PINS Logo

|  |
| --- |
| **Order Decision** |
| Site visit made on 23 August 2022 |
| **by Barney Grimshaw BA DPA MRTPI(Rtd)** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 8 September 2022** |

|  |
| --- |
| **Order Ref: ROW/3260915** |
| * 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 South Newington Footpath No.21 Modification Order 2019. |
| * The Order is dated 3 January 2019 and proposes to modify the Definitive Map and Statement for the area by adding a footpath running east south-eastwards from the eastern end of Moor Lane, South Newington, as shown on the Order Map and described in the Order Schedule. |
| * There was 1 objection outstanding when Oxfordshire County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation. |
| **Summary of Decision: The Order is confirmed.** |
|  |

Procedural Matters

1. I made an unaccompanied site inspection on Tuesday 23 August 2022 when I was able to walk the whole of the Order route.
2. In writing this decision I have found it convenient to refer to points marked on the Order Map. I therefore attach a copy of this map.

The Main Issues

1. The requirement of Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 (the 1981 Act) is that the evidence discovered by the surveying authority, when considered with all other relevant evidence available, should show that a right of way that is not shown on the definitive map and statement subsists along the Order route.
2. Much of the evidence in this case relates to usage of the route. In respect of this, the requirements of Section 31 of the Highways Act 1980 (the 1980 Act) are relevant. This states that where it can be shown that a way over land has been enjoyed by the public as of right and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The period of 20 years is to be calculated retrospectively from the date when the right of the public to use the way was brought into question.
3. Common law also requires me to consider whether the use of the path and the actions of the landowners have been of such a nature that the dedication of the path by the landowners can be inferred.

Reasons

1. Both documentary and user evidence has been submitted in this case. I consider the different types of evidence separately.

***Documentary Evidence***

1. Under the South Newington Inclosure Award 1795, the Order route was awarded as part of a private carriage road, 18́́́ ́(5.5m) wide. This provides evidence of the existence of the route but not of any public rights over it.
2. Ordnance Survey (OS) drawings and maps from 1814 onwards show the Order route in a similar manner to Moor Lane. These maps confirm the continued existence of the route but do not indicate whether there were any public rights over it.
3. On the plan prepared in connection with the Finance Act 1910, the route is shown uncoloured and not numbered indicating that it was not subject to tax. This is the manner in which public roads were dealt with, but some routes awarded as private roads in an inclosure award for the use of a number of people were also excluded in this way.
4. In the parish survey carried out in 1951 as part of the process of preparing the first definitive map, the route was claimed initially as a *‘CRF’* (Public Carriage or Cart Road mainly used as a Footpath). However, a subsequent note added in pencil stated *‘Deleted from survey by footpath panel’.* It is not known why the route was deleted but it was not shown on the first or any subsequent definitive map.
5. Overall, although the documentary evidence confirms the existence of the Order route over a long period, it does not indicate public rights over it.

***Evidence of Use***

1. It appears that public use of the route was brought into question in 2003 when it was obstructed by branches which were thought to have been placed deliberately to prevent use. This incident triggered an application being made for the route to be recorded as a public footpath by the parish council. Although fallen branches had obstructed the route on occasion before 2003, these had soon been cleared without significantly interrupting public use. Accordingly, the relevant 20 year period of public use during which a presumption that the route has been dedicated as a public right of way might have been raised in accordance with the provisions of the 1980 Act runs from 1983 to 2003 in this case.
2. Thirty six User Evidence Forms (UEFs) were submitted in support of the Order describing use of the Order route by 37 people. Three of these forms should be discounted as they were completed by people who considered their use to be with permission and/or owned adjoining land.
3. The remaining UEFs describe use of the route from the 1930s until 2003 or later. Twenty seven people claimed to have used the route throughout the period from 1983 to 2003 and a further 8 for some of that period.
4. The frequency of use claimed varied, but most users said they had used the route monthly or more frequently and some had used it daily.
5. Users had not been challenged or obstructed prior to 2003. Several reported the presence of a sign at Point B restricting access to the east of that point but not any on the route itself.
6. In the past it was possible for people to progress eastwards beyond Point B, but it also seems to have been accepted that this was by permission of the landowner. This permission was withdrawn in around 2000 and the route blocked at B.
7. There is no known owner of the land crossed by the Order route and no evidence of any action taken on behalf of a landowner to discourage public use before 2003.
8. Accordingly, the available evidence indicates that the Order route was used by the public in such a manner during the period 1983 to 2003 so as to raise the presumption that it had been dedicated as a public footpath in accordance with the provisions of the 1980 Act. Also, as there is no evidence of action by a landowner that would rebut this presumption, it is now appropriate that the route should be recorded as a public footpath.

***Common Law***

1. An inference that a way has been dedicated for public use may be drawn at common law where the actions of landowners (or lack of action) indicate that they intended a way to be dedicated as a highway and where the public have accepted it.
2. In this case, the evidence indicates that public use of the route has taken place over a long period and it may well be that public rights over it could be inferred at common law. However, in the light of my conclusion regarding presumed dedication under the 1980 Act, it is unnecessary to pursue this matter further.

**Other Matters**

1. The Order route is a cul de sac approximately 170m in length. It was suggested that this means it is not suitable to be recorded as a public footpath. However, there is no reason in law why a cul de sac route cannot be a public right of way. Often such routes terminate at a point where there is some feature which the public are likely wish to visit such as a viewpoint or the seashore. No such feature is present at Point B, but the evidence of path users suggests that the path itself is a place of public interest running as it does immediately alongside an attractive stretch of the bank of the River Swere.
2. Owners of land adjacent to the Order route may well have private rights to use it with or without vehicles. Any such rights will not be affected by the route being recorded as a public footpath. It is not uncommon for private and public rights to co-exist on the same route.
3. One owner of adjacent land has suffered from trespass and damage to fences alongside the Order route and is concerned that recording it as a public footpath may exacerbate such problems. I understand his concern but as such matters lie outside the criteria set out in the relevant legislation, I am unable to give them any weight in reaching my decision.
4. Although the route was awarded with a width of 18́́́ ́(5.5m), there is no evidence that the public have used the whole width on foot. The visible trodden path is much narrower than this and the UEFs submitted do not specify the width used. In such circumstances, it is appropriate that a width that is reasonable for the exercise of public rights on the route in question should be recorded. In this case, the Order specifies a width of 2m which is sufficient for two people to walk side by side and is reasonable for this path.

Conclusions

1. Having regard to these and all other matters raised, I conclude that the Order should be confirmed.

Formal Decision

1. I confirm the Order.

Barney Grimshaw

Inspector

