



Order Decision

Site visit made on 11 November 2020

by Alan Beckett BA MSc MIPROW

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

Decision date: 21 December 2020

Order Ref: ROW/3231729

- This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 ('the 1981 Act') and is known as the West Berkshire District Council (Public Footpath Cold Ash 18 Width) Definitive Map Modification Order 2019.
- The Order is dated 14 March 2019 and proposes to modify the Definitive Statement for the area by specifying the width of Cold Ash footpath 18 as described in the Order Schedule.
- There was 1 objection outstanding West Berkshire District 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.

Procedural Matters

1. None of the parties requested an inquiry or hearing into the Order. I have therefore considered this case on the basis of the written representations forwarded to me. I made an unaccompanied inspection of the path at issue on Wednesday 11 November 2020.
2. Other than the initial letter of objection made in response to the notice of the publication of the Order, no further correspondence was received from the sole objector. Parts of the initial objection are difficult to understand, but the following matters can be gleaned from it; the objector contends that the width of the path which has been maintained does not accord with the width proposed to be recorded; that the width should be a maximum of two metres (to accommodate two people walking side by side); and that the Order does not give clarity as to the exact location of the path.
3. In respect of these matters, no evidence was provided as to what part or parts of the path were being referred to as having been maintained or how those sections differed from the widths set out in the Order. In any event, the past or current maintenance of a route does not serve to indicate the width which has been or can be deemed to have been dedicated to the public.
4. Whilst a width of two metres may be sufficient for pedestrians to progress side by side, there are no set minima or maxima for public rights of way. The width of an individual public right of way is that set out in the definitive statement; where there is no recorded width, and the matter of width is in dispute (as here) the width to be recorded will depend upon the conclusions that can be reasonably drawn from the available documentary or user evidence. Finally, in relation to the other general point made by the objector, the alignment of the path and the widths of the various sections of it are clearly set out in the Order; in my view, what the Order seeks to record will give sufficient clarity to

landowners and users as to the position and width of the path at any given point.

The Main Issues

5. The main issue in this case is the width of footpath 18 to be recorded in the definitive statement. There is no dispute about the subsistence of a public right of way over footpath 18. The footpath was shown on the original definitive map published in 1961 which demonstrates that the footpath subsisted at the relevant date of 3 May 1954. However, the width of the footpath was not recorded in the accompanying definitive statement.
6. The only issue in this case is the lateral extent of the public right of way, and the dispute centres on that part of the path between points C and D on the Order plan. The widths to be recorded for those sections of footpath 18 other than C – D are not disputed.
7. The Order was made under section 53 (2) (b) of the 1981 Act relying on the occurrence of events specified in Section 53 (3) (c) (iii). To satisfy the terms of that section at this stage requires evidence which shows on a balance of probability, that the particulars contained in the definitive statement concerning the width of footpath 18 require modification.

Reasons

Background

8. On 6 January 2017, Cold Ash Parish Council ('the Parish Council') contacted the Council in response to a complaint that the Parish Council had received that posts had been erected along part of footpath 18 (C – D on the Order plan) which if fenced would narrow the path to approximately 1 metre. The post and rail fence was completed towards the end of January 2017 which left a 1 metre wide gap along the western edge of the previously used line of the footpath.
9. In response to the Council's requirement for the fence to be removed, the landowner's agent was of the view that a public footpath was only required to be 1 metre in width and that the fence would remain unless a greater width could be proven. The Council has investigated both documentary and user sources of evidence to support its contention that the width of footpath 18 between C-D is greater than 1 metre.
10. The fence remained in place until October 2020. On 8 October 2020 the Council notified the Planning Inspectorate that the fence had been removed and that the pre-2017 width of the path between points C and D was available for use once more. I saw from my site visit that the fence had indeed been removed although the post which marked the southern end of the fence at point C remained in place. Although path users could walk either side of this post, if the order were to be confirmed the post would represent an obstruction within the full width of the path.
11. Although the structure which led the Parish Council to raise the issue of width with the Council has now been removed, the Order before me remains to be determined and I am required to consider whether the evidence adduced by the Council is sufficient to show, on a balance of probabilities that footpath 18 is of the width stated in the Order Schedule.

Documentary evidence

12. I have examined the copies of the documentary evidence adduced by the Council in reaching my decision on the question of width of footpath 18 and I have also taken into account the published guidance on the recording of widths in definitive map modification orders¹.
13. Ordnance Survey (OS) large scale maps published in 1879, 1899 and 1912 all show footpath 18 by means of double peck lines of varying width. All the maps show the footpath between F-G as running to the west of the boundary fence of the land known as Alley Gulley. The 1912 map shows the southern third of the path to be wider than the remaining two thirds. The Council submits that the width of the path recorded by Ordnance Survey on these maps was E-F-G 1.5 metres; C-D-E 2 metres; B-C 4 metres; A-B 7 metres. Although I have only received copied extracts of these maps and acknowledge that there may be some distortion arising from the copying process which may affect the measurement of the width of footpath 18, I have no reason to doubt the accuracy of the Council's measurements.
14. The extract from the map published in 1933 does not extend northwards sufficiently to show section E-F-G, but shows the remainder of footpath 18, again by means of double peck lines. The Council's estimate of the width of the various sections of the footpath at this date is C-D-E 2 metres; B-C 4 metres; A-B 7 metres.
15. The extract from the 1982 OS 1:2500 scale map shows the entirety of footpath 18 again by means of double peck lines with the exception of the northern section of the path which is bounded to the east from F-G as on earlier mapping and to the west from E by adjacent property fences. The width of the path on the 1982 map shows some minor variation from what had been depicted in previous maps. Between points E-F-G the width is shown as 1.5 metres; C-D-E 2 metres; B-C 2 metres; and A-B 7 metres.
16. Whilst the 1982 map depicts sections B-C as being narrower than in the earlier maps, there remains a degree of consistency over time which shows that historically, the width of the section of the path principally in issue, namely C-D has been greater than the 1 metre width which had been left available by the erection of the fence in 2017.
17. The survey maps produced as a result of the 1910 Finance Act were based on the 1912 OS 25 inch to 1-mile base plan considered above. The information gathered as part of the Finance Act survey is of no assistance in ascertaining the width of the path, other than the conclusions which can be drawn from the depiction of the footpath on the base map.
18. The whole of footpath 18 has been located within the parish of Cold Ash since the reorganisation of parish boundaries in 1991. Prior to that date, the majority of the path (B-C-D-E-F-G) had been within the parish of Bucklebury.
19. The claim made by Bucklebury and Cold Ash parish councils in respect of footpath 18 was in two parts. The section of the path in Bucklebury (footpath 88 or 'the Alley Road') was described as an unmetalled public footpath between 3 and 4 feet wide (0.914 – 1.219 metres). Section A-B was claimed as a C.R.B

¹ www.gov.uk/government/publications/rights-of-way-advice-note-16-widths-on-orders

- (no.252) 10-12 feet wide (3.048 – 3.657 metres). Prior to the publication of the first Definitive Map the County Surveyor had changed the claimed status of A- B from CRB to footpath, although the available records are silent as to when or why this change occurred. Neither the draft, provisional nor definitive statements for footpath 88 or 18 included a width.
20. Aerial photographs taken between 1976 and 2003 are of little assistance in a determination of the width of the path as the line of footpath 18 is generally obscured by the canopy of the trees adjacent to the path.
 21. The Council inspected footpath 18 in August and September 2009. Photographs of the path taken during those site inspections show the position of the waymarker post located at the northern end of the C-D section of the path and demonstrate that path users were walking on land which was obstructed by the 2017 fencing.
 22. Taking these documentary sources into account, I conclude that the evidence demonstrates that the width of footpath 18 which has been available to the public has varied over its length but has not been less than 1.5 metres. In respect of the section of path in dispute, the documentary evidence demonstrates that at all material times, the width available to the public was greater than the 1m width which remained following the erection of the fence in 2017.

User evidence

23. No evidence has been submitted to suggest that the width of any part of footpath 18 was disputed prior to the erection of fencing in January 2017. In addition to the complaint from the Parish Council, the Council also received a number of complaints from path users who stated that they had always been able to walk along the path side by side (sometimes four abreast) but were now reduced to walking single file or had to wait whilst others travelling in the opposite direction had made their way through the narrowed section. The matter had been discussed at Parish Council meetings between January and May 2017 and had also featured in reports in the local press in February, March and May 2017.
24. Footpath 18 appears to be a well-used path between two residential streets close to the centre of Cold Ash. Even on a grey November afternoon, I encountered at least a dozen other path users during the time of my site inspection. Given the apparent public outcry which resulted from the erection of the fence in 2017, I consider it likely that any similar attempt to reduce the width of the path would have resulted in a similar response. However, there is no evidence of an earlier challenge to the public's ability to use a width greater than 1 metre between points C-D nor is there evidence of a challenge to use of any other part of footpath 18.
25. Twenty-two user evidence forms (UEFs) were submitted to the Council in response to the challenge posed by the fence. Of these 22 respondents, 13 had used footpath 18 for more than 20 years prior to the erection of the fence. The respondents provided estimates of the width of the path between C-D which had been available for use prior to 2017; these estimates varied between 1.5 and 5 metres.

26. The upper estimate of width appears to relate to some of the unenclosed sections of the path as the physical width of C-D which can be used to pass and re-pass is constrained to around 2.5 metres by the side branches of the trees which line the path. Nonetheless, the UEF evidence demonstrates that prior to 2017 the path between C-D was sufficiently wide for two or more users to walk abreast along the path or for two users travelling in opposite directions to comfortably pass each other.
27. I have no difficulty in accepting that the width available to the public between C-D during the 20-years prior to 2017 was greater than the 1 metre width created by the new fencing. I consider it highly likely that the 2.5 metre width which is presently available is the width which would have been used by the public prior to the fence being erected.
28. No evidence has been submitted from which it can be concluded that the lateral extent of C-D in use by the public prior to January 2017 was used by force, by stealth or with the permission of the owner of the land. The public's use of the available width between the trees and fences which bounded the path prior to January 2017 can therefore be considered to have been use 'as of right'. There is also no evidence before me to suggest that public access to the width between the pre-January 2017 boundaries had been interrupted in any way.
29. Overall, the available evidence is sufficient to raise a presumption that footpath 18 between C-D has been dedicated at a width of 2.5 metres.
30. There is no evidence before me that prohibitory notices were erected during the 20-year period prior to 2017 or that the owner or owners during that period (whoever he, she or they may have been) took any overt action to disabuse the public of the belief that in relation to C-D a width of 2.5 metres had been dedicated to public use. It follows that I conclude that the presumption of dedication raised by the user evidence in relation to the width of C-D has not been rebutted.

The remainder of footpath 18

31. The Council contends that the widths proposed to be recorded for the remaining parts of footpath 18 can be deemed to have been dedicated through long use either under the statutory scheme or at common law. The Council also submits that the widths to be recorded reflect the widths habitually used by the public in those areas where the path is not physically constrained by fencing or where boundary fencing is set back from the path.
32. The evidential basis on which the Council has determined the width of the remainder of the path and the methodology employed to arrive at its conclusions is not challenged. Having had the opportunity to view footpath 18, I find that the Council's submissions as to the width of the remainder of the to be persuasive and that on a balance of probability, the widths set out in the Schedule to the Order have been dedicated to the public.

Overall Conclusion

33. I conclude that the evidence before me is sufficient to show, on a balance of probabilities, that the widths set out in the Schedule to the Order have been dedicated to the public. It follows that I also conclude that the particulars contained in the definitive statement concerning the width of Cold Ash footpath 18 require modification.

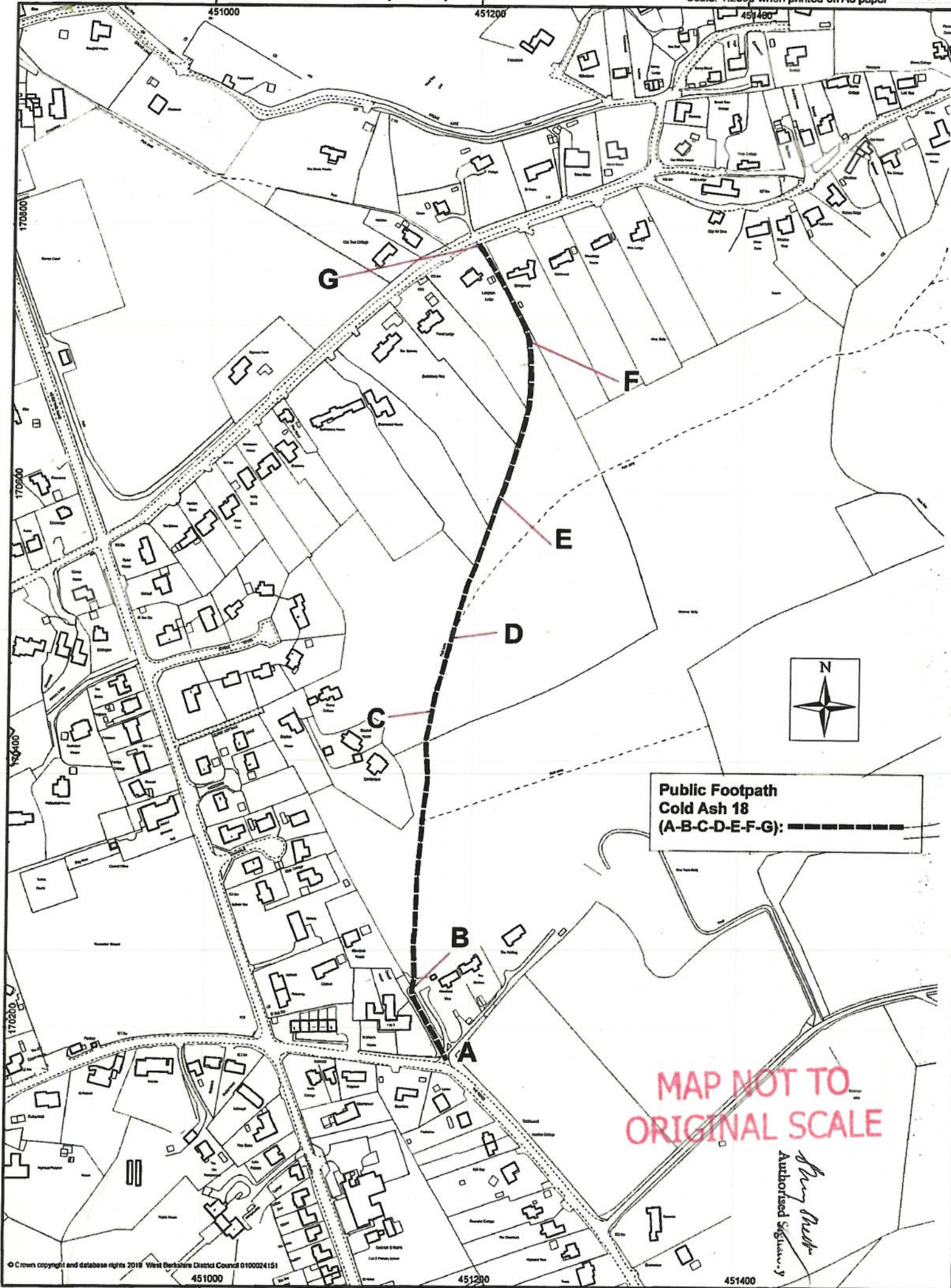
34. Having regard to these and all other matters raised in the written representations, I conclude that that the Order should be confirmed.

Formal Decision

35. I confirm the Order.

Alan Beckett

Inspector



MAP NOT TO ORIGINAL SCALE

Henry Mather
Authorized Signatory