingly, the determination of this Order depends entirely on the evidence of public use of the claimed route that is available and whether this indicates that a public footpath can be presumed to have been dedicated in accordance with the provisions of the 1980 Act (statutory dedication) or inferred at common law.

Statutory Dedication

Date when public use was brought into question

9. It was common ground between parties that a fence and gate were erected across the claimed route between Points A and B in late 2016 and soon after then the gate began to be locked. This action clearly brought public use of the route into question and therefore the relevant period of 20 years public use which would raise a presumption that this route has been dedicated as a public footpath in accordance with the provisions of the 1980 Act runs from late 1996 to late 2016 in this case.
10. It was also common ground that a fence had been in place across the Order route at the boundary of the field to the west of Point B since before 1996 and continually to the present day. However, it was disputed as to whether this brought public use into question as it was said to be easily climbed over and not a significant obstruction to public access.

Evidence of Users

11. Thirteen User Evidence Forms (UEFs) were submitted in support of the Order along with 2 Occupier Evidence Forms completed by occupants of properties adjacent to the Order route. These describe use of the route between 1970 and 2016 when it was obstructed by the new gate and fence.
12. Nine people claimed to have used the route throughout the relevant 20-year period and six to have used it or seen it being used for part of that period. The frequency of use claimed varied from occasional to daily.
13. It was suggested by objectors that many users did not follow the Order route but roamed around the field crossed by it exercising their dogs or allowing children to play. However, all the UEFs had signed maps attached which showed the Order route as the route they used and the user who appeared at the inquiry stated that this was the route she used and had seen others use on a regular basis.
14. Overall, it is my view that the evidence of use submitted could be sufficient to raise a presumption that the route has been dedicated as a public footpath so long as the use can reasonably be regarded as having taken place 'as of right'

as required by the 1980 Act and the actions of landowners did not indicate a lack of intent to dedicate a right of way.

15. It was accepted by users that access to the field crossed by the path involved climbing a fence. Such action would normally be regarded as use by force rather than as of right. It appears that the fence in question was not substantial and was relatively easy to climb, particularly with the aid of a large stone placed by someone, possibly to facilitate access. However, the landowner stated that he had not placed the stone or modified the fence in any way to enable public access or provided any stile or other means of access as he would have done if he had intended to allow the public to enter the field.

Actions of landowners

16. As already mentioned, there was a fence across the route throughout the relevant 20-year period. The landowner felt that this adequately indicated his lack of intent to dedicate a public right of way.
17. The landowner stated at the inquiry that he had on occasion within the relevant 20-year period placed signs on the Order route indicating that the land was private. However, these had been removed within a short time and after a while he stopped replacing them. Users of the route stated that they had not seen any signs.
18. In addition, the landowner stated that he had given permission to one person to enter the field to exercise his dog and in return to inform him if any of his cattle required his attention. He also stated that he had challenged people in the field on occasion but admitted that this was usually people who were not on the claimed route.

Conclusions regarding Statutory Dedication

19. Although it is evident that the Order route was used by the public over a period of more than 20 years, this use involved climbing over a fence. Although this was not a high fence, it did not incorporate a stile or other means of facilitating passage over or through it. There is no evidence to suggest that a large stone was provided by the land owner to assist access and it seems more likely that it was placed by a user to assist climbing the fence. There is in fact no evidence of any action by the landowner to indicate an intention to dedicate the route as a public right of way.
20. In these circumstances it would in my opinion be unreasonable to presume that the claimed route has been dedicated as a public footpath in accordance with the provisions of the 1980 Act. The presence of the fence throughout the relevant 20-year period means that use of the route was by force rather than as of right and also indicated the landowner's lack of intent to dedicate a public right of way.

Common Law

21. An inference that a way has been dedicated for public use may be drawn at common law where the actions of landowners (or lack of action) indicate that they intended a way to be dedicated as a highway and where the public have accepted it.

22. In this case, there is some evidence of public use of the Order route over a lengthy period but no substantive evidence of action by the landowner that would indicate an intention to dedicate it as a public right of way. It would therefore be inappropriate to infer such a dedication at common law.

Other Matters

23. It was suggested by the applicant that some people who were occupants of garages or users of the pigeon club hut adjacent to the Order route had been discouraged from supporting the Order as they had been advised that if it was confirmed their rent would be increased. At the inquiry, the landowner stated that no rent was currently paid in respect of the garages or pigeon club hut and he had never indicated that he would begin to charge rent. In addition, the occupants of all the garages have signed a petition stating that they oppose the Order. In these circumstances, whilst it is unfortunate if anyone has been discouraged from supporting the Order on the basis of inaccurate information, this is not a matter to which I can afford any weight in reaching my decision.

24. The Order specifies a width of 1.0m throughout the Order route. At the inquiry evidence was presented to the effect that the gap between the two most northerly garages is slightly less than 0.7m (27") wide and is further restricted by protruding foundations and overhanging roofs. The Order map is indistinct in this area but I note that all of the plans submitted with UEFs show that the route used passed between the second and third most northerly garages where the gap is roughly 1.0m wide. I have therefore taken this as being the correct route of the claimed path.

25. It was suggested at the inquiry that it was inappropriate for a public footpath to pass through the garage area and would be prejudicial to the security of the garages. It was also stated that a more suitable route was available in the near vicinity. I understand the concerns of garage users but as these relate to matters outside the criteria set out in the legislation relevant to orders of this type, I have not afforded them any weight in reaching my decision.

Conclusions

26. Having regard to these and all other matters raised, I conclude that the Order should not be confirmed.

Formal Decision

27. I do not confirm the Order.

Barney Grimshaw

Inspector

APPEARANCES

For the OMA

Tony Gordon Rights of Way Officer, Redcar and Cleveland Borough Council

Supporters

Judith Barber Applicant and path user

Objectors

John Reveley Landowner

David Williams Tenant of adjoining property

Interested Parties

Cllr Steve Kay Ward Councillor

DOCUMENTS

1. Statement of Case of Redcar & Cleveland Borough Council (RCBC) with file of supporting documents.
2. Statement of Judith Barber.
3. Statement of Eleanor Barber.
4. Statement of Mr & Mrs Williams.
5. Opening Statement, RCBC.
6. Additional photographs, D Williams.

