



Order Decision

Inquiry Held on 25 February 2020

Site visit made on 25 February 2020

by Susan Doran BA Hons MIPROW

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

Decision date: 27 March 2020

Order Ref: ROW/3228901

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as The Derbyshire County Council (Footpath from Moor Lane to Public Footpath No.19 – Parish of Kirk Ireton) Modification Order 2019.
- The Order is dated 24 January 2019 and proposes to modify the Definitive Map and Statement for the area by adding a public footpath as shown in the Order plan and described in the Order Schedule.
- There were 3 objections outstanding at the commencement of the inquiry.

Summary of Decision: The Order is confirmed

Procedural Matters

1. This Order concerns the addition of a public footpath (the Order route) between Moor Lane, Kirk Ireton (point A on the plan attached to the Order) and its junction with Footpath 19, Kirk Ireton (point B). The Order route follows a track affording access to 'Cottage in the Meadow' (the Cottage), formerly Moorside Cottage.
2. Concerns were raised by those opposing the Order at the Inquiry (the Objectors) that they had not been fully aware of the matter when the application to add the Order route to the Definitive Map and Statement (DMS) had first been made, and notice had not been served on them as landowners. I take the view that the matters aired relate to the Schedule 14 procedure. I have been appointed to determine the Order under paragraph 10(1) of Schedule 15 to the Wildlife and Countryside Act 1981 (the 1981 Act), rather than to determine whether the procedural requirements with regard to the Schedule 14 stage have been met. Nevertheless, having heard the submissions on these points, there is nothing to suggest that the statutory requirements have not been met, or that there is not a valid order before me for determination.
3. I note concerns expressed that the user evidence forms (the forms) adduced in this case were not representative of a wider sample or those whom, it was said, had been challenged whilst using the Order route. However, it was open to those objecting to the Order to adduce their own evidence, statements, and/or witnesses in this regard.

The Main Issues

4. The Order has been made under Section 53(3)(c)(i) of the 1981 Act which requires me to consider whether, on a balance of probabilities, the evidence shows that a public footpath subsists along the Order route.
5. The evidence adduced is of claimed use by the public. This requires me to consider whether dedication of the way as a public footpath has occurred through public use. This may be either by presumed dedication as set out in the tests laid down in Section 31 of the Highways Act 1980 (the 1980 Act), or by implied dedication under common law. In this case, Derbyshire County Council (the Council) relies on a presumption of dedication arising further to the tests laid down in Section 31 of the 1980 Act.
6. Accordingly, I must establish the date when the public's right to use the Order route was brought into question. The evidence can then be examined to determine whether use by the public has been as of right and without interruption for a period of not less than 20 years ending on that date. Finally, it is necessary to consider whether there is sufficient evidence that there was during this 20-year period no intention on the part of the landowners to dedicate public footpath rights over the route.
7. The main issue in this case is whether the claimed use was challenged and there was no intention by the landowners to dedicate a public right of way.

Reasons

When use of the Order route was brought into question

8. It was not disputed that use of the Order route was brought into question in 2016, the date of the application to the Council to add the claimed footpath to the DMS. I have considered whether other actions such as challenges it was said were made to users, and a 'Private' notice, could constitute a bringing into question for the purposes of Section 31 of the 1980 Act, but find no substantive support for an earlier date.
9. In the absence of an alternative date I am satisfied that the public's right to use the Order route was brought into question in 2016 and the 20-year period for consideration is 1996 to 2016.

Whether the Order route was used by the public as of right and without interruption

10. Some 12 forms were submitted claiming use. I heard from 6 members of the public, of whom 3 had completed forms. I was told of use of the Order route from 1968 to 2005, commencing in the early 1970s, from 1998, around 2007, and from 2015. Frequency of use varied from once or twice increasing to 8 or more times a year, 3 or 4 times a year to monthly, weekly, and daily including to walk the dog. Some spoke of the Order route forming part of a circular walk from the village, often used for dog walking.
11. Although the Objectors maintained that use had been by permission, and therefore 'by right', there was nothing in the oral or written evidence of users to indicate this was the case. I do not attach weight to use of the route for an organised fell run for which I understand permission was granted. Neither was use of the Order route carried out by force. Use was clearly open, with both

witnesses and the Objectors speaking of chatting to each other when encountered along the track. Witnesses also spoke of seeing other people using the route including villagers, and of using it with other people. None of those giving oral evidence had been challenged by the Objectors or by residents of the Cottage.

12. A couple of users had encountered farm machinery or vehicles when walking the route, for example hedge cutting equipment and at least one person did not use it on such occasions. However, there is nothing to suggest that such events were anything other than temporary and occasional, mostly relating to maintenance, and nothing to indicate that they were intended to interrupt public use of the way on foot.
13. The Order route, it was said, had been included in a local book of walks around the village first produced in 1997 and updated in 2005 and again in 2016.
14. I conclude on balance that use of the Order route by the public was as of right and without interruption for the 20-year period under consideration, and indeed in excess of 20 years for some individuals.

The evidence and actions of the landowners

15. Ownership of the track over which the Order route passes is claimed by the Objectors, although its maintenance responsibilities lie with the Cottage. A 1924 conveyance marks the track as an 'occupation road', and it provided access to the former workers' cottage which was sold in 1976.
16. The Objectors (as landowners) acknowledged in correspondence that the track was regularly and freely used by walkers with no problem now or in future, although they objected to its recording as a public right of way and stated it was never their intention to dedicate public rights. However, there is no evidence that such lack of intention was sufficiently conveyed to the public. Although use had been observed in recent years by the witness for the Objectors who was familiar with the area but not present there all the time, few people had been seen using the route prior to this. I do not consider that this impacts on the use acknowledged by the Objectors and attested to by witnesses.
17. The Objectors stated that some residents and visitors had been told persistently, by a previous owner of the Cottage (resident there between 1998 and 2011), that the track was private and they had no right to be there. Further, that some villagers had not been challenged by this person as it was considered expedient to allow their use, but that other villagers, and particularly visitors, had been challenged. However, the Objectors as landowners themselves had not challenged users.
18. I also heard there had been a 'Private' notice in place near point A at Moor Lane. However, exactly when this was present and for how long was not clear, the evidence in this regard being somewhat confused. None of the witnesses referred to it. Nevertheless, accepting that it was present, and assuming this coincided with at least part of the 20-year period, I would not regard it as sufficient evidence of a lack of intention to dedicate the Order route as a public right of way. This is because I consider the wording insufficient to convey such a meaning. Similarly, the challenges referred to were insufficient to bring home to the public that there was no intention to dedicate a public right of way.

Width

19. In written submissions the correct width of the Order route was questioned in relation to "the stone gateway accessing Cottage in the Meadow". However, no further clarification or alternative width was offered. There is a gated entrance to the Cottage itself, but this is close to the junction of Footpaths 19, 24 and 25, beyond B and the extent of the Order route. Two stone posts are located within the track at A, its junction with Moor Lane. The Objectors believed this to be the point referred to, although they were not sure.
20. How long these stone posts have been in position is not evident from the submissions and I am unable to conclude from the available evidence if they were present for the 20-year period under consideration, or not. Accordingly, I hesitate to propose a modification to the Order to record them either as a limitation to the width of the Order route, or to amend the recorded width at this point. However, should evidence subsequently come to light to clarify this matter, then this would not preclude a possible future amendment to the particulars recorded for the path in the Definitive Statement, should I confirm the Order.

Conclusions on the Section 31 tests

21. On balance, and further to the evidence considered above, I am satisfied that a presumption of dedication arises and there is insufficient evidence to rebut that presumption. Accordingly, I conclude that a right of way on foot subsists over the Order route.

Other matters

22. I note a preference that the Order route become a concessionary path as beneficial to both landowners and users alike. However, this is not the proposal before me for consideration. It is my role to determine the Order against the relevant tests set out above.
23. Issues such as desirability, suitability or the usefulness of the Order route in the footpath network are not matters that I am able to take into account under the legislation and it follows that I have not done so. I understand concerns expressed about current ownership and legal rights, and about future maintenance of the Order route, its perceived detrimental effect on the land and its owners, safety and public liability. However, whilst I recognise the importance of such concerns, they are not matters for my consideration under the relevant tests.

Conclusions

24. Having regard to these and all other matters raised at the Inquiry and in written representations, I conclude that the Order should be confirmed.

Formal Decision

25. I confirm the Order.

S Doran

Inspector

APPEARANCES

For the Council:

Kathryn Zasada	Solicitor, Derbyshire County Council
who called	
Angela Greatorex	Legal Assistant, Rights of Way
David Williams	Applicant
John Tyler	
Janet Hall	

Supporter:

Martin Bennett	Derbyshire Dales Group, Ramblers
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Others who spoke in support:

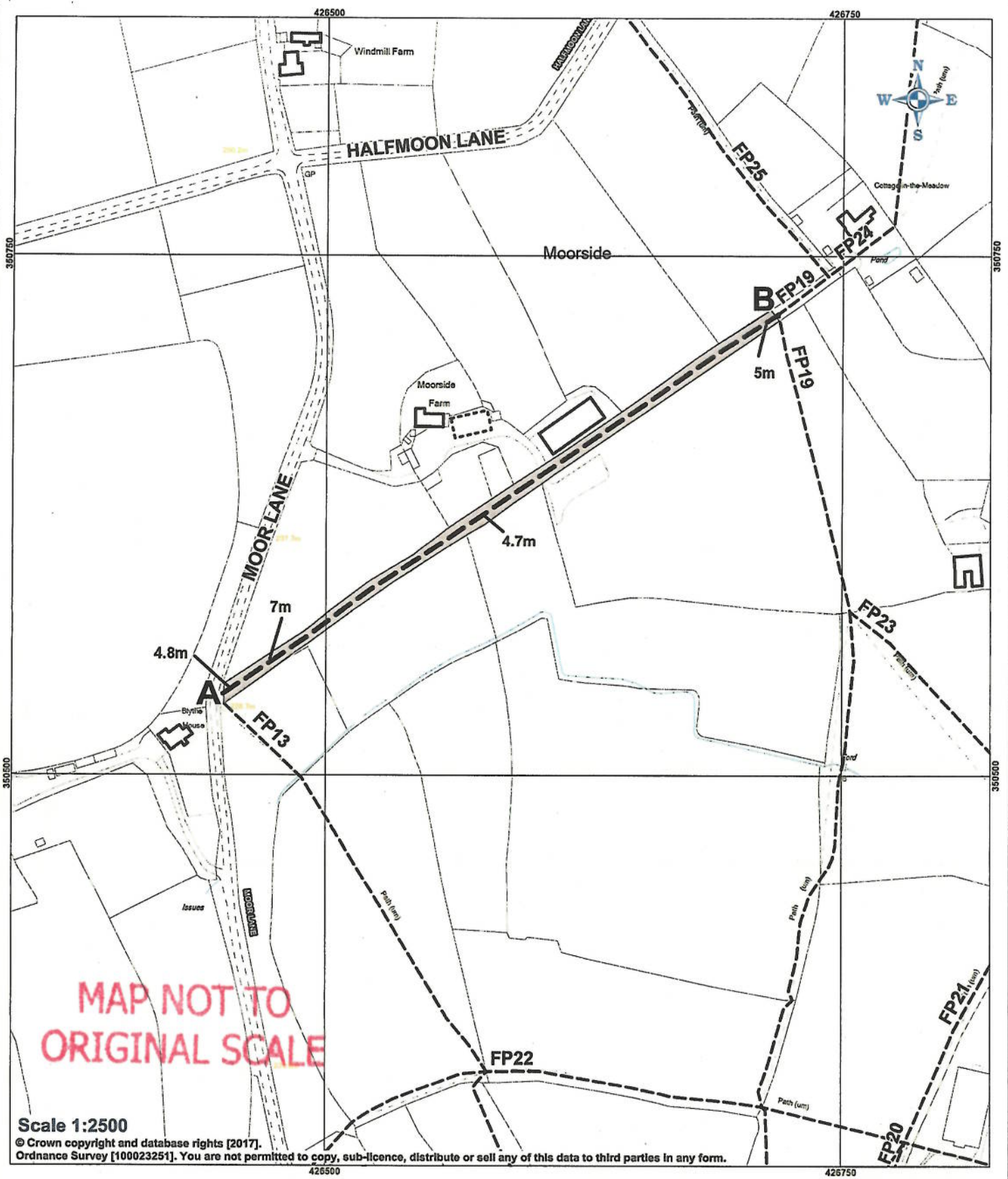
Mike Glendinning
Martin Geraghty
Joanna Toogood

Objectors:

Anne and Nigel Shuker	Landowners
who called	
Peter Dawson	

DOCUMENTS

1. Witness statements of Angela Greatorex, David Williams, John Tyler and Janet Hall, submitted by Derbyshire County Council
2. Closing submissions on behalf of Derbyshire County Council
3. Letter dated 8 December 2018 with copies of conveyances attached, submitted by Anne Shuker



MAP NOT TO ORIGINAL SCALE

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Ref: TE/CH/X4070/Order/2019
 Date: 5 November 2018

Wildlife and Countryside Act 1981 Section 53

**The Derbyshire County Council
 (Footpath from Moor Lane to Public
 Footpath No. 19- Parish of Kirk Ireton)
 Modification Order 2019**

Key: Public Footpath to be added ————
 Existing Public Footpath - - - - -



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