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| **Order Decision** |
| Inquiry held on 3 August 2022  Site visits undertaken on 2 and 4 August 2022 |
| **by Mark Yates BA(Hons) MIPROW** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 17 October 2022** |

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| **Order Ref:** **ROW/3252494** |
| * This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (“the 1981 Act”) and is known as the Oxfordshire County Council Watlington Footpath No. 36 Modification Order 2019. |
| * The Order was made by Oxfordshire County Council (“the Council”) on 19 December 2019 and proposes to add a footpath (“the claimed route”) to the definitive map and statement. |
| * There were two statutory objections and three representations outstanding at the commencement of the inquiry. |
| **Summary of Decision:** **The Order is confirmed subject to modifications set out below in the Formal Decision.** |
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Procedural Matters

1. The Council does not believe that the Order should now be confirmed, and the case in support has been taken forward by the applicant (Mr Bindoff).
2. The grid references specified in the Order in relation to the claimed route should include the initials “*SU*” rather than “*SP*”. This matter was not pursued at the inquiry and could be rectified by making minor modifications to the Order. It is not alleged that anyone was prejudiced by this issue and the route is described in the Order and notice in such a manner to enable a person to identify its location. Therefore, if confirmed, the Order should be modified accordingly.
3. Additionally, I note the text relating to the potential for the Order to be confirmed by the Council. As the decision now resides with the Secretary of State, this text should be deleted if the Order is confirmed.
4. All of the points referred to below correspond to those delineated on the Order Map.

**Main Issues**

1. The Order relies on the occurrence of an event specified in Section 53(3)(c)(i) of the 1981 Act. Therefore, for me to confirm the Order, I must be satisfied that the evidence shows on the balance of probabilities that a public right of way subsists.
2. The relevant statutory provision, in relation to the dedication of a public right of way, is found in Section 31 of the Highways Act 1980. This requires consideration of whether there has been use of a way by the public, as of right and without interruption, for a period of twenty years prior to its status being brought into question and, if so, whether there is evidence that any landowner demonstrated a lack of intention during this period to dedicate a public right of way.

1. If statutory dedication is not applicable, I shall consider whether the evidence is supportive of the dedication of a footpath under common law.

**Reasons**

***Background matters***

1. The A-B section previously crossed land comprising of a car park and grass field belonging to a church hall. The car park and hall are shown on the Order Map, but they no longer exist. Two residential properties have now been built on the site and provision has been made for this section of the route to be diverted should it be added to the definitive map. On the other side of a stream at point B, the route proceeds through a triangular parcel of land which previously comprised of a denser area of woodland.
2. In terms of the stream, I find it likely that the legal principal of ‘*ad medium filum aquae*’ will apply and the landownership on either sideextends up to the middle of the stream. However, nothing has been provided to indicate that the dedication of a public right of way could not have arisen in this case.

***When the status of the claimed route was brought into question***

1. In considering this issue I have had regard to the House of Lords judgment in the case of *Godmanchester Town Council and Drain v Secretary of State for Environment, Food and Rural Affairs [2007] UKHL 28*. The comments of Lord Hoffman at paragraph 37 of the judgment are supportive of there being symmetry between acts that are sufficient to bring the status of the way into question and those that will demonstrate a lack of intention to dedicate a public right of way.
2. The two events identified as potentially bringing the status of the route into question are the application of 12 December 2014 to modify the definitive map and a sign above the entrance doors of the hall. This sign was highlighted by one of the objectors (Mr keen) and led to the Council taking the decision to not support the Order in light of the level of use prior to it being known to have been in place. The issue to be determined is whether the wording and location of the sign were sufficient to make it clear to users of the way that there was no intention to dedicate a footpath. Thissign stated:

“*St. LEONARD’S CHURCH HALL*

*THESE GROUNDS ARE PRIVATE PROPERTY, AVAILABLE FOR THE USE OF PERSONS USING THIS HALL.**NO LIABILITY CAN BE ACCEPTED FOR VEHICLES PARKED WITHOUT AUTHORITY OR PERSONS USING THESE GROUNDS WITHOUT APPROVAL*”.

1. Whilst the earliest photographs showing the sign were taken in June 1993, it is reasonable to presume that the sign was in place prior to this date. It could potentially have been erected when the hall was built in the early 1970s. The supporters do not dispute that there was a sign in place at the hall but none of them recall seeing it. This is stated to be the case even though people sometimes attended events at the hall. No evidence has been provided of any other signage being in place prior to the application of 2014.
2. Given that the hall is no longer in place it is not possible to determine with any certainty the extent to which it could have been seen from the claimed route. Mr Bindoff has provided various calculations regarding the distance of the sign from the route and the size of the sign. Certain distances can to some extent be checked by reference to the Order Map. For instance, the hall was located around 25 metres from the entrance to the site near topoint A. Further, where the route was closest to the hall, it is likely to have become less visible as a person would not have been looking directly towards the front of the building. The sign would not have been directly visible for people travelling from the direction of point B. It is also noteworthy that the officer from the Council who conducted a site visit in May2015 did not record the presence of the sign.
3. The second sentence of the sign relates to no liability being accepted in relation to unauthorised use of the land. I find there to be some ambiguity about the first sentence and the absence of the word ‘*only*’ before or after ‘*available*’ means there is doubt as to whether it can be interpreted as prohibiting the public from accessing the land. Nonetheless, I accept that there is the potential to read the sign as meaning that access over the private land was limited to authorised users of the hall.
4. I have concluded above that there is some uncertainty regarding the interpretation of the wording of the sign. In addition, the location of the sign is likely to have meant that the wording was difficult to read at best when on the claimed route. It is quite feasible that people walking along the route were not able to read the wording of the sign at all. This is borne out by the written and oral evidence of the users. Therefore, it is not necessarily the case that people ignored the sign when using the way. The position may have been different if the sign was located at the entrance to the car park. Although the sign would have been visible to people entering the hall, it needs to be considered in the context of people using the claimed route.
5. For these reasons I do not find on balance that the sign was sufficient to bring the status of the claimed route into question. In the absence of any earlier event, I conclude that it was the application of December 2014 which brought the status of the route into question. Therefore, the relevant period to be considered for the purpose of statutory dedication is 1994-2014 (“the relevant period”).

***Evidence of use by the public***

1. Twenty-six people have submitted a user-evidence form (“UEF”) in support of use of the claimed route. Transcripts are available of interviews undertaken by the Council with four of the users. Eleven people have also submitted additional statements in support of use of the route and three of these gave evidence at the inquiry. There are a few other people who have provided some limited information in relation to use of the route. One of the users only used the claimed route once during the relevant period and their evidence is therefore of limited value. The Council accepts that the evidence of use during this period is sufficient to support the dedication of a public footpath.
2. A petition signed by a number of people wassubmitted with the original objections to the Order. The covering page of the petition sets out various matters and concludes by stating:

“*And these certain individuals are now trying to make false claims over the Land for an ‘Alleged Right of Way’**across the land, when there is a perfectly maintain footpath runs along the side of the Land (sic). They say the alleged footpath has been used for lengthy periods dating back to the 1960’s which is a lie.**We need your help, if you disagree with their statement, would you please sign the form to confirm that this is not so*”.

1. I consider that limited weight should be attached to the petition when set against the detailed user evidence. There is no evidence from the signatories in relation to the extent of their knowledge of the use of the route during the relevant period. I also place little reliance on the evidence from a few people regarding a lack of observed use during the times they were on site. A lack of observed use does not mean that such use did not occur and there is cogent evidence of public use between points A-B-C. In terms of the three people who signed the petition after completing a UEF, they have not chosen to redact their forms. Whilst I treat the relevant forms with caution, these people have provided evidence in support of their own personal use of the route which cannot be set aside.
2. One user stated that they viewed the route to be private as there was no public footpath sign in place. Two others say they believed this to the case as the land is privately owned. None of these users mention any permissivenotice placed on the route or permission being granted for them to use the route**.** Overall, there is nothing in theuser evidence toshow that use of the route was by way of permission. The fact that people may have on some occasions used the route to access the hall does not by itself render such use to be of a permissive nature. Nonetheless, even if the sign is taken to convey some form of permission to people visiting the hall, the details provided in the UEFsare indicative of the route being used on the whole as a through route rather than to access the hall.
3. The issue to be determined is whether there was use of the route throughout the recent twenty-year period and the historical Ordnance Survey maps provide no assistance on this matter. Bearing in mind that a proportion of the claimed route crossed a tarmacked car park and a field stated to have been mown, it is not surprising that there is no discernible route shown on a 2005 aerial photograph. The land crossed by the remainder of the route is not visible due to the extensive tree cover.
4. The maps attached to the UEFs indicate use of a fairly consistent route. However, two people clearly did not mark the whole of this route on the map. The evidence of the users who spoke at the inquiry is that there were clear reference points which framed the route used. These comprised of defined entrances at points A and C; a worn route between points B-C having regard to the crossing point at the stream; a section between the churchyard railings and stream; and a reasonably direct route across the field and car park from the end of the railings to point A. The Council officer’s site visit notes of May 2015 and photographs are supportive of a defined route in existence by the stream and through the woodland. This visit occurred only five months after the end of the relevant period.
5. There may have been some deviation at times in the route people used across the field and car park. The route claimed also does not follow the most direct route between the end of the railings and point A. However, the written and oral evidence of the users is supportive of it generally corresponding to the route they used and there is nothing to show that there was any widespread deviation from the route shown on the Order Map. There is also a distinction between the evidence of people using the route and other recreational use stated to have occurred within the woodland and on the field.
6. There is no evidence of any obstruction of the route by vehicles parked in the car park when events were taking place at the hall. The claimed route appears to have generally proceeded through the middle of the car park. Reference was made at the inquiry to dog shows being held on the field, but no evidence has been provided to indicate how these impacted on use of the route. The understanding of the users at the inquiry was that they were open events, and no restriction was placed on access across the field.
7. It is quitepossible that there were some occasions when users may have had to take some form of minor deviation due to certain activities taking place on the land belonging to the hall. However, there is no evidence of any activities taking place which interrupted use to such an extent during the relevant period to prevent the dedication of a public right of way.
8. The evidence is supportive of people crossing the stream at point B where there is a depression in the banks on either side. I have no reason to doubt that access was readily available, aside potentially from when the stream was in flood. Reference was made by some of the users to items sometimes being put in place which served to facilitate people crossing the stream.
9. Overall, I find on balance that the evidence of use is sufficient to raise a presumption of the dedication of a public footpath.

***Whether any landowner demonstrated a lack of intention to dedicate a public footpath***

1. Having regard to my conclusion in paragraph 16 above, in relation to the wording and location of the sign, there is no evidence of action being taken during the relevant period by any landowner to demonstrate that there was no intention to dedicate a public right of way. Additionally, no details have been provided of any incidents when those hiring the facilities challenged people walking along the route.

***Conclusions***

1. I have concluded on balance that the evidence is sufficient to raise a presumption of the dedication of a public footpath. Additionally, there is nothing to show that the landowners took any action which was sufficient to demonstrate to the public that there was a lack of intention to dedicate a footpath during the relevant period. Therefore, I conclude on the balance of probabilities that a public footpath subsists.

**Other Matters**

1. Whilst reference has been made to the availability of other public rights of way in the area and incidents of anti-social behaviour, these matters are not relevant to my decision which is concerned with determining whether a public footpath has been dedicated over the claimed route.

**Overall Conclusion**

1. Having regard to these and all other matters raised at the inquiry and in the written representations I conclude that the Order should be confirmed with modifications.

**Formal Decision**

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

* Delete the initials “*SP*” where they appear in the Order Schedule in relation to the grid references and insert“*SU”*.
* Delete all of the text in the final page of the Order to it being confirmed by the Council.

Mark Yates

**Inspector**

**APPEARANCES**

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| **The Case in Support** | | |
| Mr T. Bindoff  He additionally called:  Mr S. Noakes  Mr A. Weightman  **Objectors**  Mr M. Wood  He called:  Mr J. Colinswood  **Interested Parties**  Mr L. Smith  Mr A. Keen | Applicant  On behalf of Mr Colinswood and Mr and Mrs Pemberton  For the Council  Statutory objector | |
| **DOCUMENTS TENDERED AT THE INQUIRY** | | |
| 1. Opening statement by Mr Bindoff 2. Mr Weightman’s UEF 3. Overlay maps and aerial photograph of the site 4. Closing submission on behalf of the objectors 5. Closing submission in support of the confirmation of the Order | |  |
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