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| **Order Decision** |
| Site visit made on 17 August 2021 |
| **by Alan Beckett BA MSc MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 03 SEPTEMBER 2021** |

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| **Order Ref: ROW/3251643** |
| * This Order is made under Section 53 (2) (a) of the Wildlife and Countryside Act 1981 (‘the 1981 Act’) and is known as the Bridleway No 10.140/19 Levenside to Rosehill Drive, Stokesley Modification Order 2012.
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| * The Order is dated 24 April 2012 and proposes to modify the Definitive Map and Statement for the area by upgrading footpath 10.140/19 to bridleway as shown in the Order plan and described in the Order Schedule.
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| * There were 8 objections outstanding when North Yorkshire County Council (‘the 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 the modifications set out below in the Formal Decision.** |
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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 Tuesday 17 August 2021.
2. The Order is stated to have been made under the provisions of Section 53 (2) (a) of the 1981 Act. This provision relates to cases where the event specified in section 53 (3) (c) (i), (ii) or (iii) took place before the commencement date of the 1981 Act, this being 28 February 1983.
3. In this case the qualifying period of use which gives rise to the section 53 (3) (c) (ii) event commenced in 1989 (see paragraph 19 below); that is, the event occurred after the commencement of the 1981 Act. Consequently, the Order should have been made under section 53 (2) (b). This appears to be little more than a typographical error on the Council’s part and this error is unlikely to have caused the interests of any party to be prejudiced. If the Order is to be confirmed, I propose to modify it accordingly.

The Main Issues

1. The Order has been made in consequence of the occurrence of an event specified in Section 53(3)(c)(ii).
2. Therefore, the main issue is whether the Council have discovered evidence which, when considered with all other relevant evidence available, is sufficient to show that a right of way which is shown in the definitive map and statement as a highway of one description (namely as a footpath) ought to be there shown as a highway of a different description (namely as a bridleway) such that the definitive map and statement require modification.

**Legal Framework**

1. Dedication of a public right of way through a long period of use (as is claimed in this case) can be deemed to have occurred under Section 31 of the Highways Act 1980 (‘the 1980 Act’). Section 31 provides that where a way has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, that way is deemed to have been dedicated as a highway unless there is sufficient evidence that during that period the landowner had no intention to dedicate it. Use ‘as of right’ is use which has been without force, secrecy, or permission.
2. 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, either by a notice or otherwise.
3. Should the tests for deemed dedication under section 31 not be met, then it may be appropriate to consider the dedication of the way at common law. This requires consideration of three issues: (i) whether any current or previous owners of the land had capacity to dedicate a highway (ii) whether there was express or implied dedication by the landowners and (iii) whether there is acceptance of the highway by the public. There is no fixed period of use at common law and depending on the facts of the case it may range from a few months to several decades. There is no particular date from which use must be calculated.

Reasons

***Background***

1. The Order route is located to the south of the centre of Stokesley, commencing on Levenside and follows the course of a tarmac surfaced roadway between points A and B. The roadway provides vehicular access to a number of residential properties, a sewage pumping station and to the allotments located to the south of Lady Hullocks Court.
2. At point B the Order route narrows and runs over an accessway which provides a link to Rosehill Drive. At a point adjacent to the southern boundary of the sewage pumping station are two concrete bollards which restrict the width of the path along with a street light which does not. Between the bollards and point C the Order route follows a tarmac path with the boundary of Lady Hullocks Court to the east and an area of amenity grass to the west. On the western edge of this amenity grass is a notice which bears the legend “*No horses allowed on the grass”.*

***The date on which the right of the public to use the claimed bridleway was brought into question***

1. In order for the right of the public to use the Order route on horseback to have been brought into question for the purposes of section 31 (2) of the 1980 Act, some action must have been taken or an event occurred which brings home to those using the path that their right to do so is being challenged. The means by which such a challenge can occur are not exhaustive, but whatever means are employed must be sufficiently overt to bring that challenge to the attention of the public using the route.
2. Where there is no evidence of a physical obstruction to the route or no evidence of any other event which brings use of the route into question, sections 31 (7A) and (7B) of the 1980 Act provide that an application made to the surveying authority to add a route to the definitive map can serve as a challenge to use for the purposes of section 31 (2). An application to record the Order route as a public bridleway was made to the Council in January 2009.
3. In 2000 Stokesley Town Council (‘STC’) sought to have that part of the route A - B recorded as a Byway Open to All Traffic as a means by which vehicular access rights for adjacent property owners and allotment gardeners could be protected; the application was subsequently withdrawn. In 2001 STC requested a public footpath creation order from the Council which was subsequently made and confirmed.
4. In 2003, after receiving a complaint from a resident about horse riders using the route, STC wrote to the local representative of the British Horse Society (‘BHS’) pointing out that the route was not a bridleway and that horse riders should not use it. Further correspondence from STC to the local BHS representative in July 2003 noted that STC had agreed to request the installation of signs between points A and C reading “*Give Way to Pedestrians*” and “*Elderly People*”. It is not known whether these signs were ever erected.
5. In April 2006 STC received a letter from the local representative of the BHS which claimed that the 2001 creation order should have been for the creation of a bridleway. STC did not agree, noting that the path was of insufficient width to be suitable “*for the large groups of riders who are now using the path to exercise their horses*”. STC also submits that in 2008 the Clerk was to write to local riding stables regarding its view; however, copies of this claimed correspondence have not been submitted. In January 2009, the local representative of the BHS applied to the Council for the route to be recorded as a public bridleway.
6. Other than the bollards mentioned in paragraph 10 above, there are no restrictions on access to the Order route and the evidence submitted suggests that since the construction of the Malvern Drive housing estate in 1982 or 1983 there has always been unrestricted access to Levenside from Rosehill Drive. Whilst the bollards present constrict the available width of the path, my site visit revealed that they do not prevent access by pedestrians or cyclists. Although I did not witness use of the Order route by horse riders, I consider it unlikely that the bollards would prevent access on horseback given the width between them.
7. There is therefore no physical restriction on access to the Order route. Although STC claims that it has taken steps to challenge use of the route by horse riders, the challenge appears to be limited to corresponding with the local representative of the BHS. There is no evidence which suggests that those using the route were members of the BHS; those individuals using the Order route are therefore unlikely to have been unaware of STC’s views as communicated to the BHS. There is no evidence that STC communicated its view to local riding stables; a retrospective assertion that such correspondence was entered into is insufficient to bring use into question.
8. There is no evidence of prohibitive notices aimed at horse riders having been erected along the Order route. Although the 2003 correspondence suggests that notices were to be erected, the suggested wording of the notices being proposed is silent as to the view being taken of equestrian use of the route. The only notice present at the time of my site visit prohibits the riding of horses on the amenity grass but is silent as to whether horses are allowed on the tarmac strip between points B and C.
9. In my view the provisions of section 31 (7A) and (7B) are applicable in this case and the application made in 2009 to record the route as a bridleway is the action which brought public use of the Order route on horseback into question. Consequently, I also conclude that the relevant 20-year period for the purposes of section 31 (2) of the 1980 Act is 1989 to 2009.

***Whether the claimed bridleway was used by the public for a period of not less than 20 years ending on the date the public’s right to do so was brought into question***

1. The application submitted to the Council contended that the route at issue was a public bridleway which had been in use by the public on horseback for more than 20 years. The application was accompanied by 15 user evidence forms (UEFs) completed between June 2008 and April 2009. In addition to these forms, a further 5 UEFs were submitted in 2012. All of the UEFs contained a map which the respondent completing the form had marked to show the route which had been used and to which their evidence related.
2. Those individuals who completed the UEFs claim to have used the Order route on foot, on horseback and with a pedal cycle. In addition to use on foot, horseback and by pedal cycle, one respondent claimed use of the route with a motor vehicle. Given the presence of the bollards between points B and C, the claim of vehicular use of the Order route appears on the face of it, to be improbable. However, I have not been provided with details of when the bollards were erected, so such use may have been possible, and I do not discount the other evidence of this particular user.
3. Of the 20 respondents, 5 claimed to have used the Order route on horseback throughout the 20-year period prior to 2009. Two respondents completed their UEFs in 2008 and claimed that their use had commenced in 1986 and 1988 respectively. Whilst these two respondents do not demonstrate individual use for the whole of the 20-year period under consideration, it is not a requirement for all users to do so. The remaining 13 respondents had also used the Order route for part of the 20-year period.
4. The earliest claimed use dates from 1982 and is contemporaneous with the building of the Malvern Drive housing estate. The claim that it had been possible for horse riders to pass between Rosehill Drive and Levenside since the construction of the housing estate is supported by the observations made in representations made by a number of local residents. The evidence from these individuals is to the effect that from taking up residence on the estate as the first occupiers of the newly built houses, they had seen horse riders travelling between Rosehill Drive and Levenside.
5. The equestrian use described in the UEFs was primarily for recreational purposes as part of a longer circular ride within the local area; the Order route enabled riders to avoid vehicular traffic along West End and High Street and provided a quiet, relatively traffic-free link to Levenside and onward to the public bridleway network to the east of the town. The picture painted by the evidence of use is one of frequent and consistent use of the Order route on horseback over a prolonged period of time. None of those who had used the Order route had been challenged in their use, nor had they seen any signs or notices which indicated that such use was not permitted.
6. This regular and frequent use of the Order route is also reflected in the written objections to the Order. Objections are made on the grounds that the Order route is narrow and that pedestrians feel intimidated and threatened when encountering large horses on a narrow footpath; that horses churn up the grassed areas of housing estates and leave manure on roadways and that the use of the way by horses puts pedestrians in danger. Whilst I can appreciate these concerns, the matters raised by the objectors are indicative that there has been use of the Order route by the public on horseback over a considerable period of time.

***Whether use was as of right and without interruption***

1. The available evidence points to the entrance and exit points at A and C having at all material times been open and equestrian users have not had to break down fences or gates in order to access the path. I conclude that use has been without force and uninterrupted during the relevant 20-year period.
2. The width between the bollards is also sufficient to allow a horse and rider to pass between or around them. Use has also been conducted in full view of anyone who may have been able to observe such use. There is no indication that permission to use the path has been sought or granted. None of those who completed a UEF recalled having been challenged when using the path, and there is no evidence of prohibitory notices having been erected along it. I conclude that the use by the public described above was use as of right.

***Conclusions regarding the evidence of use***

1. There is a substantial body of evidence which demonstrates uninterrupted use of the Order route by the public on horseback as of right throughout the 20-year period under consideration. I conclude that the evidence adduced is sufficient to raise a presumption that the Order route has been dedicated as a public bridleway.

###### *Whether there is sufficient evidence that there was during the 20-year period under consideration no intention to dedicate the claimed right of way*

1. For a lack of intention to dedicate to be demonstrated a landowner is required to have taken action to make the public aware that he, she, or they had no intention of dedicating a public right of way. ‘Intention’ in this context is an objective test of what a reasonable user of the path would have understood the landowner’s intention to be; that is, whether a reasonable user would have understood that the owner intended to disabuse the user of the notion that the way was anything other than a public footpath.
2. The most common way in which the landowner’s intentions could have been brought to public attention would have been by the erection on the path of a notice or notices denying the existence of a public bridleway, or to place a suitably worded notice in the local newspaper. The identity of the freeholder of the land crossed by the claimed bridleway is not known; ownership of the land is not registered with Land Registry. There is no evidence that the relevant landowner took any such action prior to January 2009.
3. The objector claims the actions of STC have been consistent in opposing the request for the footpath to be upgraded and that this opposition would have been known to users through reports of STC meetings set out in the local press and through approaches to the Council and local riding schools. Whilst STC may object to the claim that a public bridleway has come into being through long use, it is for the landowner to demonstrate a lack of intention to dedicate.
4. There is no evidence to suggest that STC are the owners of the land in question. That A – B was the subject of a definitive map modification order application made by STC in 2000 and that separately STC sought a s26 creation order from the Council indicates that STC have no proprietorial interest in the land. Had STC been the owner it would have been possible for it to have dedicated the public rights which it sought to have recorded by other statutory means.
5. There is no evidence before me that prohibitory notices were erected during the relevant 20-year period 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 the way had been dedicated to public use as a bridleway.
6. I conclude that there is insufficient evidence of actions having been taken by the landowners to rebut the presumption of dedication raised by the user evidence.

**Other matters**

1. STC argue that at 1.8 metres in width the proposed bridleway does not comply with the minimum width required by Schedule 12A of the 1980 Act as a non-field edge bridleway is required to be a minimum of 2 metres in width. STC also notes that other Highway Authorities require a bridleway to be a minimum of 3 metres.
2. Schedule 12A was inserted into the 1980 Act by the Rights of Way Act 1990 to provide highway authorities with the ability to re-instate a public right of way where the land supporting the right had been disturbed rendering it inconvenient for the exercise of the public right. Schedule 12A (3) provides the minimum and maximum widths to which the highway authority can reinstate the surface of the path.
3. The widths set out in Schedule 12A (3) are not however statutory widths for all public rights of way, and the width of public rights of way will vary from case to case. In the current case the width of B – C is constrained by the fences between which the used path runs; the evidence submitted in support is that that horse riders were able to negotiate the path despite this constrained width. It follows that the bridleway has been deemed to have been dedicated subject to that constraint.
4. Objection to the Order is also made on grounds of public safety in that the path is too narrow for horse riders and pedestrians to pass in safety, with particular reference being made to the use of the path by the elderly residents of Lady Hullocks Court. In this case the evidence demonstrates that there has been use of the Order route by the public on horseback of the required quality for a public bridleway to be deemed to have been dedicated. The use on horseback has taken place alongside use of the route by pedestrians, seemingly without mishap; such combined use is a feature of many public bridleways. Concerns about the suitability of the Order route for use by horse riders is not a matter I can take into account in reaching my decision.

**Conclusions on statutory dedication**

1. I conclude that the evidence of use of the Order route on horseback by the public as of right and without interruption throughout the period between 1989 and 2009 is sufficient to raise a presumption of dedication of the route as a public bridleway.
2. There is no evidence to suggest that prohibitive notices had been erected on the Order route at any time during the relevant period and there is no evidence of challenges to use having been made, or that the owner of the land during the relevant period brought to the attention of the public using the path that there was no intention to dedicate a public bridleway. I consider that the presumption of dedication raised by the user evidence has not been rebutted.
3. It follows that I am satisfied that the evidence before me is sufficient to show, on a balance of probabilities, that a public bridleway subsists over the Order route.
4. Given my finding that dedication of a public footpath can be deemed to have taken place under section 31 of the 1980 Act, it is unnecessary for me to consider whether dedication at common law could be inferred.

###### Overall Conclusion

1. Having regard to these and all other matters raised in the written representations I conclude that the Order should be confirmed subject to the modification set out in paragraph 3 above.

**Formal Decision**

1. I confirm the Order subject to the following modification: in the preamble to the Order, line 1, substitute 53(2)(a) with 53(2)(b).

Alan Beckett

Inspector

