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| **Order Decision** |
| Site visit made on 6 July 2021 |
| **by C Beeby BA (Hons) MIPROW** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 11 October 2021** |

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| **Order Ref: ROW/3255665** |
| * This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Luton Borough Council Footpath No 159 (Langley Place, Luton) Definitive Map and Statement Modification Order 2020. |
| * The Order is dated 13 May 2020 and proposes to modify the Definitive Map and Statement for the area by recording public footpath No 159 between New Town Street and the rear boundary of the Telmere Industrial Estate as shown in the Order plan and described in the Order Schedule. |
| * There were three objections outstanding when 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.** |
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Procedural Matters

1. In writing this decision I have found it convenient to refer to points marked on the Order Plan. I therefore attach a copy of this plan.

The Main Issues

1. Luton Borough Council made the Definitive Map Modification Order (DMMO) under Section 53(2)(b) of the 1981 Act on the basis of events specified in sub-section 53(3)(c)(i). As a result, the main issue is whether the discovery by the Council of evidence (when considered with all other evidence available) is sufficient to show that a public right of way on foot which is not shown in the map and statement subsists over land in the area to which the map relates.
2. Whilst it suffices under section 53(3)(c)(i) for a public right of way to be *reasonably alleged* to subsist, the standard of proof is higher for the DMMO to be confirmed. At this stage, evidence is required on the balance of probabilities that a right of way subsists. The burden of proof lies with those who assert the existence of a public footpath.

Reasons

***Background***

1. The Order route runs between the “Sugar Loaf” public house and an area used as its garden, and past rear amenity space associated with a property on Albert Road, before reaching the Telmere industrial estate. Documentary evidence has been submitted in support of the Order.

***Documentary Evidence***

*1900, 1922, 1938 and 1946 Ordnance Survey (OS) Maps*

1. These depict the Order route as the end of an alley which runs between houses. It is open to New Town Street. The 1922 and 1938 maps name the alley “Langley Place”.
2. The Order route is shown on the 1946 OS map as a separate area of land from the open area shown where Langley Place formerly existed. A line separates the route from New Town Street.

*Street Directory extracts 1908-1933*

1. Occupiers of 28 dwellings on Langley Place over this time period are listed.

*1930 Compulsory Purchase Order Plan*

1. This depicts the Order route as the end of Langley Place, an alley which runs between houses and which is open to New Town Street.

*1935 Housing Confirmation Order Map*

1. The whole Order is not supplied but Langley Place is shown as an alley between a number of houses. Several of these, and the majority of Langley Place, are shaded pink. The Order route is excluded from this shading.

*1939 land sale microfiche extract*

1. This depicts an area of land sold by the Council in 1939. The Langley Place housing does not appear, and an open area is shown instead. The Order route is excluded from the transaction.

*Statutory Declaration*

1. In this statement, a current resident affirms their evidence (recalling the history of the area where they grew up in the 1940s and 1950s). Langley Place is described as an alleyway where, as a child, the declarant was forbidden from playing.

*1975 Kelly’s Directory entry*

1. Langley Place is described as “From 98 New Town street (No thoroughfare)”. 98 New Town Street is the address of the Sugar Loaf public house.

*Street sign*

1. A sign with the words “Langley Place” was present on the corner of the public house and adjacent to the Order route at my site visit. It also appears in a historic photograph of the public house.

*2017 Land Registry documents*

1. The Order route is shown as unregistered land between surrounding land parcels.

***Reasoning***

1. The early documentary evidence depicts Langley Place as an alley providing access to several dwellings. The alley’s narrow width compared to surrounding streets suggests that any public access was most likely to be restricted to pedestrian use only. It is shown in a similar fashion to an alley which passes north from the opposite side of New Town Street and which is marked on one map as “School Way”. This was available for use on foot on the day of my site visit.
2. Whilst it is not depicted as a thoroughfare route, Langley Place formed the sole access to a number of dwellings. As such, the route would have been used by residents who may have enjoyed a private right of access along the alley. In addition, the route would have been used by visitors to the dwellings. Given the number of former dwellings along the route, this group is likely to have been sufficiently large and varied that use was by the public at large. Furthermore, Langley Place is depicted in the majority of the evidence as open to the street and unobstructed in the same way as the wider highway network in the town. At the time, it consequently had the characteristics of a route which was available for open public use on foot, and it is likely to have been an alley of a similar type to “School Way”. The presence of the Langley Place street sign additionally provides some support for its historic availability for public use, as this was presumably provided by a public authority.
3. The Langley Place dwellings appear to have been demolished in approximately 1938-1939. The exclusion of the Order route land from the Housing Order’s shading suggests that it did not form part of the demolition scheme. This is consistent with the continuing presence of the public house adjacent to the route throughout the submitted evidence.
4. Documents since the demolition distinguish the land crossed by the Order route from the remainder of the land formerly crossed by Langley Place, which is shown initially as an open area and later as the industrial estate. The inclusion of a Kelly’s Directory entry in 1975 supports the continuing existence of an element of the former Langley Place at that point in time. The directory was not produced for the purpose of identifying the existence or otherwise of public rights of way. Nevertheless, the word “thoroughfare” used in the description suggests a route between two places. “No thoroughfare” is therefore more likely to indicate a cul-de-sac area of land than to suggest that no public access exists over that land.
5. The housing along the Langley Place alley had been demolished by the time of the recollections within the Statutory Declaration concerning the 1940s/1950s. Thus, the majority of Langley Place does not appear to have existed as an alley by the mid twentieth century. The declaration is consequently likely to relate to the Order route land only. The stated prevention of children playing there suggests that the land in question was, nevertheless, openly accessible at that point.
6. The principle “once a highway, always a highway” means that once a public right of way has come into existence it continues to exist indefinitely. It can only be brought to an end by the use of a statutory provision such as a stopping up order. Matters which have no effect on the pre-existence of the public right consequently include any lack of public use or maintenance, and the physical obstruction of a route (or lack of public or highway authority objection to that obstruction). Furthermore, no statute has displaced the highway principle.
7. A stopping up order in respect of Langley Place has not been located, although it is suggested that submitted undated maps show a footpath which was intended to be extinguished by a red line extending along the majority of Langley Place but excluding the Order route. Nevertheless, the land crossed by the Order route is excluded from the Housing Order and land sale documents. This is consistent with its exclusion from any registered area in modern Land Registry records. Thus, if a stopping up order was made in respect of Langley Place to enable the sale and development of the land, it is more probable that this concerned the majority of the alley as shown in the Housing Order and land sale, rather than the Order route.
8. Although it is not necessary for a route to have a “destination” in order for it to form a public right of way, Langley Place was formerly an alley providing public access to a number of dwellings. The Order route forms a remnant of that alley and therefore the connection of only one end of the route to a highway is not a barrier to the existence of public rights along it.
9. Whilst no single item of evidence is compelling in support of unrecorded public footpath rights over the Order route, the evidence as a whole is sufficient to demonstrate the existence of a historic public footpath over the route, for which no opposing evidence or evidence of stopping up has been located. The construction of fencing across the route and other matters referred to above have had no effect on the existence of the unrecorded public rights. Thus, the balance of probabilities is tipped in favour of confirmation of the Order.

**Other Matters**

1. The DMMO would record a public footpath over land which contains a hatch giving access to the public house’s cellar for deliveries. It would also lie immediately adjacent to the public house’s entrance. Health and safety concerns have been raised in this regard. Concerns about potential criminal activity have additionally been submitted. However, as these matters lie outside the criteria set out within the relevant legislation, I cannot give them weight in reaching my decision.

Conclusion

1. Based on the evidence before me I am satisfied on the balance of probabilities that a public footpath subsists along the entirety of the Order route and that the definitive map and statement should be modified accordingly.

**Formal Decision**

1. I confirm the DMMO.

C Beeby

INSPECTOR