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| **Order Decision** |
| On papers |
| **by Sue Arnott fiprow** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 29 December 2021** |

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| **Order Ref: ROW/3240476** |
| * This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981. It is known as the Derbyshire County Council (Footpath from Hawthorn Close to High Street – Parish of Doveridge) Modification Order 2018. |
| * The Order is dated 29 March 2018. It proposes to modify the definitive map and statement for the area by recording a public footpath between Hawthorn Close and High Street in Doveridge, as shown on the Order map and described in the Order schedule. |
| * There were three objections outstanding when Derbyshire County Council submitted the Order for confirmation to the Secretary of State for Environment, Food & Rural Affairs. |
| |  | | --- | | **Summary of Decision: The Order is confirmed, subject to a minor modification as set out in the Formal Decision below.** | |

**Procedural matters**

1. When this Order was publicised, three objections were submitted. One was from the owner of a property located alongside the Order route and the other two from his tenants who have since relocated. The owner has now withdrawn his objection to the Order and the cottage is in the process of being sold. I understand the prospective new owner has been made aware of the position as regards the Order but has not made any representations.
2. Although the objectors are no longer actively engaged in the determination of this order, I have nonetheless noted relevant evidence contained in their representations. In forming my conclusions, I have considered this information along with all other documents submitted by the order making authority. In this case, I am satisfied I can reach a reliable decision without visiting the site.

**The Main Issues**

1. The main issue here is whether the evidence before me is sufficient to show that, in the past, the Order route has been used in such a way and to such an extent that a public footpath can be presumed to have been established.
2. Derbyshire County Council (DCC) made the Order under Section 53(2)(b) of the Wildlife and Countryside Act 1981 on the basis of events specified in sub-section 53(3)(c)(i). If I am to confirm it, I must be satisfied that, on a balance of probability, the evidence shows a public right of way on foot subsists along the claimed route, described in the Order and labelled A-B-C-D on the Order map.

Reasons

1. An application was made to DCC by Doveridge Parish Council in 2015 to record the claimed footpath on the definitive map as a public right of way. This was accompanied by completed user evidence forms from 36 people who had previously walked the path, three letters of support containing further evidence together with a copy of an agreement from 1978. Local consultation brought forward further evidence.
2. The main case in support of the Order is based on the presumed dedication of a public footpath under statute, the requirements for which are set out in Section 31 of the Highways Act 1980 (the 1980 Act). For this to have occurred, there must have been use of the claimed route by the public on foot, as of right and without interruption, over the period of 20 years immediately prior to its status being brought into question. Such use would raise a presumption that the route had been dedicated as a public footpath. This may be rebutted if there is sufficient evidence to show that during this period there was no intention on the part of the relevant landowner to dedicate the way for use by the public; if not, a public footpath will be deemed to subsist.
3. When considering evidence in relation to Section 31 of the 1980 Act, the first matter to be established is when the public’s rights were brought into question. DCC concluded this occurred in 2013 or 2014 when a gate was erected across the route at the High Street end, events which eventually led to the submission of the application in 2015.
4. An analysis of the evidence provided by people who had walked the route showed a significant number had done so on a frequent basis and over a period extending back much further than the relevant twenty years, whether that is taken to be 1993-2013 or 1994-2014. This use appears to have been ‘as of right’ (insofar as it has been without force, secrecy or permission) and without interruption throughout both periods.
5. The objectors stated that some people had been challenged whilst walking the route, but no supporting evidence was provided to substantiate this claim. DCC noted that even if this was proven and that challenges began immediately after the owner bought the property in 2006, there is still a significant body of evidence to show twenty years’ use by the public before this.
6. Other than these uncorroborated challenges to individuals there is no other evidence of actions at any time by, or on behalf of, the relevant landowners that might be construed as displaying a lack of intention to dedicate the Order route as a public footpath.
7. This leads me to conclude that the evidence shows the required level of use by the public during the twenty years prior to the gate being erected at point D, and insufficient evidence to rebut the presumption of dedication that arises from that use. It follows from this that a public right of way is deemed to have been established along the Order route.
8. In conclusion, and on the basis of the information provided, I am satisfied that the relevant statutory test is met: that, on a balance of probability, a public right of way for pedestrians has been shown to subsist over the Order route A-B-C-D. Consequently, I conclude that the Order should be confirmed.

***Other matters***

1. The evidence indicates that cars have been parked on a regular basis on the Order route between points C and D, thereby narrowing the width available for pedestrians to pass. It follows that the extent of the right of way established through long-usage will have been limited by the presence of these vehicles.
2. Between C and D the Order Schedule records the width of the way as varying between 2.4 metres and 5 metres. The Order map makes clear that the width at point C is 4m, at D it is 3.7m, widening to 5m and narrowing to 2.4m between.
3. Although DCC recognises that members of the public have never been prevented from using the route, it requests modification of the Schedule so as to reflect the limitation imposed by the parked vehicles. It seeks addition of the wording “Available width restricted when motor vehicles are parked on drive at side of 15 High Street as shown shaded on the Order Plan” to the ‘Remarks’ column of the Schedule. I accept this would reflect the evidence in this case and describes the conditions experienced throughout the relevant period by the claimants. I therefore intend to modify the Order accordingly.

**Conclusion**

1. Having regard to the above and all other matters raised in the written representations, I conclude the Order should be confirmed with the modification referred to in the previous paragraph.

Formal Decision

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

In Part II of the Order schedule - Modification of the Definitive Statement

* In the column headed “Remarks”, add “Available width restricted when motor vehicles are parked on drive at side of 15 High Street as shown shaded on the Order Plan”.

Sue Arnott

**Inspector**

