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| **Order Decision** |
| Site visit made on 20 April 2021 |
| **by Barney Grimshaw BA DPA MRTPI(Rtd)** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 12 May 2021** |

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| **Order Ref: ROW/3238950** |
| * This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Wiltshire County Council Mere Path No.78 Definitive Map and Statement Modification Order 2019.
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| * The Order is dated 28 March 2019 and proposes to modify the Definitive Map and Statement for the area by adding a public footpath running between The Square and North Street, Mere, as shown on the Order Map and described in the Order Schedule.
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| * There were 6 objections outstanding when Wiltshire County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.
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| **Summary of Decision: The Order is not confirmed.** |
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Procedural Matters

1. I made a site inspection on Tuesday, 20 April 2021 accompanied by Mr C Harlow, Wiltshire County Council, the Order Making Authority (OMA), Mrs A Howell, Mr E Hanson and Councillor G Jeans, supporters of the Order, Messrs A and D Lipscombe, objectors and a number of others. We were able to walk the whole of the Order route.
2. The OMA has adopted a neutral stance in respect of the confirmation of the Order as it was not satisfied that the available evidence satisfied the necessary criteria set out in the 1981 Act.
3. In writing this decision I have found it convenient to refer to points marked on the Order Map to which I have added an additional point (Point A1). I therefore attach a copy of this map.

The Main Issues

1. The requirement of Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 (the 1981 Act) is that the evidence discovered by the surveying authority, when considered with all other relevant evidence available, should show that a right of way that is not shown on the definitive map and statement subsists along the Order route.
2. Much of the evidence in this case relates to usage of the route. In respect of this, the requirements of Section 31 of the Highways Act 1980 (the 1980 Act) are relevant. This states that where it can be shown that a way over land has been enjoyed by the public as of right and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The period of 20 years is to be calculated retrospectively from the date when the right of the public to use the way was brought into question.
3. Common law also requires me to consider whether the use of the path and the actions of the landowners have been of such a nature that the dedication of the path by the landowners can be inferred.

Reasons

***Documentary Evidence***

1. The OMA considered a range of documentary evidence, none of which indicated the existence (or otherwise) of a public footpath on the line of the Order route.
2. When the first definitive map of rights of way was being prepared, the Order route was not included in the claim submitted by the parish council in 1951.
3. Plans prepared in connection with proposed development in 1998 show the Order route annotated *“PEDESTIAN ACCESS TO THE SQUARE”*. This does not necessarily mean that the route was regarded as a public right of way but could have indicated a private access for residents of flats proposed to be developed. Such residents are now known to hold keys to the gates across the route.
4. A lease in July 2000 allows the tenant of a building adjacent to the claimed route the right to use it only in the event of an emergency suggesting that it was not believed that there was any general public right over the route.
5. A statement submitted along with an application for works to a building alongside the route in 2008 states that *“The pedestrian right of way along the western side of the building via the courtyard will be retained”.* This appears to refer to the Order route but does not necessarily indicate that the route is a ‘public’ right of way.
6. These documents do not in my view indicate the existence (or otherwise) of a public footpath on the Order route. Accordingly, the determination of this Order depends entirely on the evidence of public use of the claimed route that is available and whether this indicates that a public footpath can be presumed to have been dedicated in accordance with the provisions of the 1980 Act (statutory dedication) or inferred to have been dedicated at common law.

***Statutory Dedication***

*Date when public use was brought into question*

1. There is general agreement that gates across the route close to Point A have been regularly locked since 2017. This clearly brought public use into question then and led to an application for the route to be recorded as a public footpath being submitted in 2018.
2. Other evidence refers to gates having sometimes been locked since 2007, between 2004 and 2007, and between 1979 and 1985 or 1991. This evidence is disputed by people who claim to have used the path before 2017. I have therefore considered a number of possible dates when public use of the Order route may have been brought into question.

*Evidence of Users*

1. Twenty-six User Evidence Forms (UEFs) have been submitted in support of the Order. These describe use of the Order route from the 1950s until 2017. However, 2 forms were completed by the same person and 2 related only to use in 2017 by people who had a key for the gates.
2. In addition, a number of other submissions have been made by people describing their use of the Order route.
3. Most people who completed UEFs claimed to have used the route weekly or more frequently, although 2 subsequently stated that their use might not have been so frequent throughout the whole period of their use.
4. All users stated that they had not been challenged or obstructed in their use before 2017 although one stated that when approaching the route from the north, if she saw closed gates, she would not use the route in case they were locked.
5. During the 20 year period from 1997-2017, around half of those completing UEFs claimed to have used the route throughout the period and most of the rest for at least some of that period. Similar numbers also claimed to have used the route in the periods 1987-2007 and 1984-2004. However, in the period from 1959 to 1979 there is very little evidence of use in the early part of that period.
6. Overall, it is my view that the available evidence of public use of the Order route since the 1970s is sufficient to raise a presumption that the route has been dedicated as a public footpath unless actions of landowners interrupted such use, brought it into question or otherwise indicated a lack of intention to dedicate a public right of way.

*Actions of landowners*

1. There is general acceptance among users of the route and landowners that metal gates have been present close to Point A for a long time. An image from 1955 appears to show the gates although images from 1965 and 1971 appear not to. More recent images consistently show them. There is also evidence that there were wooden gates in place close to Point A1 and on my visit I could still see brackets where they had been hung. These were said to have been removed by the current owners of part of the route in around 2007. The main dispute between parties concerns whether gates were ever locked to prevent public access.
2. A witness who leased or owned a shop adjacent to the archway (Point A) from around 1979 to 1985 (or possibly 1991) stated that he consistently locked the gates at Point A and braced the gates at Point A1 from Saturday evening until Monday morning during this period. He also recalled locking the gates over the Christmas period.
3. Another witness who owned land crossed by the claimed footpath from 2004 to 2007 stated that he locked the gates most of the time, denied permission to people requesting use of the route and turned away people attempting to use it. He also stated that the padlock on the gates had been removed on three occasions by persons unknown but had been replaced each time.
4. The current owner of some of the land crossed by the claimed path has stated that, when viewing the property before purchasing it in 2007, the gates at Point A were locked and have been at various times since then. The path was also obstructed during construction work. However, residents of flats adjoining the route have keys to the lock and there are currently more than 20 such keyholders.
5. Another current owner of some of the land crossed by the claimed path since 2007 has also stated that the gates were often locked during the ensuing 4 years whilst construction works were being undertaken. In addition, he stated that a sign informing people that it was private property and that entry was restricted was in place on the gates for about a year before being removed.
6. A former resident of a flat adjoining the claimed path for some time before 1989 has stated that prior to a car parking area being created in the 1970s the route would not have been usable as it would have crossed private gardens.
7. This evidence does not indicate that gates were always locked but that they may often only have been locked at times when people were not likely to have wanted use the route such as at night, on Sundays, in the Christmas period or during construction work. Nevertheless, if gates were locked as claimed by several witnesses, it is my view that this would have brought public use of the route into question and/or indicated a lack of intention on the part of landowners to dedicate a public right of way.
8. It is also arguable that a landowner would not erect and maintain gates across a route if it was intended that access to the route would never be restricted.

*Conclusions regarding Statutory Dedication*

1. There is significant evidence of public use of the Order route during periods between 1984 and 2017. However, there is also evidence of gates across the route being locked at various times during similar periods. Having reviewed all the available evidence, it is my view that, on the balance of probability, it is not possible to identify a continuous 20 year period since 1970 during which public use was not interrupted or brought into question or in which the actions of landowners did not indicate a lack of intention to dedicate a public right of way. The available evidence of public use of the route before 1970 is insufficient to raise a presumption of public dedication.
2. Accordingly, I conclude that it cannot be presumed that the Order route has been dedicated as a public footpath in accordance with the provisions of the 1980 Act.

***Common Law***

1. An inference that a way has been dedicated for public use may be drawn at common law where the actions of landowners (or lack of action) indicate that they intended a way to be dedicated as a highway and where the public have accepted it.
2. In this case, although there is evidence that the Order route has been used by the public over a lengthy period, there is also evidence that landowners’ actions have indicated a lack of intention to dedicate a public right of way. It cannot therefore be inferred that the Order route has been dedicated as a public footpath under common law.

**Other Matters**

1. A number of supporters of the Order pointed out the advantage of the use of the Order route rather than a nearby alternative along Manor Road. Manor Road is narrow with no adequate footway and is used by large vehicles, it is therefore unattractive and potentially dangerous for pedestrians. I understand the concern expressed and accept that the unattractiveness of this alternative would have made it likely that people might have preferred to use the Order route when they could. However, the desirability or otherwise of the Order route is not a matter to which I can afford significant weight in determining the Order in accordance with the provisions of the 1981 Act.

Conclusions

1. Having regard to these and all other matters raised, I conclude that the Order should not be confirmed.

Formal Decision

1. I do not confirm the Order.

Barney Grimshaw

Inspector

