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| **Order Decision** |
| On papers on file |
| **by Susan Doran BA Hons MIPROW** |
| **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/3269091** |
| * This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as the Wildlife and Countryside Act 1981, The Definitive Map of Public Rights of Way for Gloucestershire – Additional Public Footpath linking Public Footpath RWD10A to Kidnalls Wood, Yorkley Village, West Dean Civil Parish - Modification Order 2020.
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| * The Order is dated 22 October 2020 and proposes to modify the Definitive Map and Statement for the area by adding a footpath as shown in the Order plan and described in the Order Schedule.
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| * There were no objections outstanding when Gloucestershire County 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 in the Formal Decision** |
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Procedural Matters

1. This case concerns the addition of a public footpath between Public Footpath RWD10A (point A on the plan attached to the Order) and Kidnalls Wood (point B) in the Forest of Dean District, and is based on claimed use by the public.
2. An objection made to the Order, concerning the inclusion of a limitation in the form of a stile at point B, has been withdrawn. On the same matter, Gloucestershire County Council (‘the Council’) seeks a modification to the Order so as to record no limitation at point B. I consider this below.
3. My decision is reached on the basis of the papers on file. Whilst I have not visited the site, I am satisfied that I can reach my decision without the need to do so.

The Main Issues

1. The Order is made under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 which requires me to consider whether, on a balance of probabilities, the evidence shows that a footpath subsists over the Order route, in this case further to a presumption of dedication under the tests set out in section 31 of the Highways Act 1980 (‘the 1980 Act’).
2. In addition, and further to the request from the Council that the Order be modified, I shall consider whether or not a limitation should be recorded at point B.

Reasons

*Whether a footpath subsists*

1. The right of the public to use the Order route was brought into question in 2017 when it was fenced off by the landowner. This provides a 20-year period of 1997 to 2017 for the purposes of section 31 of the 1980 Act. Evidence of use was provided in 35 user evidence forms with individuals claiming regular and frequent use for varying numbers of years during the 20-year period with 15 individuals claiming use throughout it. Claimed use was for recreation purposes including dog walking. There is nothing to indicate that claimed use by individuals was with force, secrecy, or permission. Neither is there any evidence that use was interrupted. I therefore conclude use was as of right.
2. There is no evidence that use was challenged or that any actions were taken by the landowner or landowners to indicate they had no intention to dedicate the Order route to the public as a right of way.
3. It follows in my view that a public right of way on foot subsists over the Order route.

*Limitation*

1. Parts 2 and 3 of the Schedule to the Order record a limitation of a stile at point B on the Order route. The issue is whether or not the path is deemed to have been dedicated subject to the existence of a limitation at B.
2. The evidence adduced points to the stile recorded at B as having been in place for some 40 years, with 13 of the user evidence forms referring to its existence or its reported existence, including by persons whose use had commenced as late as 2002. However, clarification sought by the Council indicates the stile had fallen into disrepair and was destroyed by a fallen tree around 1993, prior to the relevant 20-year period. In any event, the evidence does not point to the stile being present throughout the 20-year period.
3. I therefore conclude that the Order route was not dedicated subject to the existence of a stile at point B. It follows that the Order should be modified as requested and that no limitation be recorded.

Other matters

1. I understand that the Order route has been opened up on the ground and a kissing gate installed at point B. Further, that the landowner may apply under section 147 of the 1980 Act for authorisation to erect such a structure. Whilst I note these points, they are not relevant to my determination of the Order which is made on the basis of the evidence as to the existence of a public right of way, and if so whether it was dedicated subject to any limitations.

Conclusion

1. Having regard to these and all other matters raised in the written representations, I conclude that the Order should be confirmed with a modification that does not require advertising.

**Formal Decision**

1. I confirm the Order subject to the following modification:
* in Part 2 of the Schedule to the Order, delete the wording beneath the heading ‘Limitations and Conditions’ and insert ‘None’
* in Part 3 of the Schedule to the Order, under the description of the ‘Particulars as to position, width, limitations or conditions…’ delete ‘Stile at point B’ and insert ‘None’

S Doran

**Inspector**

