
Order Decision

Inquiry opened on 17 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: 24 October 2019

Order Ref: ROW/3200522

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as The Lancashire County Council Public Footpath at Elmers Green, Skelmersdale, West Lancashire Borough Definitive Map Modification Order 2016.
- The Order is dated 2 November 2016 and proposes to modify the Definitive Map and Statement for the area by adding a public footpath running between Elmers Green and Footway F2696, as shown on the Order Map and described in the Order Schedule.
- There were 7 objections outstanding at the commencement of the inquiry.

Summary of Decision: The Order is confirmed.

Procedural Matters

1. I held a public inquiry into this Order on Tuesday 17 and Wednesday 18 September 2019 at Tanhouse Community Centre, Skelmersdale. I made an unaccompanied site inspection on Monday 16 September when I was not able to walk the Order route but could view it from both ends. It was agreed by all parties at the inquiry that a further accompanied visit was not necessary
2. 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

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 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

Documentary Evidence

6. There is no evidence to suggest that the Order route existed before the development of the houses in this part of Elmers Green in 1972.
7. The land on which the cul de sac was built was acquired from the Development Corporation by a development company, Ashton & McCaul Ltd, which built the houses and constructed the road and footways. When the houses were sold, the strip of land over which the Order route runs was not included within the adjacent plots (Nos. 14 and 16). Lancashire County Council, the Order Making Authority (OMA), suggests that this indicates that it was intended that this strip would be used to provide a footpath link from the cul de sac to Footpath F2696, the Hillside Footpath. A copy of Skelmersdale Development Corporation Footpath Register (undated) shows the route by means of a coloured broken line which was said to indicate a proposed footpath.
8. The current ownership of the strip of land is not known. The most likely explanation for this is either that it was retained by the development company which subsequently ceased trading or was retained by the Development Corporation which ceased to exist in 1985.
9. A 25" Ordnance Survey (OS) map published in 1976 shows the land between Nos 14 & 16 Elmers Green open at the western end but crossed by a solid line at the eastern end. This would indicate a fence or barrier of some kind which may have obstructed access. OS maps published in 1993 and 2001 include a similar solid line. A digital OS image from 2006 shows the Order route clearly defined with open access at both ends. The OS base maps used in Land Registry Title documents for adjacent properties also showed the solid line.
10. The OMA argued that it was likely that the area now occupied by Nos 2-22 Elmers Green would have been fenced off while development was taking place and that this would explain a solid line being shown across the Order route at that time. However, it is not known when the fence may have been removed as it is not known whether the OS maps of 1976, 1993 and 2001 were based on new surveys or merely reproduced information previously surveyed. Alternatively, it was possible that there may have been a gate permitting pedestrian access. It was also pointed out that a 2019 OS digital image still showed the Order route as an open and available surfaced route even though it is known to have been covered over and blocked since 2014. This was said to illustrate the fact that all the information on OS maps might not be up to date. On the other hand, objectors argued that the maps indicated that the route had not been available until after 2001.
11. Photographic evidence from 2009 shows the Order route surfaced with tarmac and with staggered barriers of the type used to control bicycles or motorised vehicles. No records have been found of when and by whom the surfacing and erection of barriers was carried out. However, the barriers were said to be similar to those used elsewhere in the town and evidence of users and a long

term resident of the area suggests that the work was undertaken before 1994 and possibly before 1985 when the Development Corporation ceased to exist.

12. Adoption records from Skelmersdale Corporation dated 1982 do not show the Order route but do show a proposed cycle track along the line of the current Hillside Footpath with a footway alongside it from Elmers Wood Road as far as Point B. The OMA suggested that this would only make sense if the footway linked with another footpath at Point B, namely the Order route.
13. The route was not recorded on the original definitive map (1955) or the review (1975) nor has it been included in the list of highways maintainable at public expense.

Conclusions regarding Documentary Evidence

14. When the houses in the cul de sac were built a strip of land between Nos 14 and 16 was not included within the neighbouring plots. OS maps indicate that there was some sort of boundary structure across this strip of land at Point B in 1976 which was subsequently removed. It is not known whether this structure prevented public access or when it was removed.
15. Nevertheless, at some time the boundary structure was removed and a tarmac path was constructed and staggered barriers erected. It is not known by whom this work was undertaken but it seems unlikely that anyone other than the Development Corporation or local council would have done it.
16. On balance, it seems most likely that the strip of land was retained in order to provide a link to the Hillside Footpath and that this was subsequently constructed.

Statutory Dedication

Date when public use was brought into question

17. It was common ground that the Order route was obstructed by a fence at Point B in 2014 and this action triggered the claim for it to be recorded as a public footpath.
18. Accordingly, I have taken 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 as running from 1994 to 2014 in this case.

Evidence of Users

19. Eighteen User Evidence Forms (UEFs) were submitted in support of the Order. In addition, 13 people submitted statements describing their use of the route, 8 of whom had also completed UEFs. Three people gave evidence at the inquiry regarding their use of the route, all of whom had previously completed a UEF and/or a statement. Accordingly, I have been able to consider evidence of use provided by a total of 23 people.
20. The use described runs from the 1970s until 2014. Eleven people claimed to have used it throughout the period from 1994 to 2014 and 11 for part of that period. One person had only used it prior to 1994.

21. The frequency of use described varied from several times per week to very occasionally. Users generally said they had also seen others using the path. Most users did not specifically refer to the nature of the route but in statements and at the inquiry a number of users and others indicated that the tarmac surface had been laid before 1994.
22. Users stated that they had not been challenged or obstructed in their use prior to 2014 nor had there been any signs restricting access.
23. Objectors pointed out some inconsistencies in the user evidence and also claimed that the route had been so overgrown at times that it would have been impassable. This was disputed by users who accepted that there had been moss on the tarmac and some overgrowth but never enough to prevent passage even though it was accepted that at times some people may deviated from the route on to the garden of No.14.

Actions of landowners

24. No substantive evidence of action taken by landowners which would indicate a lack of intention to dedicate the Order route as a public footpath has been submitted. In fact, the identity of the landowner is not known.

Conclusions regarding Statutory Dedication

25. A significant quantity of evidence of public use of the Order route took place throughout the period from 1994 to 2014 which is sufficient to raise the presumption that it has been dedicated as a public footpath in accordance with the provisions of the 1980 Act. No substantive evidence that might rebut this presumption has been submitted and accordingly I conclude that the route has been dedicated as a public footpath as a result of use by the public during the period 1994 to 2014.

Common Law

26. 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.
27. In this case, there is evidence of public use of the route over a lengthy period and no evidence of action by a landowner to discourage such use. In fact, someone, which may well have been the landowner, constructed a surfaced path to accommodate users. It might therefore be reasonable to infer that the route has been dedicated as a public footpath at common law. However, in the light of my conclusion regarding statutory dedication it is not necessary to pursue this possibility further.

Other Matters

28. Objectors argued that there was no need for a footpath on the Order route and expressed concern that the existence of the path in the past had facilitated crime and anti-social behaviour in the area which had significantly reduced since it had been closed. I understand the argument and the concern but as they relate to matters outside the criteria in the relevant legislation, I am unable to give them any weight in reaching my decision.

Conclusions

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

Formal Decision

30. I confirm the Order.

Barney Grimshaw

Inspector

DOCUMENTS

1. Statement of Case of LCC.
2. Proof of Evidence of Jayne Elliott, LCC.
3. Statements of Betty Crompton, Robert Ellis, Veronica Griffin, Linda Kelsall, Michael Kelsall, Stephen Kelsall, Terry Kelsall, Robert Pendleton, Allan Parkinson, Claire Robinson, Martyn Taylor, Kevin Wilkie and Julie Guratsky.
4. Additional Statement of Robert Ellis.
5. Extracts from Skelmersdale New Town Basic Plan 1975 and 1981.
6. Copy of Land Registry Title No. LA735995.
7. Statement of Case of Miss Kirk & Mr Kelly.
8. Proof of Evidence of Miss Kirk & Mr Kelly.
9. 5 photographs, Miss Kirk.
10. Statement of Case of Mr & Mrs Evans.
11. Proof of Evidence of Mr & Mrs Evans.
12. Statement of Case of Mr & Mrs Timson.
13. Proof of Evidence of Mr & Mrs Timson.
14. Closing Statement on behalf of objectors.
15. Closing Statement of LCC.

