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| **Order Decision** |
| On papers on file |
| **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/3267109** |
| * This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (‘the 1981 Act’) and is known as the City of Bradford Metropolitan District Council (Soil Hill Footpaths) Modification Order 2019. |
| * The Order is dated 16 May 2019 and proposes to modify the Definitive Map and Statement for the area by adding six public footpaths as shown in the Order plan and described in the Order Schedule. |
| * There was 1 objection outstanding when the City of Bradford Metropolitan District Council (‘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. As noted above, there was one objection outstanding when the Order was submitted to the Secretary of State. That objection was made on 5 July 2019 ‘*for and on behalf of Shay Farm Ltd*’. Part of the land crossed by the claimed rights of way forms part of Shay Farm; it was the then owner of Shay Farm, a Mrs Durrant, who made the application in 1991 to record the public rights of way described in the Order.
2. The objection relates to that part of footpath 381 shown in the Order plan as between points N – Q; the objection contends that there has been no public use of this route in the preceding 60 years.
3. The Council has attempted to make contact with the named party who claimed to be acting ‘*for and on behalf of Shay Farm*’, via the email address contained within the letter of objection; via the details for Shay Farm Ltd registered with Companies House and via letter addressed to Mrs Durrant at Shay Farm. Despite these various approaches, the Council has not received a reply.
4. The Council considers the sole objection received to be bogus or malicious; it contradicts the statement made in support of the application by Mrs Durrant that footpath 381 was a public right of way. The Council’s view is that it did not make sense for the agent of the applicant, or for the applicant to contradict her own earlier evidence and to object to an Order which reflects almost exactly what had been applied for.
5. The Planning Inspectorate has also attempted to contact the objector to seek clarification of the nature of the objection but has had no success; all communications remain unanswered. Having considered the objection carefully in the light of the submissions made by the landowner applicant as to the status of footpath 381, I have concluded that the objection is of little relevance relevance to the matters which I have to consider. Consequently, I can attach very little weight to the objection.
6. No other representations have been made with regard to the conclusions drawn by the Council from the evidence available to it. In the absence of any further response being received from the sole objector, the Order has therefore been determined following a consideration of the documents submitted by the Council.

The Main Issues

1. The Order has been made under section 53(2)(b) of the 1981 Act in consequence of the occurrence of an event specified in section 53(3)(c)(i).
2. The main issue is therefore whether the evidence discovered by the Council, when considered with all other evidence available, is sufficient to show that a right of way which is not shown in the map and statement subsists over land in the area to which the map relates.
3. The application to add the footpaths to the definitive map and statement was made in 1991 and was supported by 31 user evidence forms (‘UEFs’). The Council submits that the UEFs which had been in use at that date only requested respondents to state the date at which use commenced. Of the 31 UEFs in the Council’s possession, only 1 set out both the start and end dates of the period of use.
4. In consequence of the deficiency in the UEFs, the Council considers that the evidence is not sufficient to satisfy the criteria for statutory dedication of a public right of way found in section 31 of the Highways Act 1980.
5. The Council therefore relies upon the user evidence and other documentary sources to demonstrate that dedication of public rights of way has occurred at common law. There is no fixed period of use at common law and depending on the facts of the case it may range from a few years to several decades. There is no particular date from which use must be calculated.

Reasons

1. The documentary evidence the Council has considered includes documents found in local archives, historic maps, the Council’s own records relating to public rights of way and those records made available to it by Calderdale Council. The conclusions the Council draws from these evidential sources is that the paths at issue had all been dedicated as public rights of way at common law by the early part of the twentieth century.
2. The Order routes are continuations of, or links to, public footpaths on the Calderdale side of the administrative boundary which were recorded when the definitive map for that area had been first prepared in 1962. It is the Council’s case that the user evidence submitted in support of the application to add the paths to the definitive map is evidence of the continuing use of the routes following the acceptance by the public of an earlier dedication.
3. In part of the documentation submitted in support of the application, Mrs Durrant declared that footpath 381 (which ran across her land) was a public footpath. The neighbouring landowner declared the same in relation to footpath 379. The Council considers such statements to be evidence of a further express dedication of a public right of way and a corroboration of the dedication which can be inferred from the available documentary and user evidence.
4. I find the arguments put forward by the Council to be persuasive and the conclusions which the Council has reached have not been challenged.

**Other matters**

1. The area of Soil Hill is subject to minerals working for the extraction of clay and it is noted that such workings have impacted upon the alignments of the Order routes. The Council submits that in 2019, the extraction works at Soil Hill Quarries had affected footpaths 379, 380 and part of 382 shown as L- S on the Order plan. These recent works have no impact upon the public rights already in existence (but unrecorded) at the time quarrying operations commenced.
2. It is understood that a condition of the planning consent for the quarry is that the land should be back filled and restored once quarrying has been completed. It would therefore be possible for those footpaths affected by the permitted minerals working to be physically reinstated at some point in the future.

Conclusions

1. The documentary evidence adduced is sufficient for an inference of dedication of the Order routes to be drawn at common law with the user evidence demonstrating acceptance by the public of that earlier dedication. It follows that I conclude that the evidence discovered is sufficient to show, on a balance of probabilities, that a public right of way on foot subsists over the Order routes.
2. Having regard to these and all other matters raised in the papers before me, I conclude that the Order should be confirmed.

**Formal Decision**

1. I confirm the Order.

Alan Beckett

Inspector