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## Order Decision

Site visit made on 2 September 2019

**by Barney Grimshaw BA DPA MRTPI(Rtd)**

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

**Decision date: 03 October 2019**

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### **Order Ref: ROW/3211454**

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as the North Yorkshire County Council, Footpath No.05.39/59 from Strikes Lane to Raven Stones, Sutton-in-Craven Modification Order 2011.
- The Order is dated 28 April 2011 and proposes to modify the Definitive Map and Statement for the area by adding a footpath running between Strikes Lane and Raven Stones as shown on the Order Map and described in the Order Schedule.
- There were 2 objections outstanding when North Yorkshire County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

### **Summary of Decision: The Order is confirmed.**

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#### **Procedural Matters**

1. 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.
2. I attempted to make an unaccompanied site inspection on 2 September 2019 but was obstructed by a locked gate at Point A and was only able to view part of the Order route. Nevertheless, I am satisfied that I can make my decision without the need for a further inspection.

#### **The Main Issues**

3. 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.
4. All 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, other than a way of such character could not give rise at common law to any presumption of dedication, 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.

5. 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**

6. No documentary evidence supporting the confirmation of the Order was submitted.
7. 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 to have been dedicated at common law.

### **Statutory Dedication**

#### *Date when public use was brought into question*

8. In 1985, part of the land crossed by the Order route changed hands and it seems that the new owner began challenging users of the route. Fencing was also erected and a sign reading "Private No Trespassers" put up. These events led to an application being made for a route to be recorded and brought public use of the route into question.
9. The route then applied for included the current Order route from Strikes Lane to Raven Stones but then ran on to Sutton Lane.
10. Accordingly, 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 1965 to 1985 in this case.

#### *Evidence of Users*

11. Fifteen User Evidence Forms (UEFs) were submitted in 1985 with the original application. All but one of these described the route used as running from Strikes Lane to Sutton Lane by way of Raven Stones. The other simply referred to Strikes Lane to Raven Stones. Unfortunately, none of these UEFs included a map and consequently it is not known whether the route used included that in the current Order. Accordingly, I can give little weight to these forms although they do serve to indicate that a route from Strikes Lane to Raven Stones had been used prior to 1985.
12. A further 24 UEFs were submitted in 2009/10 including 4 completed by people who had submitted forms in 1985. These describe use of the route from Strikes lane to Raven Stones or the "Big Rock" over a period from the 1930s until 1985 or later.
13. Three of the forms indicated that permission had been received for use of the route which consequently would not have been 'as of right' as required by the 1980 Act. On the remaining 21 forms, 9 people claimed to have used the route throughout the 20 year period 1965 to 1985 and 7 for part of that period. The other 5 had stopped using it before 1965.

14. The frequency of use claimed varied from once or twice per year to weekly or more often. However, roughly half of the people completing UEFs claimed only to have used the route once or twice per year.
15. Although the later forms had maps attached, not all of these had the route used marked and others indicated routes that differed from the Order route to some extent. However, this is perhaps not surprising given that users were being invited to plot their route on a small scale plan over 20 years after they had stopped being able to use it. In these circumstances it can be difficult to ensure that the correct route is recorded but I have no evidence to suggest that the Order Making Authority has not done so in this case.

#### *Actions of landowners*

16. I have seen no substantive evidence of any action taken by a landowner prior to 1985 which would indicate a lack of intention to dedicate the Order route as a public footpath.

#### *Conclusions regarding Statutory Dedication*

17. Although the evidence of public use of the Order route is to some extent limited it nevertheless indicates a significant amount of public use of the Order route throughout the period from 1965 to 1985 and there is no substantive evidence of action by landowners to indicate a lack of intention to dedicate a public right of way during the same period. In these circumstances, it is my view, that on the balance of probabilities, dedication of the Order route as a public footpath can be presumed in accordance with the provisions of the 1980 Act.

#### **Common Law**

18. 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.
19. In this case, the available evidence suggests that members of the public used the route from Strikes Lane to the Raven Stones over a lengthy period without any challenge by the landowner. However, in the light of my conclusion regarding the statutory dedication of the route, there is no need to pursue the possibility that dedication might also be inferred at common law any further.

#### **Other Matters**

20. It is argued on behalf of an objector that the Order route is not of such character that public use could give rise at common law to any presumption of dedication as it terminates at a point to which the public have no right of access. The judgement in the *Kotegaonkar* case<sup>1</sup> is cited in support of this argument. However, that case concerned a route that was not connected to a point accessible by the public as of right at either end and, in my view specifically relates to such routes. In this case, the Order route connects to a public highway at one end and, although it would be a cul de sac path, there is no reason in law to prevent such routes becoming highways in appropriate circumstances.

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<sup>1</sup> *Kotegaonkar v SSEFRA and Bury MBC* [2012] EWHC (Admin)

21. Objections also referred to the possibility that, if the Order is confirmed, more pedestrians will be likely to use Strikes Lane which is narrow and has no footway. It was also suggested that confirmation of the Order could have an adverse effect on wildlife, particularly in the section where the route passes through a disused quarry. I understand these concerns but, as they lie outside the criteria set out in the relevant legislation, I can give them no weight in reaching my decision.

### **Conclusions**

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

### **Formal Decision**

23. I confirm the Order.

*Barney Grimshaw*

**Inspector**

