
Order Decision

Site visit made on 3 February 2020

by Barney Grimshaw BA DPA MRTPI(Rtd)

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

Decision date: 11 February 2020

Order Ref: ROW/3224914

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Lincolnshire County Council (Amendment of Lindsey County Council (Rural District of Spilsby) Definitive Map and Statement – Evidential Events) (No 1) Modification Order 1988.
- The Order is dated 31 October 1988 and proposes to modify the Definitive Map and Statement for the area by adding a public footpath running between Orby Road and Faulkers Lane, Burgh Le Marsh, as shown on the Order Map and described in the Order Schedule.
- There were 8 objections outstanding when Lincolnshire County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is not confirmed.

Procedural Matters

1. I made an unaccompanied site inspection on 3 February 2020 when I was able to walk parts of the Order route and to view other sections from various points.
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. 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.

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. The Order was made in 1988 and unfortunately no record of the basis on which it was made by Lincolnshire County Council, the Order Making Authority (OMA), is currently available. There is also no record showing that all the legislative requirements were met. However, in the absence of any evidence to the contrary, it must be presumed that the Order was properly made and that the OMA was satisfied that there was at least a reasonable allegation that the Order route was a public footpath.
7. More recently the OMA has reviewed the available evidence relating to the claimed route and my assessment of this is summarised below. I also note that the OMA has itself concluded that the evidence is not sufficient to justify confirmation of the Order and has requested that it is not confirmed.

Documentary Evidence

8. Various early commercial maps such as Armstrong (1779), Cary (1787), Bryant (1828) and Greenwood (1830) do not show the route.
9. In the Inclosure Award of 1839, a short section of the Order route (Points C-D) is awarded as a 'Foot Road'. However, the award does not specify whether it is public or private.
10. Most of the Order route is shown on the 1888 Ordnance Survey (OS) map and the whole of it has been shown on OS maps from 1904 onwards. However, although OS maps provide good evidence of the physical presence of features shown at the time they were surveyed, they do not indicate whether routes shown were public or private.
11. 1910 Finance Act documents do not record any deduction from value in respect of rights of way for any of the hereditaments crossed by the Order route.
12. In the parish survey carried out in 1951 as part of the process of preparing the first definitive map, the Order route appears to have been claimed as a public footpath on the basis of general public usage. However, sections of it were described as being of no use or as ploughed up. The route was not subsequently shown on the first definitive map and there is no record of any objection having been made to its omission.
13. Highway maintenance records since 1929 do not include the Order route as being a public highway. In the A158, Burgh Le Marsh By-pass Side Roads Order 2004, which made provision for the way in which both public and private routes crossed by the proposed new road were to be dealt with, no mention is made of the Order route.

Conclusions regarding the Documentary Evidence

14. It would appear that the Order route existed from before 1904 but may have begun to be disused by the mid-20th century. However, there is little documentary evidence that the route was public and some that would suggest that it might not have been. On balance, it is my view that the documentary

evidence is insufficient to indicate that the route should be recorded as a public footpath.

15. 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

16. Fifteen User Evidence Forms (UEFs) were submitted in support of the application for the Order. These describe use of the route between 1900 and 1986. Unfortunately, none of the UEFs had a plan attached and many were also incomplete in other respects.
17. Eight of the forms were completed in 1970/71, two in 1974, two in 1986 and three were undated but probably completed in 1986. It is not known what events, if any, might have brought public use of the route into question at these dates.
18. As there are no plans accompanying the UEFs, it is not possible to be sure that the route taken between the end points described followed that of the Order route. In addition, some of the forms suggest that only part of the Order route may have been used and some suggest that more than one route may have been used. Some also refer to obstructions on the route and some were completed by people with connections to landowners such that their use may have been effectively by permission rather than 'as of right'.
19. Furthermore, some of the forms are unclear regarding the period of usage of the route and/or the frequency of use. However, as the forms were completed so long ago, the OMA has been unable to contact people to clarify the information provided.
20. Even if the inadequacies of the UEFs are ignored, it is not possible to identify a continuous 20 year period ending in 1970, 1974 or 1986 during which claimed use of the order route is sufficient in my view to raise a presumption that the route has been dedicated as a public footpath. Whichever period is considered there are years in which there is no substantive evidence of more than 2 or 3 people using the route.

Conclusion regarding Statutory Dedication

21. The user evidence that is available is insufficient to raise a presumption that the Order route has been dedicated as a public footpath in accordance with the provisions of the 1980 Act.

Common Law

22. 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.
23. In this case, there is limited evidence of public use of a route between Orby Road and Faulkers Lane over a lengthy period. However, the evidence is

unclear in several respects and, in particular, might not relate to the precise route shown in the Order.

24. Users reported the presence of stiles, footbridges and gates on their route and I saw some of these on my visit. It is possible that these were put in place by landowners to facilitate public use but there is no evidence to support this view. Also, some of the structures that I saw are not on the Order route.
25. Overall, it is my view that it would not be reasonable to infer that the Order route has been dedicated as a public footpath on the basis of the evidence that is currently available.

Other Matters

26. The OMA has drawn my attention to a number of points that would require modification of the Order if it were to be confirmed. However, in the light of my conclusions already reached, there is no need to pursue these matters further.

Conclusions

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

Formal Decision

28. I do not confirm the Order.

Barney Grimshaw

Inspector

