



## Order Decision

Site visit on 23 June 2020

**by Sue Arnott FIPROW**

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

**Decision date: 08 July 2020**

---

### **Order Ref: ROW/3232071**

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981. It is known as the Kirklees Council (Colne Valley 253 – Cellars Clough, Marsden) Public Path Modification Order 2018.
- The Order is dated 4 June 2018. It proposes to modify the definitive map and statement for the area by recording a public footpath between the River Colne and the Huddersfield Narrow Canal at Marsden, as shown on the Order map and described in the Order schedule.
- There were 2 objections outstanding when Kirklees Council submitted the Order for confirmation to the Secretary of State for Environment, Food & Rural Affairs.

**Summary of Decision: The Order is confirmed.**

---

### **Procedural matters**

1. This Order was scheduled to be determined by means of a public inquiry that was due to be held on 23 June 2020. Unfortunately, the introduction of the Covid-19 lockdown restrictions on 23 March 2020 meant that a public meeting of this nature could not be held as planned. In order to progress this matter without delay, all interested parties were invited to consider whether a change of procedure would be acceptable in these circumstances. As a result, it was agreed that the Order would be determined following a further written exchange together with an unaccompanied visit to the site.
2. I am grateful to all concerned for their assistance in making this alternative arrangement during difficult times. I carried out my inspection of the claimed footpath<sup>1</sup> on 23 June 2020 alone, and have taken account of all the evidence submitted in reaching my decision.

### **The Main Issues**

3. The main issue here is whether the evidence before me is sufficient to show that, in the past, the Order route has been used in such a way and to such an extent that a public footpath can be presumed to have been established.
4. Kirklees Council (KC) made the Order under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) 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 subsists along

---

<sup>1</sup> I was unable to walk the full length of the claimed footpath but, with the benefit of the photographs provided, I was able to observe sufficient parts of it to form a reasonably clear impression of the route in question.

---

the claimed route, described in the Order between the points labelled A-E-C-F-D and B-C.

## Reasons

5. Firstly, I have examined the several old Ordnance Survey maps submitted by KC, and a plan from an indenture dated 1888 (provided by a claimant), all of which show the old Cellar Clough Mill and its associated ponds. Whilst it is possible to trace the development of roads, paths and tracks in the area from 1888 onwards, it cannot be deduced from these records that any of the routes shown were open to the public. Nevertheless, these maps confirm that there has been a physical track on the line now claimed and shown on the Order map as D-F-C-B since the late nineteenth century<sup>2</sup> whilst a path via C-E-A became established on the ground sometime between 1932 and the early 1960s.
6. The main case in support of the Order is based on the presumed dedication of a public footpath under statute, the requirements for which are set out in Section 31 of the Highways Act 1980 (the 1980 Act). For this to have occurred, there must have been use of the claimed route by the public on foot, as of right and without interruption, over the period of 20 years immediately prior to its status being brought into question. Such use would raise a presumption that the route had been dedicated as a public footpath. This may be rebutted if there is sufficient evidence to show there was no intention on the part of the relevant landowner during this period to dedicate the way for use by the public; if not, a public footpath will be deemed to subsist.

*When was the status of the way brought into question?*

7. When considering evidence in relation to Section 31 of the 1980 Act, the first matter to be established is when the public's rights were brought into question.
8. KC considered that probably occurred around 2008 or 2009 although it is difficult to pin down any definite date when use by the public was first challenged. Some claimants report being made unwelcome by anglers around the time notices were placed along the route aimed at deterring public use<sup>3</sup>. The evidence suggests these incidents may have begun as early as 2006 or 2007 but reached a point in late 2008 when some claimants sought the assistance of the Peak and Northern Footpath Society to gather evidence for a formal application to record a public footpath. This was submitted to KC on 7 April 2009.
9. KC took the date of the application as the point at which the status of the way was brought into question and that has not been questioned by the objectors. Nevertheless, the Council does acknowledge that the date of challenge may have occurred earlier, although it believes there is still a case to be made, resting on use of a slightly earlier relevant twenty-year period.
10. Whilst there does not appear to be a single incident which brought matters to a head, several of the claimants completed their evidence forms in late 2008, implying that they felt their right to use the route was already in doubt. I will

---

<sup>2</sup> I have noted the photographs (dated 2015) of a stone arched footbridge that, until recent years, provided a crossing over the mill race at point C but which has since been removed.

<sup>3</sup> Claimants list these as stating 'Private Road', 'Dogs on leads', 'No camping or Police will be called', 'No dog poo' and signs in Polish forbidding fishing.

therefore take September 2008<sup>4</sup> as the time when the status of the Order route was brought into question (although I agree with KC that the outcome may indeed be the same).

11. It follows from this that I shall need to examine the claimed use by the public during the preceding twenty years, September 1988 – September 2008.

*Evidence of use by the public*

12. If a presumption of dedication is to be raised, qualifying use by the public during the relevant period must be shown to have been enjoyed 'as of right', without interruption, and to have continued throughout the full twenty years. Use 'as of right' is interpreted as being use by the public that does not take place in secret, is not by force and is not on the basis of permission.
13. In support of the claimed route I have before me the written evidence of 34 individuals, 27 of whom used it regularly throughout the whole 20-year period. In fact use dates back several decades, in one case starting as early as 1939. All claimants have provided marked up maps and most have included detailed descriptions of the path they took so there is no doubt this evidence relates to the Order route.
14. There is nothing to suggest this claimed use was by licence or otherwise with the express permission of the landowner. It was open, readily observable, took place at various times of day and days of the week and was not conducted in secret.
15. On the question of whether this was by force, it is apparent today that locked gates now obstruct the route at points B and D. The evidence provided by the claimants indicates that the way was always accessible at these points during the relevant period and that the locks were installed after the application was submitted. Many claimants refer to the gate at point F being locked in the past but the gap at the side was always available for free passage by pedestrians.
16. From my examination of the evidence before me, I have no doubt that the claimed use between September 1988 and September 2008 was not only without force, secrecy or permission, that it was continuous and without interruption throughout the whole 20-year period, but that it was also clearly used by the public on foot in sufficient numbers and with sufficient regularity to raise a presumption that the route in question was a public right of way.

*The intentions of the relevant landowner(s)*

17. Ownership of the land during the relevant period is not clear. At the time of the application in 2009 it was owned by Smith Developments Limited, a company which subsequently went into receivership. Several claimants refer to a Mr Firth being the owner at one time and also to Messrs Steve and Kevin Cooper, but there is no reliable information available to indicate when Cellars Clough Mill and the associated land transferred from one owner to another.
18. When the Order was advertised, no formal objection was lodged by the (then) landowning company. No evidence has been submitted by it (or by the current owners) to challenge that discovered by KC although representations had been made in response to the application.

---

<sup>4</sup> The earliest evidence form is dated 16 September 2008

19. In his submissions, one objector states: "*the last 3 owners of the mill have always stated it isn't a public path and have told the anglers to tell anyone walking up that it is private property.*" I might be willing to acknowledge that this is **some** evidence of a lack of intention by the owner(s) to accept a public path were it clear when these instructions were given and by whom. As it is, the letter of objection written in 2018 appears to refer mostly to ownership changes after the relevant period which is of no effect in rebutting the presumption of dedication of a right to the public. Nevertheless, the evidence does show that notices were placed around the site before September 2008 but, in my view, the wording of these signs was not sufficiently clear to directly challenge the public's right to walk the claimed footpath.
20. Evidence provided by a former manager at the mill from 1980 to 1983 states (by way of statutory declaration) that "*There was never any question raised about the status of the path being other than a public footpath until the Fishing Club started operation some time in 2008*". Amongst the evidence that is now before me I can find nothing that impugns that statement.
21. I therefore have no hesitation in concluding that the presumption of dedication of the way as a public footpath is not rebutted. It follows from this that a public right of way is deemed to have been established along the Order route.

#### *Summary*

22. In conclusion, and on the basis of the information provided, I am satisfied that the relevant statutory test is met: that, on a balance of probability, a public right of way for pedestrians has been shown to subsist over the Order route A-E-C-F-D and B-C. Consequently, I conclude that the Order should be confirmed.

#### **Other matters**

23. In its submissions, KC addresses the point that the Order route might appear to be a cul de sac. At its eastern end (point D) it joins definitive Footpath 181 but to the west (at points A and B) there is no recorded public right of way. In fact points A and B are connected by a canal towpath, owned and managed by the Canal and Rivers Trust, and used on a regular basis by the public. This is widely regarded as a place of popular resort and I have no difficulty accepting the nature of the Order route satisfies the description of a highway.
24. Both objections raise concerns over the impact the claimed footpath would have on the private fishing lake, on anglers' safety and on the security of fishing tackle. None of these are matters that are relevant to my consideration of this Order which is based on the premise that long-standing use by the public has *already* established a public footpath.

#### **Conclusion**

25. Having regard to the above and all other matters raised in the written representations, I conclude that the Order should be confirmed.

#### **Formal Decision**

26. I confirm the Order.

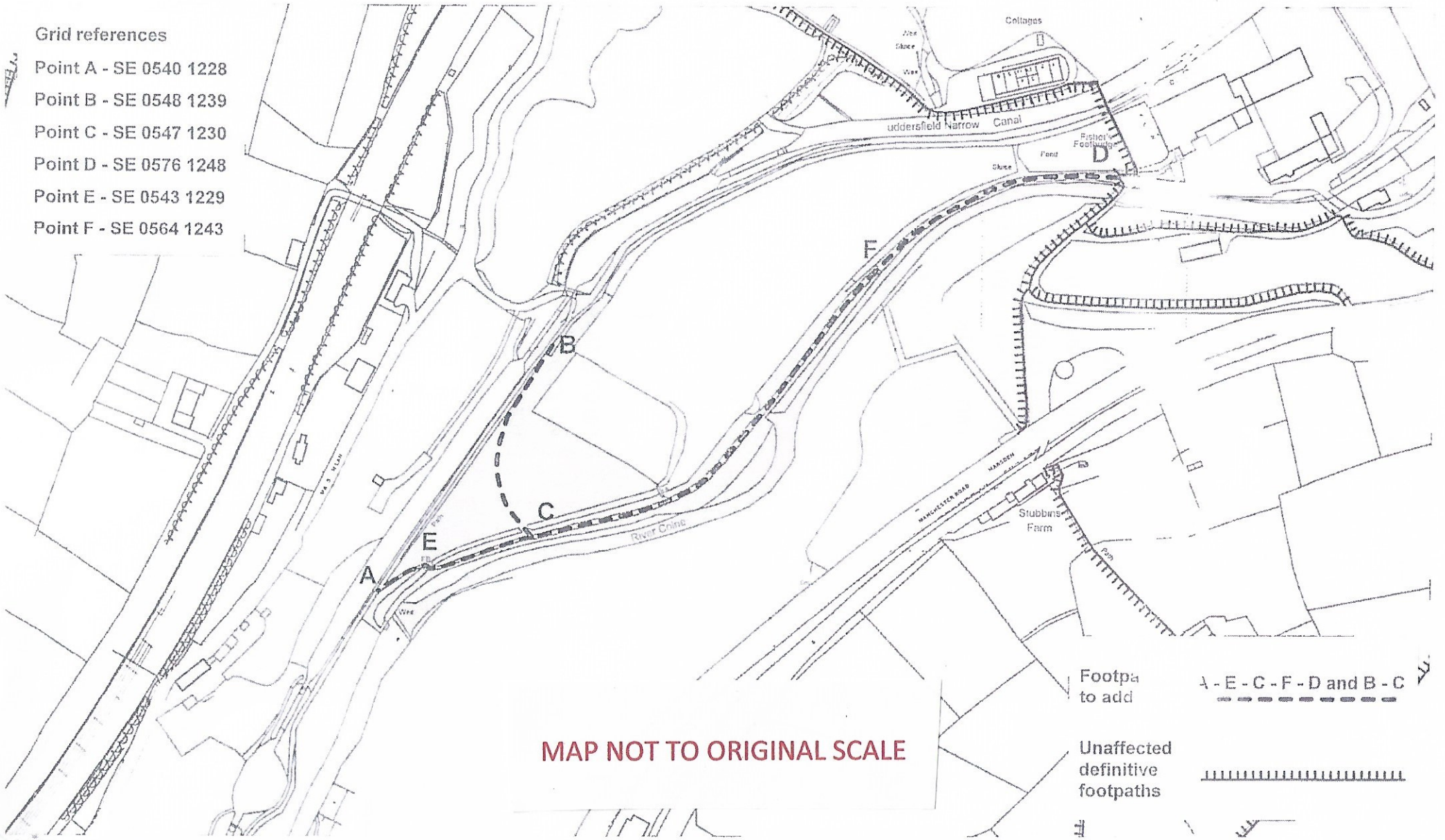
*Sue Arnott*

**Inspector**

Wildlife & Countryside Act 1981, section 53. Modification order to add a public footpath to the definitive map and statement at Cellars Clough, Marsden - Colne Valley 253

Grid references

- Point A - SE 0540 1228
- Point B - SE 0548 1239
- Point C - SE 0547 1230
- Point D - SE 0576 1248
- Point E - SE 0543 1229
- Point F - SE 0564 1243



**MAP NOT TO ORIGINAL SCALE**

Footpa to add      A - E - C - F - D and B - C

Unaffected definitive footpaths

