



Order Decision

Inquiry held on 26 November 2019

Site visit made on 27 November 2019

by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA

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

Decision date: 12 March 2020

Order Ref: ROW/3222320

- This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as Leicestershire County Council (Addition of Public Footpath A118 within the Unparished area of Market Harborough in the County of Leicestershire and Addition of Public Footpath CP12 within the Parish of East Farndon and Public Footpath DC9 within the Parish of Marston Trussell in the County of Northamptonshire) Definitive Map Modification Order 2018.
- The Order is dated 27 September 2018 and proposes to modify the Definitive Map and Statement for the area by adding Footpath A118 to extend from Point A to Point B, extending Footpath CP12 from Point B to Point C, and extending Footpath DC9 from Point C to Point D as shown on the Order Map and Schedule.
- There was one objection outstanding when Leicestershire County Council (the "Council") submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed

Preliminary matters and general description of the claimed route

1. The claimed route runs between public footpath A27/DC5 south-east of Lubenham along the dismantled railway line to an area of designated open space adjacent to Farndale View, Market Harborough as shown on the Order map. A-B (FP A118) is within Leicestershire (Parts I and II, Order Schedule); B-C (FP CP12) is in Northamptonshire (Parts III and IV, Order Schedule); and C-D (FP DC9) is also in Northamptonshire (Parts V and VI of the Order Schedule). The Council has obtained the consent of Northamptonshire County Council which is necessary for it to make an order for a path outside its area.
 2. I made an accompanied site inspection and walked the full length of the claimed route, accompanied by Mrs Ireson from the Council and Mrs Mugridge, the applicant. Arrangements had been made at the close of the inquiry for these persons and Mr Thomas, the objector to accompany me, however although Mr Thomas met me with the others at Point D he declined to walk the route. Before we set off Mr Thomas requested that I inspected a gate with a sign on it situated outside the order route on his land, which I did as described below.
 3. At the end of the walk, Mr Thomas was waiting for us at Point A and expressed concern that matters may have been discussed in his absence during the walk. Apart from pointing out that he had been given every opportunity to accompany me, I made it clear that no matters concerning the application were discussed, other than to point out relevant physical features.
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The Main Issue

4. The main issue is whether the evidence discovered by the Council, taken with all other relevant evidence is sufficient to show on a balance of probabilities that a right of way, in this case a footpath, not shown in the Definitive Map and Statement (DMS) for each area, subsists over land as shown on the Order Map.
5. Issues about criminal activity along the route, safety, security, and suitability of the route, although legitimate concerns generally expressed by the objector, are not relevant to the main issue. The merits or otherwise of any intention to use legislation or other means to alter the status of the route to a cycle track at some point in the future, are not relevant to what is at issue in this inquiry.

The relevant law

6. The Order is made under section 53(2)(b) of the 1981 Act, and s53(3)(c) states that an Order should be made to modify the DMS for an area on the discovery of evidence which, when considered with all other relevant evidence available, shows: "*(i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way to which this Part applies.*"
7. By s32 Highways Act 1980 I have to take account of any "map, plan or history of the locality or other relevant document" offered in evidence and give such weight to it as is justified by the circumstances, including its antiquity, the status of the person who made or compiled it, including for what purpose, and the "custody" in which it has been kept and from which it is produced.
8. Section 31 of the 1980 Act sets out a statutory presumption of dedication: if public use of a way for twenty years or more is shown, the way is deemed to have been dedicated as a highway of that description unless there is sufficient evidence from which it can be concluded there was no such intention during that period to dedicate it. The twenty-year period must be calculated retrospectively from the date when the public's right to use the way as claimed is brought into question. Further, at common law it may be inferred that a way was dedicated and accepted for public use for periods less than 20 years.

When was the use of the route as a footpath brought into question?

9. A declaration made under s31 was made and duly lodged with the Council that covered the period 2000 to 2010. As discussed below I find that the deposit date was the earliest date when use as a footpath was effectively brought into question, and for the purposes of the statutory test of deemed dedication such use must have subsisted for twenty years before that date 1980 to 2000.

User evidence

10. The railway was closed to the public in 1966 and the application for the Order was submitted in 2013. Over this period of 47 years the evidence user forms show that 30 users walked the route prior to 2000 and 11 users stated they had used the route over the full 20 year period.
11. Of the Council's witnesses Mrs Mugridge and Mr Leach had used the route since 1975 and Mr Jones had used it since 1980. Mr Harvey in a detailed proof of evidence also stated that he had used the route from the 1970s. I was given no good reason to disbelieve any part of their testimonies.

12. Four members of the public who completed user evidence forms supplied photographs of themselves or members of their family using the claimed way. One image is dated 1975 and, although a snapshot in time, shows that members of the public were accessing the route well before 2000.
13. Aerial images were also produced appearing to date from 1969, 1991 and 2000 from which it is clear that the railway tracks had been dismantled, and worn areas of grass appear along the line of the former railway.
14. Mr Thomas, in cross-examining the witnesses in support of the Order, established that there was occasionally some variation in the route taken in that they and others who completed user forms may have deviated from the line of the claimed route onto adjacent fields. However no robust evidence was adduced that undermined what the witnesses said about the use of the order route itself from Points A-D.
15. The evidence in this case goes well beyond that of members of a single family and their friends, and the number of local persons who completed evidence forms taken with those who gave direct oral testimony are to my mind representative of the local community. Sixty-two user forms were submitted by persons, thirty of whom were asked further questions by the Council and responded as summarised above.
16. A further line of questioning of the witnesses related to claims by Mr Thomas that several notices had been erected to prevent the public from using the path. However the evidence was that use of the Order route was open and unimpeded by any notice or obstruction over the relevant 20 year period 1980 to 2000. As owner of part of the land over which the order route lies, it was clear that Mr Thomas had not acquired it until after this relevant period and his actions after that time do not affect the position prior thereto.
17. As described above I viewed a timber fence or gate like structure which lay to the side of the path and concealed in undergrowth, from within Mr Thomas' land and a few metres west of Point D before the Order route begins. A small white rectangular sign was affixed to one of the cross bars; it bore the traces of writing on it but the elements had conspired to render it totally illegible.
18. Back on the order route I saw the plastic bales of silage that had been referred to in evidence and which, it was asserted, were put there deliberately in order to prevent persons exercising rights of passage. As deposed to by several witnesses, they were to the side of the way, grouped around a telegraph pole and did not present an obstruction, indeed they had disintegrated to a point where they were beginning to merge into the landscape.
19. Mrs Ireson stated that her first site visit for the Council was in 2006 when she was unaware of any notices, then or subsequently. Of more relevance here is Mrs Mugridge's testimony who clearly stated that although her use of the claimed path started in the 1970's, she only became aware of a sign at the Lubenham end of the route in 2007 at or around the time when Mr Thomas was approached to see whether the status of the route could be formalised in some way. Mr Harvey was also clear that there had been no signs on the claimed way before 2000.
20. It was also suggested that the public were made aware by other means during the relevant period that there was no public right of way and to this end I was

asked by Mr Thomas to request from the Council and put into evidence an additional 15 evidence forms.

21. I acceded to this request because, although the Council strenuously pointed out they were forms returned in relation to a different proposal than the one before me, they appeared capable of disclosing information that related to the whole or parts of the Order route. Nevertheless, Mr Thomas unable to point to anything in those additional statements that demonstrated a clearly expressed intention not to dedicate the claimed way, that was made known to the public on the part of landowners or others in possession or control of the land.
22. As to the landowners themselves, apart from the deposit made under s31 of the 1980 Act referred to above, made by Mr Gardiner as to Points A-B only, neither he nor the other two owners, including Mr Thomas had sought to bring into question the existence of a right of way along the Order route prior to 2000. Of all the adjacent owners and occupiers consulted by the Council, one objection was received that referred to provision having been made in terms of a temporary sign to prevent a right of way being established, but that was in 2007, clearly after the end of the relevant period. Land Registry records indicate that Mr Thomas became an owner in or around 2002 and it is likely that such measures could only have been taken by him after that date.
23. There is a locked gate at point D between the claimed route and Footpath A27/DC5 where it crosses the top of the railway embankment. No disclaimer signs are displayed and from what I saw the barbed wire at the side had been trodden on and stepped over. Further along to the west of Point B there is a gateway with no disclaimer signs, formed of two gates with a gap in between, readily negotiable on foot. The gap as shown on the image supplied by the Council dates from 2014 and shows a chain suspended between the gates, at a level low enough to step over. As I saw the structure, one of the gates appears to have been replaced but the gap remained and in place of the chain a piece of wire joined the foot of both gates, again easily surmountable.
24. The route is grassed over and rough in places. On the day of the visit it was waterlogged in several sections but still negotiable. Throughout the length of the way there was evidence of considerable use on foot from soil compaction and boot prints and no evidence of old or broken signs suggestive of a disclaimer of public rights of way.

Lengths and widths specified in the Order

25. The user forms indicate that the width of the order route is 4 metres. Overall the user evidence is clear and consistent and corresponds with observations during my visit. The width claimed is consistent with the former use of the land as a railway line. I therefore consider the claimed width of 4 metres reflects both the way and the use made of it and is appropriate.

Other matter: documentary evidence

26. The Council would have weight given to the designation by Market Harborough District Council of the land through which the claimed route passes, as amenity land, originally in 1972 and confirmed in its 1991 local plan. Whilst this may possibly have given encouragement to persons to use the route there is no such direct evidence. Since designation of preferred land uses in a local plan

does not give any immediate rights so to use the land and is not indicative of the existence of such rights, it is not a matter to be given significant weight.

27. I have referred to historical aerial images in the preceding section of my decision and whilst they lend mild support to the contention that the route was being used by members of the public at around the dates they were taken, no inference as to the status of the route can be drawn from the documents themselves.

Summary

28. I find from the foregoing that the deposit date of 2000 was the earliest date when use as a footpath was effectively brought into question, and for the purposes of the statutory test of deemed dedication, the relevant period of use over which such use must have subsisted is from 1980 to 2000.
29. I find that there is no evidence that any effective challenge was made by notices, barriers or the like placed across the route through the period 1980 to 2000. Use by the public may be brought into question by someone not the landowner but in any event the information as to this provided by Mr Thomas was in large part anecdotal in nature and as a matter of fact and degree was insufficient to establish that the "right of the public to use the way" as a footpath had been to be "brought into question" as set out in s31(2) of the 1980 Act during the relevant period.
30. I am satisfied that on the balance of probability that the user evidence in terms of its quantity and quality shows public use of the order route from 1980 to 2000, sufficient to raise a presumption of dedication and acceptance by the public of a footpath under s31 of the 1980 Act. No compelling evidence has been forthcoming to show a lack of intention by any landowner to so dedicate the way as a footpath during the relevant period.

Conclusion

31. For the above reasons and considering all other matters raised I conclude that the Order should be confirmed.

Formal Decision

32. I confirm the Order.

Grahame Kean

INSPECTOR

APPEARANCES

For the Council

Mrs N Varia	Solicitor to the Council
Mrs S Ireson	Rights of Way Officer
Mrs K Mugridge	Applicant
Mr P Leach	User witness
Mr A Jones	User witness

In support of the Order

Mr Harvey	User witness
Ms L Mugridge	User witness

Against the Order

Mr Thomas	Objector
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Additional Documents submitted during the Inquiry

1. Supplementary user evidence forms
2. Statement of Mr Thomas and appendices

