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| **Order Decision** |
| On the papers on file |
| **by Martin Small BA (Hons) BPl DipCM MRTPI** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 01 July 2022** |

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| **Order Ref: ROW/3291491** |
| * This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Kent County Council (Public Footpath KM348 at Bearsted) Definitive Map Modification Order 2021.
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| * The Order is dated 6 October 2021 and proposes to modify the Definitive Map and Statement for the area by adding a public footpath from The Street to Bearsted Village Green, Bearsted, as shown in the Order plan and described in the Order Schedule.
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| * There was one objection outstanding when Kent 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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Preliminary Matters

1. The Order has been made in compliance with a direction to Kent County Council, the Order Making Authority (‘OMA’), in 2020 by another Inspector. The OMA’s position on the Order is neutral. The Order route runs from The Street between No 1 Smarts Cottages and ‘Betsworth’, both residential properties, for about 30 metres onto a track providing access to Bearsted Village Green and its cricket pavilion.
2. The owner of No 1 Smarts Cottages has claimed a private right to park on the Order route. The OMA refers to evidence that vehicles have been parked on the Order route in the past and suggests that it may be appropriate to amend the Order to include this as a limitation to use.
3. However, the claimed private right to park appears to be contested by Bearsted Parish Council. The evidence before me on this matter is limited and it is not for the Secretary of State in this decision to determine whether or not private rights exist. If confirmed, the Order would simply be subject to any private rights that may exist, but I see no reason for this to be expressed in the Order.
4. An objection to the Order was made on the assumption that public footpath status would mean that the route could no longer be used for parking cars in an area with inadequate parking. The objector also contends that the route has been transformed for much the better by the owner of No 1 Smarts Cottages. However, the 1981 Act is concerned solely with ascertaining the existence of rights and does not allow account to be taken of issues such as the effect the footpath may have on the amenities of the area if the Order is confirmed.
5. The objector was advised of this and offered the opportunity to withdraw his objection, amend it or insist that it is relevant and explain how the objection related to the issues that can and must be taken into account. No response was received from the objector. I have therefore been appointed to determine the Order on the basis of the papers on file. I have not visited the site, but I am satisfied in the circumstances of this case that I can make my decision without doing so.

Main Issue

1. Kent County Council made the Order on the basis of events specified in subsection 53(3)(c)(i) of the 1981 Act, which sets out the criteria for the confirmation of the Order. This requires me to consider whether the evidence discovered shows that the Order route as shown on the Order Map not currently recorded on the Definitive Map and Statement (‘DMS’) subsists and should be recorded with footpath status.
2. If I am to confirm the Order, I must be satisfied that, on a balance of probability, the evidence shows that a public footpath subsists along the route described in the Order.

Reasons

1. The Order route provides access to the Village Green, a place of popular resort enjoyed by local residents as members of the public for lawful recreation. Documentary evidence for a public path is limited and I find it doubtful that it is sufficient to show that a public right of way subsists.
2. However, I have copies of 10 user evidence forms from local residents in support of the application. These clearly demonstrate their unchallenged use of the Order route over a time significantly in excess of the 20-year period required by Section 31(1) of the Highways Act 1980 prior to the date when the right of the public to use the way was brought into question. This date is taken to be the date the application for the Order was made; 2 November 2015. The use of the route was also ‘as of right’, without secrecy, force or consent.
3. From the evidence before me, the way is not of such a character that use of it by the public could not give rise at common law to any presumption of dedication. There is insufficient evidence that there was no intention during the 20-year period to dedicate the Order route as a highway.

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. Consequently, I conclude that the Order should be confirmed.

**Formal Decision**

1. I confirm the Order.

Martin Small

INSPECTOR

COPY – MAP NOT TO ORIGINAL SCALE

