



Order Decision

Unaccompanied site visit made on 24 February 2021

by Mark Yates BA(Hons) MIPROW

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

Decision date: 08 April 2021

Order Ref: ROW/3235697

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the 1981 Act") and is known as The Northamptonshire County Council (Public Footpath UA29 Hogs Hole Burton Latimer – in The Borough of Kettering) Definitive Map Modification Order 2017.
- The Order was made by Northamptonshire County Council ("the Council") on 21 July 2017 and proposes to add a footpath to the definitive map and statement.
- There was one objection and one representation 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. In light of the Covid-19 pandemic the scheduled public inquiry was cancelled and following consultation with the interested parties it was agreed that the Order could be determined from the written representations of the parties.
2. The Council has certified that it complied with the requirements of paragraph 3 of Schedule 15 to the 1981 Act in relation to the serving and placing of notices. However, some procedural matters have been raised by the objector (Mrs Lesingham) and an affected landowner, W. J. Redden & Sons Ltd ("Redden").
3. The details provided reveal that the affected landowners were all served with copies of the Order and notice. Redden were also provided with the written representations of the parties and given an opportunity to respond. No response has been received from Redden and they have provided nothing in support of their late objection to the Order. In respect of the site notices, paragraph 3(2)(c)(i) to Schedule 15 specifies that these should be placed at the ends of the way affected by the Order. It is not necessary for notices to be erected on the connecting ways. There is also no requirement to serve notices on adjacent landowners.
4. It is apparent that Mrs Lesingham initially encountered a problem in accessing documents kept on deposit at the Council's offices due to staff working from home during the Covid-19 pandemic. However, I understand that this issue was resolved, and she has been able to inspect the relevant documents. As the scheduled inquiry was cancelled, the issues raised in relation to the advertisement of the inquiry no longer seem to be relevant.

Main Issues

5. The Order relies on the occurrence of an event specified in Section 53(3)(c)(i) of the 1981 Act. Therefore, for me to confirm the Order, I must be satisfied that the evidence shows on the balance of probabilities that a footpath which is not shown in the definitive map and statement subsists.
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6. The Council asserts that the route claimed ("the claimed route") has been dedicated as a public footpath in accordance with Section 31 of the Highways Act 1980 ("the 1980 Act"). This requires consideration of whether there has been use of a way by the public, as of right¹ 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.
7. If statutory dedication is not applicable, I shall consider whether the evidence is supportive of the dedication of a footpath under common law.

Reasons

Statutory Dedication

When the status of the claimed route was brought into question

8. The Council believes that a statutory declaration, dated 16 December 2003, brought the status of the claimed route into question. This declaration was made on behalf of the former owner of land crossed by a large proportion of the route under Section 31(6) of the 1980 Act. It followed on from a statement and plan lodged in October 2002. Section 31(6) provides a mechanism whereby a landowner can demonstrate a lack of intention to dedicate any additional rights of way over their land. This document could also serve to bring the status of the way into question.
9. In the absence of any earlier event, I accept that the status of the claimed route was first brought into question by the lodging of the statutory declaration. This means the relevant period for the purpose of statutory dedication ("the relevant period") should be taken to be 1983-2003. It is therefore not necessary to consider any later event that could have potentially brought the status of the route into question.

Evidence of use by the public

10. Around forty people initially submitted evidence in support of use of the claimed route. The evidence in support is predominantly found in the proofs of evidence and user evidence forms provided. Additional letters have also been submitted in support of the Order. It is apparent that the proofs of evidence follow on from interviews undertaken by Council officers.
11. The evidence forms comprise of one page of responses to standard questions and a map on which the person has drawn the route they used. Therefore, they provide limited information when set against the proofs of evidence. I also find that many of the additional letters in support have little evidential value. However, the user evidence as a whole is supportive of public use throughout the relevant period. Further, it is not disputed that a route or routes were used by the public in the locality during this period. The relevant part of Mrs Lesingham's objection focusses on the route used by the public.
12. The claimed route links with two public rights of way. It follows the eastern boundary of an area of woodland known as Hogs Hole before crossing a field towards its southern end. There is land to the east which now comprises of a residential development with the rear gardens of some of the properties on

¹ Without force, secrecy or permission

- Virginia Crescent lying close to the claimed route. This development was undertaken a number of years after the end of the relevant period.
13. Mrs Lesingham believes the route used by the public went across land now within the gardens of properties on Virginia Crescent. Should I conclude that a footpath was previously dedicated over such a route, it would be necessary to modify the Order to record the path through the gardens concerned irrespective of the potential impact on the owners or occupiers of these properties. In terms of any preferred route through the woodland, the evidence would need to show that a footpath has been dedicated over a particular route. It is not my role to determine whether another route may offer a more suitable option for the public.
 14. The evidence of the users predominantly points to people following a route along the edge of the woodland. This is most evident from the maps the users have completed and attached to their evidence forms and proofs of evidence. There are additionally references by people to the use of a route around the edge of the wood. The evidence from those who appear to have walked within the wood is far more limited. Although a letter from Burton Latimer Town Council refers to the route being located at least 40 feet from the boundaries of the properties, this does not correspond with the route included in the Order. Nor does the user evidence support widespread use of a particular route within the woodland during the relevant period.
 15. Mrs Lesingham has submitted some aerial photographs that provide a useful insight into the land crossed by the claimed route prior to the housing development. Her aerial photographs do not cover the relevant period with the earliest one dating back to 2005. Nonetheless, a worn path is clearly evident which generally corresponds with the claimed route. An aerial photograph supplied by the Council, which originates from 2001, is less clear but it appears to show signs of a worn feature along the boundary of the wood.
 16. In terms of the photographs that post-date the relevant period, it is apparent that people were only physically prevented from using the route a number of years later when fencing was erected in connection with the development. The aerial photographs provide a snapshot in time and when taken in isolation are not necessarily indicative of use by the public. However, the photographs are entirely consistent with the user evidence and provide support for the use of a route alongside the edge of the wood.
 17. The Council takes the view that the claimed route lies outside of the gardens of the properties. It is asserted that a growth in vegetation and tree planting undertaken by the developer has covered the route. This growth in vegetation is evident on the 2020 aerial photograph. From looking at the photographs, I conclude on balance that the path used by the public during the relevant period broadly corresponds with the route shown on the Order Map.
 18. There is nothing to suggest that use of the claimed route was by way of permission or undertaken in secret. The applicant (Mrs Hull) refers to there being fencing towards the southern end of the route. Two other users (Mr and Mrs Pearce) also refer to fencing that became dilapidated over time. Mrs Hull's evidence is that it was always possible to get through or over the fence. None of the other users mention this fencing and it is evident that people were able to use the route in its entirety. In particular, there is no evidence to show that any fencing served to interrupt use during the relevant period or that people had to employ force to use the route during this period.

19. Overall, from my evaluation of the evidence, I find on balance that it is sufficient to raise a presumption of the dedication of a public footpath over the route included in the Order.

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

20. There is nothing to suggest that action was taken during the relevant period to demonstrate to the public that there was a lack of intention to dedicate a footpath.

Conclusions

21. I have concluded on balance that the evidence is sufficient to raise a presumption that the claimed route has been dedicated as a public footpath. In addition, there is no evidence that any landowner demonstrated to the public a lack of intention to dedicate the route during the relevant period. Therefore, I conclude on the balance of probabilities that a public footpath subsists. In light of this conclusion, there is no need for me to address the evidence in the context of common law dedication.

Other Matters

22. A number of matters have been raised regarding the potential impact of the route being recorded as a public footpath, including environmental, privacy and security concerns. However, these issues have no bearing on the test to be considered, as outlined in paragraph 5 above.

Overall Conclusion

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

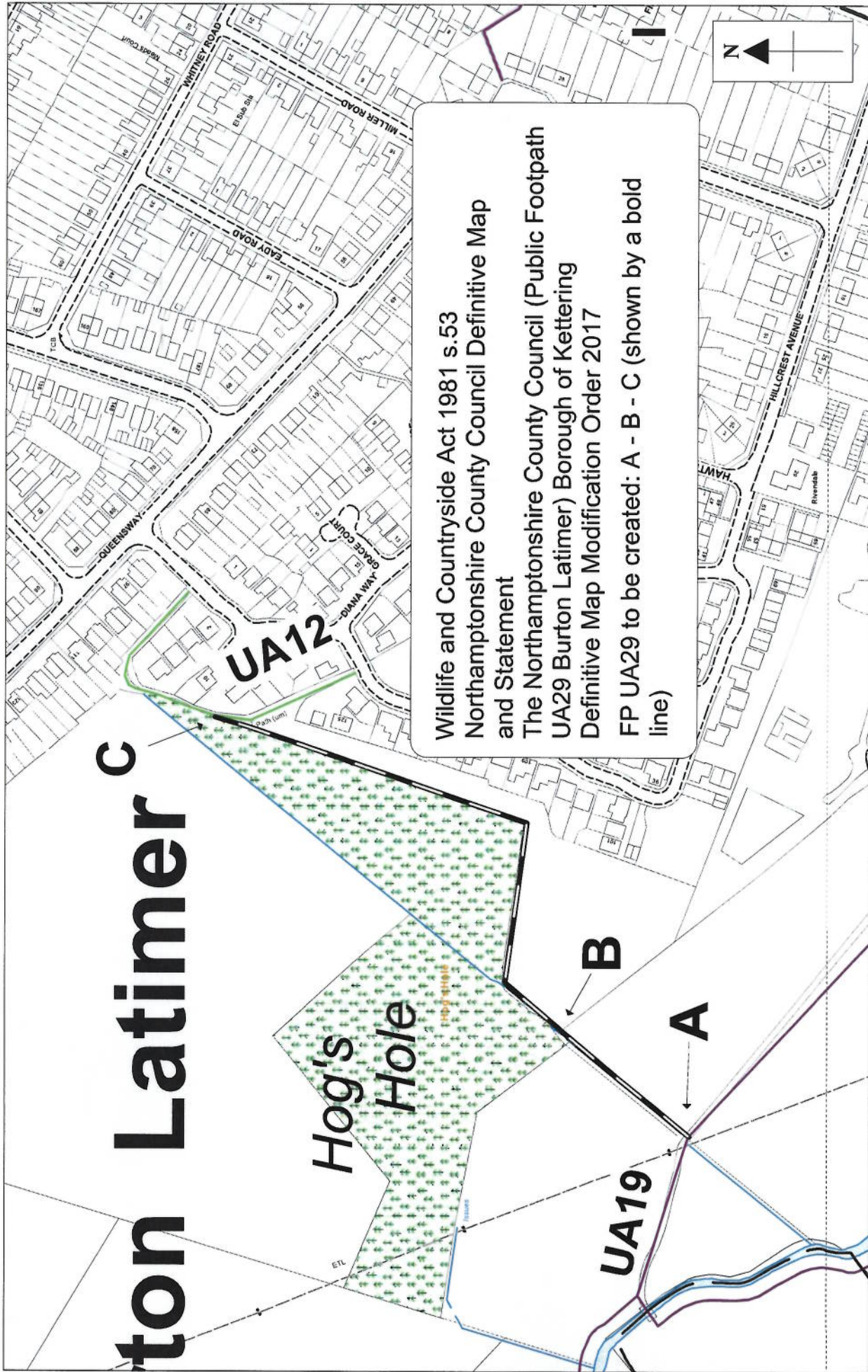
Formal Decision

24. I confirm the Order.

Mark Yates

Inspector

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Wildlife and Countryside Act 1981 s.53
 Northamptonshire County Council Definitive Map
 and Statement
 The Northamptonshire County Council (Public Footpath
 UA29 Burton Latimer) Borough of Kettering
 Definitive Map Modification Order 2017
 FP UA29 to be created: A - B - C (shown by a bold
 line)



Northamptonshire
 County Council

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