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| **Order Decision** |
| Inquiry opened on 30 November 2021 |
| **by Barney Grimshaw BA DPA MRTPI(Rtd)** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 16 December 2021** |

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| **Order Ref: ROW/3245937** |
| * 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 Council (Parish of Ashton Keynes) Path no.41 Definitive Map and Statement Modification Order 2018. |
| * The Order is dated 7 September 2018 and proposes to modify the Definitive Map and Statement for the area by adding a footpath running between Fridays Ham Lane at Rixon Gate and Path no.19 Ashton Keynes, as shown on the Order Map and described in the Order Schedule. |
| * There was 1 objection outstanding at the commencement of the inquiry. |
| **Summary of Decision: The Order is confirmed.** |
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Procedural Matters

1. I held a virtual public inquiry into this Order on 30 November and 1 December 2021. I made an unaccompanied site inspection on 26 November 2021 when I was able to walk the whole of the Order route. It was agreed by all parties at the inquiry that a further accompanied visit was not necessary
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. 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

1. This Order concerns a claimed footpath in an area that has been affected by mineral working and has consequently altered significantly over time. The Order was applied for by Ashton Keynes Parish Council (AKPC), on the basis of presumed statutory dedication in accordance with the provisions of the 1980 Act but, after investigation, the Order was made by Wiltshire Council, the Order Making Authority (OMA), on the basis of inferred dedication at common law. I have considered both these possibilities.

***Statutory Dedication***

1. The claimed path was obstructed by fencing and a locked gate in 2016 and, at around the same time, the landowner made a deposit under section 31(6) of the 1980 Act which indicated that he did not accept the existence of a public right of way over the claimed path.
2. The landowner states that the route was unusable as a result of overgrowth when he acquired the land in 2015 and that he wired up the route by the end of May 2015. However, evidence of path users is that the route remained in use until 2016.
3. Accordingly, the relevant 20 year period of public use during which a presumption that the route has been dedicated as a public right of way in accordance with the provisions of the 1980 Act runs from 1995/96 to 2015/16 in this case.
4. Thirty-four User Evidence Forms (UEFs) were submitted in support of the Order, describing use of the claimed path from 1973 to 2016. However, the Order route was not defined on the ground until 2004 when fencing, kissing gates and signage was installed. Prior to that, although user evidence indicates that a route was used, it is not clear that this was the same as the Order route. Also, as already mentioned the land has been significantly affected by mineral working operations. A footpath to the south of the claimed route (Footpath 20) was stopped up in 1996 and it is possible that some claimed use before then was of this route rather than the Order route. It is also suggested that after 1996 use of any route in the vicinity may have been interrupted as a result of mineral workings taking place and an aerial photograph taken in June 1999 would appear to confirm this.
5. On balance, I concur with the view of the OMA that evidence of usage prior to 2004 cannot be relied upon as relating to the current Order route. Accordingly, it is not possible to identify a continuous period of 20 years public use of the Order route as required by the 1980 Act. The confirmation of the Order will therefore depend on whether the available evidence shows that the dedication of the Order route can be inferred at common law.

***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, the then landowner, Aggregate Industries (AI), stated in a letter, dated 18 February 2004, from the Estate Surveyor of AI to the County Council Rights of Way Officer, that it had diverted Footpath 20 while sand and gravel extraction was being carried out. The letter referred to the diversion having been a temporary measure until a new path could be established around the northern and western margins of the newly created lake. It then stated that the new footpath had been installed and continued *“I understand from historical correspondence held on our files that we now need to formally adopt the new route, replacing the temporary diversion route. Could you please advise how this may be dealt with…”*. The new footpath would appear to be the path now claimed and, on the face of it, this seems to be a clear statement of the intent of the landowner to dedicate this route as a public footpath.
3. A plan attached to the letter showed the current Order route annotated *‘New Footpath 20’* and another route annotated *‘20(Temporary Route)’*. However, this latter route does not appear to coincide with the route that Footpath 20 was in fact diverted to in 1996 which runs closer to the south-eastern edge of the new lake. In addition, Footpath 20 was diverted by formal orders rather than on a temporary basis.
4. Nevertheless, it seems clear that in 2004 the then landowner set out the Order route with the intention that it would be a public footpath and it was subsequently signed and waymarked as such. There is no substantive evidence of any action subsequently taken by AI as landowner to indicate that the path was not a public footpath or to object to it being signed as such.
5. No further action regarding the formal adoption of the new path on the Order route appears to have been taken either by AI or the County Council. However, user evidence indicates that the public used the path in the belief that it was a public right of way.
6. Almost half of the people who completed UEFs stated that they had used the route throughout the period from 2004 when the path was set out until 2015/16 when it was closed and the remainder said they had used it for some of that period. Four people who had used the route gave evidence in person at the inquiry, two of whom had not previously completed a UEF. Most users also said they had seen others on the route. Some users admitted that they had not always followed the fenced route precisely on occasions when it had been overgrown. However, overall, the available evidence clearly indicates acceptance by the public of the route.
7. The new path was fenced on both sides and equipped with kissing gates at each end. A finger post with a sign featuring a symbol of a walker was erected close to Point A and is visible on a Google Streetview image dated 2009. This sign appears to be of the sort that the council used on public footpaths. It has been suggested that this might have been left when Footpath 20 was diverted in 1996 but its location and the direction in which it points make this seem unlikely and it appears to relate to the Order route. In addition, there were waymarkers at both ends of the new path. The one at Point B was clearly of the type used for public footpaths and is identifiable in photographs. One at Point A is also visible in photographs but not clearly enough for any wording to be read. Minutes of the parish council indicate that signage was provided by the county council but erected by the parish. However, it seems unlikely that either the parish council or OMA would waymark a path as public at one end and as permissive at the other. On behalf of the OMA, it is stated that permissive path signs would not have been supplied, as that would have been a matter for the landowner.
8. The current landowner has stated that when he took possession of the land in 2015 there was a small permissive path sign at Point A. However, this was not apparently seen by any users of the path and there is no evidence of when or by whom such a sign might have been erected.
9. At a meeting on site in 2015, an officer of the OMA removed the finger post and waymarkers from the path. The officer has stated that the finger post was a public footpath sign but could not recall whether the waymarkers were of the public footpath type. On behalf of the OMA it was stated that the officer would have been unlikely to remove permissive path signs as these would not have been the responsibility of the authority but it would have been appropriate for him to remove public footpath signage as the route was not recorded as a public right of way on the definitive map.
10. In 2014, in an email from the Estates Manager – Transactions and Projects for AI to the then chair of the parish council marked *‘Without Prejudice’,* it was stated that, as the fenced path had not been formally dedicated, it should be regarded as a permissive footpath only. He then continued to state that the company would have been happy to submit an application for the path to be formally dedicated and the existing Footpath 20 to be stopped up but, as the land was being sold, there was not time for this before the completion of the sale. As far as I am aware this was the first and only occasion on which a representative of AI referred to the path as being permissive and it was said without prejudice and in the context of the land being in the process of being sold.
11. Leisure Maps relating to the Cotswold Water Park produced in 2014 and 2016 show the claimed route as a public footpath and show other paths as permissive paths with a different notation. The basis for showing the route in this way is not known but it is perhaps indicative of the local reputation of the status of the path.
12. Overall, it is my view that the available evidence shows that between 2004 and 2015 the landowner intended to dedicate the claimed route as a public footpath and this was accepted by the public. It can therefore be inferred that the route has in fact been so dedicated at common law. It is unfortunate that it also seems clear that AI did not intend that there would be two public footpaths across the land but, as a result of the way in which Footpath 20 was diverted and the new path was established, that is what has occurred.

Conclusions

1. Having regard to these and all other matters raised, I conclude that the Order should be confirmed.

Formal Decision

1. I confirm the Order.

Barney Grimshaw

**Inspector**

appearances

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| **For the OMA** |  |
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| Trevor Ward | Counsel, representing Wiltshire Council (WC) |
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| Who called: |  |
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| Janice Green | Senior Definitive Map Officer, WC |
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| **Supporters** |  |
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| Jon Arnett | Path user |
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| David Wingrove | Chair, Ashton Keynes Parish Council (AKPC) and path user |
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| Robert Bewley | Path user |
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| Graham Carter | Path user |
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| **Objectors** |  |
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| Gareth Pinwell | Ashfords LLP, representing Alvin Lindley |
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| Who called: |  |
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| Alvin Lindley | Landowner |
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| **Interested Parties** |  |
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| Peter Gallagher | Ramblers |
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documents

1. Statement of Grounds and Statement of Case of WC, with 36 appendices.

2. Proof of Evidence of Janice Green, WC (and summary).

3. Statement of case on behalf of Alvin Lindley.

4. Statement (Proof of Evidence) of Alvin Lindley.

5. Statement of Meryl Haynes.

6. Statement of Linda Clements-Jewery.

7. Statement of David Wingrove, AKPC.

8. Statement of Mike Seymour.

9. Opening Statement, WC.

10. Closing Statement, WC.

11. Closing Statement on behalf of the landowner.

