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| **Order Decision** |
| Site visit made on 7 December 2021 |
| **by Martin Small BA (Hons) BPl DipCM MRTPI** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 1 February 2022** |

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| **Order Ref: ROW/3243341** |
| * This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Wildlife and Countryside Act 1981, The Definitive Map of Public Rights of Way for Gloucestershire – Additional Public Footpath at Bowbridge, Stroud Town, Modification Order 2019.
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| * The Order is dated 28 June 2019 and proposes to modify the Definitive Map and Statement for the area by adding a footpath between Point A at its junction with Public Footpath ZST50 to Point B at its junction with Public Footpath ZST54 as shown in the Order plan and described in the Order Schedule.
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| * There were 9 objections outstanding, together with 8 representations in support, 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.** |
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Procedural Matter

1. The landowner, an objector to the Order, requested an accompanied site visit and the parties were notified of the date, time and meeting point for the visit. However, whilst the applicant and a representative of Gloucestershire County Council were present the landowner was not, nor were any other objectors to the Order. I therefore walked the Order route unaccompanied.

The Main Issues

1. The main issue is whether the evidence is sufficient to show that, in the past, the Order route has been used in such a way that a public footpath can be presumed to have been established.
2. Gloucestershire County Council made the Order on the basis of events specified in sub-section 53(3)(c)(i) of the 1981 Act. If I am to confirm it I must be satisfied that, on a balance of probability, the evidence shows a public right of way subsists along the route described in the Order between the points labelled A and B.

Reasons

1. On 11 November 2016 an application was submitted to Gloucestershire County Council (GCC) for an order under Section 53(2)(b) of the 1981 Act to modify the Definitive Map and Statement for Gloucestershire (DMS) by adding a footpath connecting Public Footpaths ZST50 and ZST54 at Bowbridge, Stroud, Gloucestershire. This is shown as A-B on the Order Map.
2. The application included 13 written evidence forms completed by 13 individual path users. During GCC’s investigation into all the available evidence relating to the route Stroud Town Council and the Ramblers Association confirmed that they had no comments, whilst a letter of support was submitted from Mr Mossman. Following its investigation, on 21 June 2019 GCC concluded that an Order should be made and the Order was sealed on 28 June 2019. During the advertising of the Order nine letters of objection were received. In addition, eight emails of support in the form of Statements of Truth were received after the conclusion of the consultation period. The Council now seeks confirmation of the Order.
3. The case in support of the Order is based on the presumed dedication of a public right of way under statute, the requirements of 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 so as to raise a presumption that the route had been dedicated as a public footpath.
4. This may be rebutted if there is sufficient evidence that there was no intention on the part of the relevant landowner(s) during this period to dedicate the way for use by the public; if not, a public right of way on foot will be deemed to subsist.

***Historical evidence***

1. GCC’s case does not rest on the historical documents it has discovered. The claimed route is shown on the 1969 1:1250 and 1974 1:2500 editions of the Ordnance Survey (OS) map which are indicative of the physical existence of the route. However, these maps carry a disclaimer that any representation of a road, track or path is not evidence of the existence of a right of way over it.
2. An aerial photograph taken in May 1988 shows the physical existence of the Order route but does not confirm its status. No other documentary evidence has been provided or discovered to support the existence of the claimed footpath.
3. GCC therefore concluded that the documentary evidence was insufficient to demonstrate that, on the balance of probability, a public right of way could be said to subsist on the claimed route. This is not disputed by the applicant and I have no reason to disagree with the conclusion of GCC in this respect.

***When was the status of the way brought into question?***

1. When considering the 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 (the ‘date of challenge’) in order to set the relevant 20-year period.
2. The date of challenge is the date when a landowner challenges the use of the route e.g. by putting up a notice or locking a gate. In the absence of any specific date of challenge, Section 31(7) of the 1980 Act provides that the date of the DMMO application can be used in accordance with paragraph 1 of Schedule 14 of the 1981 Act. The claim was submitted on 11 November 2016. In the absence of any evidence to the contrary I take this to be the date on which the use of the route was challenged.

***Evidence of use by the public 1996-2016***

1. If a presumption of dedication is to be raised, qualifying use by the public during the relevant period must be shown to have been enjoyed ‘as of right’, without interruption. This use must be shown to have continued throughout the full 20 years without interruption although it is not necessary for each individual user to have walked the Order route throughout the full period. Use ‘as of right’ is use by the public that does not take place in secret, is not by force and is not on the basis of permission.

*Was the claimed use ‘as of right’?*

1. The claim was supported by 13 User Evidence Forms (UEFs), submitted by 13 individual local residents confirming the Order route as shown on the accompanying maps. The UEFs submitted by Ms Milner and Ms Palmer indicate that express / implied permission was given to use the route. Consequently this usage was not ‘as of right’ and so cannot be taken into account in my decision.
2. However, the other 11 submitted UEFs claim unchallenged public enjoyment of the Order route on foot, without force, secrecy or permission. These are corroborated by the Statements of Truth. Whilst only a limited amount of supportive evidence has been provided, I am satisfied that the quality of the evidence is sufficient to demonstrate use as of right.

*Was the claimed use continuous and without interruption?*

1. The other 11 UEFs indicate usage of the Order route during the 20-year period. Eight of the users claim to have walked the Order route between 1996 and 2016 with the remainder claiming to have walked the route in the later years of the requisite period. Two of the Statements of Truth state usage across the whole 20-year period with the remainder stating use of part of the period. Therefore during any year over the period, at least eight users claimed to be using the Order route. The frequency of use varied from daily and weekly to 6-8 times per year, with dog walking being a fairly consistent activity.
2. The maps submitted with the UEFs are consistent in showing the Order route. Although the landowner contends that the physical path ‘on the ground’ has been created by cattle rather than walkers, I am satisfied that with the UEFs, OS maps and aerial photograph, the likelihood is that the path has been used by members of the public.
3. A metal kissing gate marks the start of the Order route at Point A on the Order map. There are no barriers at Point B. The UEFs indicate that the route was not obstructed and no evidence has been put forward that the claimed continuous nature of the use of the route was physically interrupted. I am therefore satisfied that the claimed use was continuous and not interrupted between 1996 and 2016.

***The intentions of the relevant landowner***

1. Only the owner of the land has the capacity to dedicate a public right of way in perpetuity. It follows from this that it is only the intentions of the relevant landowner that can rebut any presumption that dedication of a way for public use was intended. Whilst the initial burden of proof rests with members of the public claiming use of the path it is for the landowner to demonstrate that sufficient steps have been taken to prevent the accrual of new public rights of way through use of a route by the public. For there to be sufficient evidence that there was no intention to dedicate a way there must be an overt act to bring this position to the attention of people using the way.
2. The land over which the Order route crosses has been in the ownership of Mr Cullimore since March 1967 as part of Thrupp Farm. Mr Cullimore explained that he never intended there to be a public right of way over the Order route. However, the main overt action claimed by Mr Cullimore is the stopping and advising of users of the route by himself and his employees to inform the users that the use of the route was prohibited. No evidence of the frequency of such actions is provided and only two of the users who submitted UEFs indicate that they were so advised.
3. Mr Mossman, with reference to his email of support for the Order, confirmed that he never believed he needed permission to use the path. Given the claimed frequent and regular use of the Order route over the 20-year period, known by Mr Cullimore, it is reasonable to expect a greater proportion of the users over this period to have acknowledged that they were stopped and advised, had Mr Cullimore and his employees been diligent in their intentions to prevent public use of the Order route.
4. The stopping of, advising and granting express / implied permission to two specific users to use the route is not sufficiently overt to make the public aware of the landowner’s lack of intention to dedicate a footpath. Whilst I understand that Mr Cullimore made a deposition under Section 31(6) of the 1980 Act regarding ways over Thrupp Farm on 2 April 2019, this was beyond the date of challenge.
5. Section 31(3) of the 1980 Act sets out that a landowner may erect a notice, visible by persons using the way, that is inconsistent with the dedication of a highway i.e. ‘No Public Right of Way’. Mr Cullimore states that fences and signs have been put up on the farm identifying where no right of way exists such as “Keep Out”, “Private Land”, “Trespassers will be prosecuted” and “Keep to Footpath”. However, Mr Cullimore states that he did not put up any signs at Points A or B due to the existence of public footpaths on Thrupp Farm the use of which could not be prohibited. This is consistent with the 11 UEFs which indicate that there had never been any notices on the Order route.
6. However, the objectors have referred to signs being destroyed or removed by members of the public. Mr Foot and Miss Storey identify a sign on the Order route close to Point A. Mr Foot states this was originally put up by the previous farm manager ‘many years ago’ and Miss Storey suggests the sign had wording such as “private land please keep to the footpath”. These signs were subsequently replaced. Nevertheless, I have no details of exactly when these signs were put up or how long they were in position. Miss Storey does not indicate that the contended sign near Point A specifically advised the public that the Order route was not a public footpath. None of the other objectors identify a sign at Point A (or at Point B).
7. Notwithstanding the UEF evidence, Mr Olsen, a local resident acting on his own behalf, put up a sign sometime in 2013 – 2014 on the field gate adjacent to the kissing gate providing access to Public Footpath ZST50 and the Order route. This sign stated “THESE FIELDS ARE PRIVATE PROPERTY. PLEASE KEEP TO PATHS. TAKE LITTER HOME. NO CAMPING/FIRES”. The reference to ‘paths’ could be considered to be an invitation to use the two paths starting at the kissing gate, thus seeming to corroborate the public’s use of the latter. Although not put up by Mr Cullimore, I have no evidence that he or his employees removed the sign or sought to amend it in any way. The sign was not apparent during my site visit, although there were signs “Please keep to the footpath”, “Beware of bull” and relating to bagged dog waste on the field gate.
8. I also observed two signs near Point B on the Order map. One of these is at the start of the Order route and states “No Footpath”. The other is on existing Footpath ZST54 and states “Please Keep to the Footpath”. All of these signs appeared to be relatively new and there is no reference to any of them in the evidence adduced. I therefore believe that these signs were probably erected after November 2016, subsequent to the 20-year period.
9. In summary, whilst some users of the Order route may have been advised that it was not a public footpath, there is little evidence to confirm that this was a diligent effort to prevent public use. It appears likely to me that the landowner has over time erected signs on his land relating to rights of way. However, the only evidence of signage specifically referring to the Order route is from two objectors and a local resident, none of which have provided evidence that the signs specifically advised that the Order route was not a public right of way. I therefore find insufficient evidence of a lack of intention by the landowner to dedicate a public footpath on the Order route.

**Other Matters**

1. Objectors to the Order cite conflict with livestock, failure to control dogs, anti-social behaviour and the existing rights of way across the field. However, whilst I understand these concerns, none of these are matters which are relevant to my consideration of this Order which is based on the premise that long-standing use by the public has already established a public path. I therefore cannot take these matters into account when considering whether or not the Order should be confirmed. It is also pertinent that the Order seeks to record rights already accrued rather than introduce new rights and is thus unlikely to significantly increase instances of anti-social behaviour.
2. Therefore none of the other matters raised constitute a reason for not confirming the Order.

Conclusion

1. 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 on foot has been shown to subsist along the route described in the Order between the points labelled A and B. Consequently, I conclude that the Order should be confirmed.
2. Having regard to the above and all matters raised in written representations, I confirm the Order.

**Formal Decision**

1. I confirm the Order.

Martin Small INSPECTOR

