



Order Decision

Site visit on 19 March 2020

by Mark Yates BA(Hons) MIPROW

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

Decision date: 25 June 2020

Order Ref: ROW/3227608

- The Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the 1981 Act") and is known as The Nottinghamshire County Council (Mansfield Woodhouse Footpath No. 61) Modification Order 2018.
- The Order was made by the Nottinghamshire County Council ("the Council") on 2 November 2018 and proposes to add a footpath to the definitive map and statement, as detailed in the Order Map and Schedule.
- There were seven¹ objections outstanding when the 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 Matters

1. The scheduled public inquiry was cancelled, and I have determined the Order from the written representations of the parties.
2. All of the points referred to below correspond to those shown on the Order Map.

Main Issues

3. The Order relies on the occurrence of an event found within Sections 53(3)(b) and 53(3)(c)(i) of the 1981 Act. In essence, the issue to be determined is whether a public footpath has been dedicated over the route claimed ("the claimed route"). The definitive map and statement can be modified in such circumstances by reference to 53(3)(b) or 53(3)(c)(i) of the 1981 Act. The evidential test to be applied in either case is the balance of probabilities.
4. The relevant statutory provision, in relation to the dedication of a public right of way, is found in Section 31 of the Highways Act 1980. This requires consideration of whether there has been use of a way by the public, as of right² and without interruption, for a period of twenty years prior to its status being brought into question and, if so, whether there is evidence that any landowner demonstrated a lack of intention during this period to dedicate a public right of way.
5. If statutory dedication is not applicable, I shall consider whether the evidence supports the dedication of a footpath at common law. An implication of dedication may be shown at common law if there is evidence from which it can be inferred that a landowner has dedicated a right of way and that the public has accepted the dedication.

¹ I have taken a petition to constitute a single objection on behalf of the signatories.

² Without force, secrecy or permission

Reasons

Statutory dedication

When the status of the claimed route was brought into question

6. The evidence is supportive of fencing being erected across the claimed route in the early part of 2011. It is apparent that this action led to the submission of the application to add the route to the definitive map. I note that the objection from Mr Cooling refers to a barrier in place at point C in 2010 that was regularly locked. The evidence of the users of the route is that the structures in place prior to 2011 did not prevent access for pedestrians. I also find it noteworthy that a Google photograph from 2009 shows a vehicular barrier and adjacent gap at around point C. This is supportive of pedestrian access being available at this point. An additional 2009 Google photograph shows the presence of bollards and staggered barriers when looking from point A. Again, these structures would not have prevented access for pedestrians.
7. I take the view that the fencing erected in 2011 served to bring the status of the claimed route into question. This means that the relevant twenty-year period to be considered is 1991-2011 ("the relevant period").

Evidence of use by the public

8. Sixteen user evidence forms were submitted in support of the application. These forms provide evidence of frequent use of the route on foot throughout the relevant period. The objectors do not dispute that the route was used as of right prior to 2011. Some acknowledge that its previous availability led to occurrences of anti-social behaviour and they object to it re-opening. A worn route is also visible on various aerial photographs.
9. Whilst there is support for use of the claimed route in the decision to not confirm an Order made in 1980 to extinguish the route, this falls well outside of the relevant period. A later Extinguishment Order of 2017 was also not confirmed, but it again falls outside of the relevant period. Nonetheless, these Orders point to a recognition that unrecorded public rights could exist over the claimed route. The fact that no such rights are presently recorded does not prevent the dedication of a public footpath from arising.
10. Having regard to the above and my assessment of the evidence forms, I find on balance that the evidence is sufficient to raise a presumption of the dedication of a footpath.

Whether any landowner demonstrated a lack of intention to dedicate a footpath

11. There is nothing to suggest that action was taken during the relevant period to demonstrate a lack of intention by any landowner to dedicate a footpath. It is apparent that pedestrian access was available during this period despite the presence at times of structures along it.

Other Matters

12. The objectors are clearly concerned about the anti-social behaviour stated to have occurred when the claimed route was available to use. References are also made to other issues such as the availability of an alternative route, maintenance and safety. However, none of these matters are relevant to my determination of the Order.

13. It will be for the Council to determine how to address the fact that the claimed route is now obstructed by a property. It does not consider that an electricity sub-station is on the route.

Conclusions

14. Having regard to these and all other matters raised in the written representations I find on the balance of probabilities that a public footpath has been dedicated in accordance with Section 31 of the Highways Act 1980. It follows that I conclude that the Order should be confirmed.

Formal Decision

15. I confirm the Order.

Mark Yates

Inspector



Nottinghamshire County Council

Title Nottinghamshire County Council
(Mansfield Woodhouse Footpath No.61)
Modification Order 2018

MAP NOT TO ORIGINAL SCALE




Scale 1:1250

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Ordnance Survey 100019713

Key

 Footpath to be added

 Existing unaffected brideway

