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| **Order Decision** |
| On papers on file  |
| **by Barney Grimshaw BA DPA MRTPI(Rtd)** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 24 May 2021** |

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| **Order Ref: ROW/3242480** |
| * This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as The Definitive Map of Public Rights of Way for Gloucestershire – Additional Public Footpath linking Rose Hill & Far Wells Road, Bisley with Lypiatt Parish – Modification Order 2019.
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| * The Order is dated 28 June 2019 and proposes to modify the Definitive Map and Statement for the area by adding a Public Footpath linking Rose Hill and Far Wells Road, as shown on the Order Map, and described in the Order Schedule.
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| * There was 1 objection outstanding when Gloucestershire 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 confirmed subject to a modification that does not require advertising.** |
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Procedural Matters

1. I have not visited the site, but I am satisfied I can make my decision without the need to do so.
2. In writing this decision I have found it convenient to refer to points marked on the Order Map. 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. Some 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

1. Gloucestershire County Council, the Order Making Authority (OMA), investigated various possible sources of documentary evidence relating to the Order route.
2. The Bisley Tithe Map (1842) shows the route coloured in the same manner as known highways. This suggests that the route may have been thought to be a public way.
3. The map prepared compiled in connection with the survey carried out under the Finance Act 1910 shows the route separate from other hereditaments, uncoloured and unnumbered. This is the way in which public highways were shown. This is strong but not conclusive evidence of the existence of public rights over the route.
4. Ordnance Survey maps from 1880 onwards consistently show the route. Although these maps provide good evidence of the existence of the route at the time they were surveyed they do not indicate whether public rights existed over it.
5. The map submitted by the parish council in connection with the preparation of the first definitive map in the 1950s is not very clear but appears to show the Order route coloured as a footpath. However, the path was not subsequently included in the definitive map itself.
6. In addition, 10 User Evidence Forms (UEFs) were submitted describing claimed use of the path by 13 people from 1944 to 2017 when public use was brought into question by a challenge to users made by someone who might be the owner of part of the route. All those completing UEFs claimed to have used the route for at least part of the 20 year period 1997-2017 and seven to have used it throughout that period. Much of the claimed use had been on a frequent basis, weekly or more often, and no users had met with any obstruction or challenge before 2017.
7. No evidence has been provided of any action by any potential landowner before 2017 that would indicate a lack of intention to dedicate the route as a public right of way.
8. There is however evidence that the route was signposted as a public footpath at its junction with Far Wells Road (Point B) either by the parish council or county council. The sign was removed in 2015 as the route was not recorded as a public right of way but it is said to have been in place for at least 25 years before then.
9. Overall, the combination of the documentary and user evidence, is in my view sufficient on the balance of probability, to indicate that the Order route is a public footpath and should be recorded as such, especially as no substantive evidence to the contrary has been submitted.

**Other Matters**

1. The only objection made to the Order concerned the width of the path which the objector claimed to be less than stated in the Order. The OMA has now met with the objector and measured the width and reached agreement on the correct width of the path. As a result, the OMA has requested the modification of the Order to reflect the agreed width and the objector has accepted that this will satisfy his objection. I therefore propose to make the requested modification.

Conclusions

1. Having regard to these and all other matters raised, I conclude that the Order should be confirmed subject to the modification of the width of the footpath as requested.

Formal Decision

1. I confirm the Order subject to the following modification:

In the Schedule to the Order, Part 1, delete the words *“…having a width of 1.3 metres between Points A-B”* and substitute the words “*…having a width at Point B of 0.8m and a varying width of 1-1.3m along the path between Points A-B”.*

Barney Grimshaw

Inspector

