



Order Decision

Inquiry held on 21 January 2020

Site visit held on 21 January 2020

by Paul Freer BA (Hons) LLM PhD MRTPI

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

Decision date: 18 JUNE 2020

Order Ref: ROW/3226749

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981. It is known as the Redcar & Cleveland Council Brotton Public Footpath No.31 Definitive Map & Statement Modification Order 2019.
- The Order is dated 23 January 2019. It proposes to modify the definitive map and statement for the area by adding a footpath from Huntcliffe Drive, Brotton in a generally east-north-easterly direction between Nos 15 and 16 Huntcliffe Drive for a distance of approximately 42 metres to connect to Saltburn Road, Brotton, as shown on the Order map and described in the Order Schedule.
- There was one objection outstanding when Redcar & Cleveland Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.

Summary of Decision: The Order is confirmed.

Procedural Matter

1. It was agreed at the Inquiry that there was no requirement for me to be accompanied during my site visit. Accordingly, I carried out an unaccompanied site visit after the close of the Inquiry.

Main Issue

2. The main issue here is whether the evidence is sufficient to show that in the past the Order route has been used in such a way that a footpath can be presumed to have been established.
 3. The Order was made under the Wildlife and Countryside Act 1981 on the basis of events specified in sub-section 53(3)(c)(i). If I am to confirm it, I must be satisfied that, on a balance of probability, the evidence shows a public right of way on foot subsists along the route described in the Order.
 4. The case in support is based primarily on the presumed dedication of a public right of way under statute, the requirements for which are set out in Section 31 of the Highways Act 1980. For this to have occurred, there must have been use of the claimed route by the public as of right and without interruption, over the period of 20 years immediately prior to the right to use the route being brought into question, thereby raising a presumption that the route had been dedicated as a footpath. This may be rebutted if there is sufficient evidence that there was no intention on the part of the relevant landowner(s) during this
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period to dedicate the way for use by the public; if not, a footpath will be deemed to subsist.

Reasons

Bringing into question

5. There are number of events that took place that could be considered as having brought the use of the path into question. These include the purchase in September 2016 of the path from the original developer of the housing estate by the present occupier of No 16 Huntcliffe Drive and the submission in September 2017 of a planning application for various extensions to that dwelling (Council Ref: R/17/0669/FF).
6. However, it seems to me that the true catalyst resulting in the use of the path being brought into question was when the owner of No 16 Huntcliffe Drive, allowed the hedge that borders the path to become overgrown. In giving his evidence to the Inquiry, Mr Furness made it clear that he deliberately allowed the boundary hedge to grow in order to block the path and to stop people from using it. In his written statement, Mr Furness provides a photograph that shows the path being covered by the overhanging hedge although, because of the angle from which the photograph is taken, it is not entirely clear whether the path itself was obstructed.
7. Although Mr Mays, the applicant for the Order, and others seek to contend otherwise, it appears to me that Mr Furness was at least partially successful in his attempts to block the path. As part of his evidence, Mr Mays provides copies of correspondence with the Chief Executive of Redcar & Cleveland Council referring to events that took place following his request for the hedge to be cut back. In that correspondence, Mr Mays confirms his understanding that Mr Furness intended the hedge to grow in order to stop people from using the path. I also have evidence that Mr Furness discussed blocking up the path with his neighbour, subsequently confirmed in post-Inquiry correspondence. Whilst this neighbour disagreed with the suggestion put forward by Mr Furness, this is further evidence that some members of the public fully understood the intention to block the path.
8. In addition, Mr Furness' clear evidence was that he himself did not at any time trim back the hedge. That evidence was not challenged and I have no reason to dispute it. The hedge was subsequently cut back by persons unknown (it was unobstructed at the time of my site visit), and several respondents refer in their user evidence forms to the path being obstructed in recent years. The latter are entirely consistent with the hedge being allowed to grow by Mr Furness following his acquisition of path. The obvious corollary is that, whoever did cut back the hedge, did so because it blocked the path, at least sufficient for them to want to clear it. It follows that they must have been aware that their right to use the path was being challenged by the growing of the hedge.
9. In my view, the decision by Mr Furness to allow the hedge to grow was a deliberate attempt to disabuse a reasonable user of the path of the notion that the land was a public highway. It is clear that the public understood that intention. The courts have held that, in some cases, there is a correlation between an intention not to dedicate public use of a path and bringing public use of a path into question. In my opinion, this is one such case. In his

evidence, Mr Furness explains that he allowed the hedge to grow from the date that he acquired the footpath. I therefore consider that the date on which the right of the public to the use this path was brought into question should properly be regarded as being the date that Mr Furness acquired the land, specifically 29 September 2016. Consequently, I need to examine use by the public during the twenty-year period between September 1996 and September 2016 (the relevant period).

Assessment of the evidence

10. The 24 user evidence forms submitted with the application mostly relate to the period from 1971 to 2017, or parts thereof. One of the forms refers to use of the path from 1958 and therefore from a time that pre-dates the construction of Huntcliffe Drive. However, a copy of the Title Deeds dating to April 1965 clearly shows the footpath to be on a different alignment at that time. I have therefore focused on use of the footpath dating from when the Huntcliffe Drive estate was constructed during the early 1970's, there being no dispute that the path now subject to the Order has been a permanent feature since that time.
11. Although I have read all of the user evidence forms that have been submitted, I do not propose to rehearse them individually here. I did note, however, that a significant proportion of the respondents record using the Order route over the whole or a substantial part of the relevant period, and on a frequent and continuous basis: for example, daily or weekly. The evidence refers predominantly to use by dog walkers, school children and joggers, and also by people accessing the bus stop on Saltburn Road. None of the respondents refer to being stopped or challenged when using the route, and some indicate that they always believed it to be a public path.
12. In addition to the user evidence forms, I heard evidence of the use of the path from several residents of Huntcliffe Drive who attended the Inquiry. Mr George Hume confirms that he used the path daily for a period of 42 years, and indicated that the path was never blocked or obstructed. Similarly, Mr George Speight indicated that he has lived in Huntcliffe Drive for some 40 years. During the first 20 years or so, he used the path only occasionally but in the last 12 years he has walked the path every day, and has never been stopped from doing so. Mr Howies is a more recent resident of Huntcliffe Drive, but for the last four years has walked the path 4 or 5 times a week. Ms Jo Burdett, who has lived in Huntcliffe Drive since 1989, explained that she uses the path everyday for dog walking, and has never been stopped from doing so or been challenged.
13. In addition, I heard evidence from Councillor Cutler and Councillor Hunt, both of whom represent Brotton Ward. The former recalled using the path on a daily basis to get to school between 1975 and 1979 (and therefore outside the relevant period), whereas Councillor Hunt was aware that the path had been used by walkers and school children but was not in a position to give evidence of personal use of the path.
14. A number of the residents of Huntcliffe Drive also referred to a signpost previously located where the path met Saltburn Road, and Mrs Mays in particular has a clear recollection that there was a wooden sign saying 'Public Footpath' in this location. However, other residents could not recall the presence of such a sign and, with no documentary or photographic evidence of it, it is a matter to which I attach only limited weight.

15. The objector to the Order, Mr Furness, was not able to produce any evidence to challenge that of the local residents in respect of their usage of the path.
16. I am satisfied that this user evidence, when taken as a whole, indicates use by the public as of right and without interruption throughout the twenty-year period which is sufficient to raise a presumption of dedication. There is nothing in the documentary evidence produced by the Council that materially adds to my conclusion or leads me to a different conclusion.

Intentions of the landowner

17. Prior to the current landowner acquiring the land and then deliberately allowing the boundary hedge to grow, there is no evidence to show that the previous landowner(s) had no intention of dedicate the path to the public. None of the respondents mention a sign or notices placing any restriction on public use, or indicating that the path was private land. I therefore conclude that the presumption of dedication indicated by the user evidence has not been rebutted by a lack of intention to dedicate.

Other matters

18. In his evidence, Mr Furness refers to a number of other matters, including; the planning application granted in November 2017 for various extensions to his property, anti-social behaviour by some users of the footpath and the Council's response to enquiries he made about the status of the path at the time that he purchased the property in 2010. Whilst I recognise that the above are all clearly matters of considerable importance to Mr Furness, they are not relevant to my consideration of whether a footpath can be presumed to have been established along the Order route. I must make my decision solely on the actual use of the Order route as shown by the evidence available to me. The matters raised by Mr Furness cannot form part of my considerations in that respect.
19. Similarly, Mr Greening made points in relation to the path being slippery and unlit. He also expressed the opinion that use of the path gave rise to vandalism of cars parked on Huntcliffe Drive. These are again matters that cannot form part of my considerations.

Conclusion

20. I conclude that, on the balance of probability, a footpath has been established along this route. Accordingly, having regard to the above and all other matters raised in the written representations and at the Inquiry, I conclude that the Order should be confirmed.

Formal Decision

21. I confirm the Order.

Paul Freer

INSPECTOR

APPEARANCES

For the Order-Making Authority

Mr T Gordon	Strategic Transport Officer, Redcar & Cleveland Council
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In Support of The Order

Mr John Mays	Applicant
Mrs Mays	Local resident
Mr George Hume	Local resident
Councillor Graham Cutler	Ward Councillor, Brotton Ward
Mr George Speight	Local resident
Ms Jo Burdett	Local resident
Councillor Barry Hunt	Ward Councillor, Brotton Ward

Opposing the Order

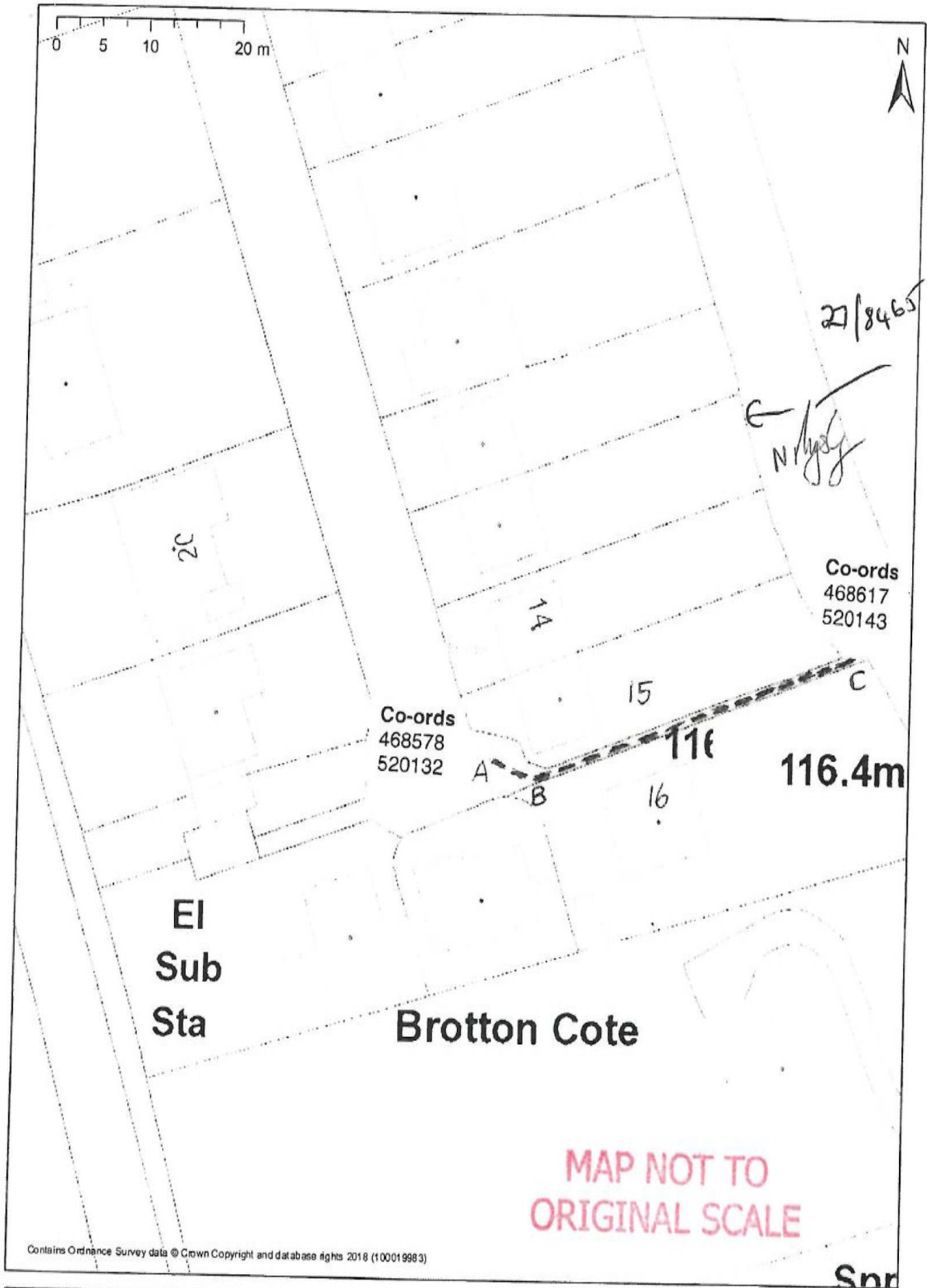
Mr Steven Furness	Objector
Mr Paul Greening	Local resident

Documents submitted at the Inquiry

1. Opening statement on behalf of the Order Making Authority.

Documents submitted after the Inquiry

1. Landowner evidence statement from Mr Furness.
2. Copy of Title Deeds dating to May 1965, submitted by Mr Furness.
3. Comments from Mr John Mays on the Landowner evidence statement from Mr Furness.
4. Comments from Ms Emma Garbutt, Senior Legal Officer at Redcar & Cleveland Council, on the Landowner evidence statement from Mr Furness.



Huntcliffe Drive Claim Map

1:500
January 15, 2019