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| **Order Decision** |
| Inquiry Held on 14 September 2022  Site visit made on 13 September 2022 |
| **by D M Young JP BSc (Hons) MPlan MRTPI MIHE** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 11 October 2022** |

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| **Order Ref: ROW/3276730** |
| * This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Buckinghamshire County Council (Public Footpath Around Statters Field, Parish of Little Chalfont) Definitive Map Modification Order 2019. |
| * The Order is dated 25 November 2019 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. |
| * There were 21 objections outstanding at the commencement of the Inquiry. |
| **Summary of Decision: The Order is Confirmed** |
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Procedural Matters

1. The Order route is shown between points A-B-C-D-E-F-G-H-I-B on the Order Plan (see Appendix 1) and comprises a circular route around an area of land known locally as Statters Field. The route is principally accessed from Public Footpath LCF/9/1 which in turn is accessed from Long Walk, a private residential road running between Burton and Lodge Lanes.
2. The application to add the route to the Definitive Map and Statement (DMS) was made by Little Chalfont Parish Council and is dated 21 January 2016. The Order was considered by Buckinghamshire Council’s (the Order Making Authority (OMA)) Rights of Way Committee on 18 July 2019.
3. Since 2014 the land has been owned by Debra Olleveant (the landowner) who opposes the Order.
4. I carried out an unaccompanied site visit on the evening of 13 September 2022 where I was able to walk the Order route, save for the fenced off section containing the apiary.

The Main Issues

1. The Order is made under Section 53(2)(b) of the 1981 Act, relying on the occurrence of an event specified in Section 53(3)(c)(i) of the same. This section requires me to consider whether the evidence discovered by the OMA, when considered with all other relevant evidence, is sufficient to show, on the balance of probabilities, that the right of way described in the Order subsists and that the DMS therefore requires modification.
2. The OMA rely on statutory dedication of the Order routes under Section 31 of the 1980 Highways Act. This provides that where a way, other than a way of such a character that use of it could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public, as of right and without interruption, for a period of twenty years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that the landowner demonstrated a lack of any intention during this period to dedicate the route.
3. ‘As of right’ is set out in *R v Oxfordshire County Council, ex parte Sunningwell Parish Council* (1999) as being without force, secrecy or permission. The 20-year period applies retrospectively from the date on which the right of the public to use the way was brought into question.
4. In addition to considering the user evidence with regard to the provisions of section 31 of the 1980 Act, I am also required to consider whether dedication of the claimed route has taken place at common law. The evidential test to be applied, at common law or under the statutory provisions, is the civil standard of proof; that is, the balance of probabilities.

Reasons

***When the right to use the route was first brought into question***

1. In order to calculate the relevant 20-year period, it is necessary to establish the point at which the public’s use of the route was called into question. There is no dispute that the landowner erected a notice to the gate at point B in March 2014 which read “*Private Property, No Public Right of Way. Walkers are permitted at their own risk under licence only, which may be withdrawn at any time*”. The latest possible 20-year period is therefore 1994-2014
2. It has been suggested that the previous landowner made a deposit under Section 31(6) of the 1980 Act before the land was transferred to the current landowner. However, the OMA has no record of a deposit being made. I therefore find that the relevant 20-year period is 1994-2014.

***Whether there has been use by the public for the required period of 20 years***

1. In order for a presumption of dedication to arise under Section 31 of the 1980 Act, there must be actual use of the alleged route, and such use must be by the public. With regard to the number of members of the public who must use a route for it to become a public right of way, there is no statutory minimum however use must be by a sufficient number of people to show that it was use by the public. Use of a way by different persons, each for periods of less than 20 years, will suffice if, taken together, they total a continuous period of 20 years or more.
2. 27 User Evidence Forms (UEFs) were submitted with the application, 18 of the respondents were subsequently interviewed by the Council. The evidence contained in the UEFs is conveniently summarised at page 388 of the OMA’s evidence bundle and shows that six people used the route over the entirety of the 20-year period. The majority of the other users attest to use of the route over a significant proportion of the 20-year period. Claimed use of the Order route extends as far back as the 1970s.
3. Aerial photographs taken in 1999, 2003 and 2006 show the same walked route as described in the UEFs an depicted on the accompanying maps. A number of individuals gave evidence to the inquiry as to their use of the Order route including the landowner. This was entirely consistent with the information contained in the UEFs and additional interview statements and as such adds weight to those forms.
4. There is no suggestion from those opposing the Order that the evidence contained in the UEF’s is in any way inaccurate. Whilst the landowner suggested there might have been a gate at point U prior to 2014, there is nothing to suggest it was ever locked. There was also some discussion regarding a barb wire fenced that marked the boundary between Statters Field and adjacent residential gardens. However, while some users may have accessed the route from their gardens, there was no suggestion that the barb wire fence actually prevented the public’s use of the Order route.
5. Many of the witnesses refer to widespread use of the route by other villagers. None recall being challenged about their use of the route nor were any notices seen prior to 2014. Overwhelmingly, users believed that the landowner was aware that the public at large was using the route. That is supported by the June 2015 letter from the previous landowner (the Statter and Minerva Sports Club) whose Treasurer Mr Wilson wrote:

*“From 1972 onwards…. there were no formal rights of way across the land, but we were aware and had no problem with local residents walking their dogs and harvesting blackberries on the property*”

1. I consider the level of use during the relevant 20-year period would have been sufficient to “*bring home to the landowner that a right is being asserted against him*” (*R (Lewis) v Redcar and Cleveland Borough Council*) and therefore weighs in favour of confirmation. There is no credible evidence that the use was interrupted or that it was secretive or by force. Although the level of use varies between the witnesses, overall, it has been demonstrated that it was on a regular basis varying from daily, weekly and monthly depending on the time of year.

***Lack of intention to dedicate***

1. The user evidence gives rise to a presumption of dedication and therefore the burden shifts to the landowner to demonstrate a lack of intention to dedicate. For there to be sufficient evidence of this there must be evidence of some overt acts on the part of the landowner, during the relevant period, to show the public at large that they had no intention to dedicate. The test is whether a reasonable user would have understood that the landowner was intending to disabuse the user of the notion that the way was public.
2. I have already identified that a notice was erected by the landowner in 2014. However, there is no substantive evidence that the landowner took any actions prior to that to demonstrate to the public at large that they had no intention to dedicate the routes during the period 1994-2014.

Common Law Dedication

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. At common law, there is no defined minimum period of use that has to be satisfied, nor is there any need for the existence of public rights to be brought into question.
2. In this case, there is clear evidence from the previous landowner that they were aware of public use of the Order route from 1972 onwards and took no steps to disabuse users of the notion that the way was public. This supports a significant body of user evidence from local people as well as the aerial photographs.
3. In light of the above I find it possible to infer an intention to dedicate on the part of the landowners, with acceptance being demonstrated by public use of the route.

Other Matters

1. Various issues have been raised by those opposing the Order including, but not limited to, the effect on private property, local ecology, the potential for anti-social behaviour, safety and security, an increase in footfall and parking along Long Walk and maintenance and other liabilities. While I note, and can appreciate the genuine concerns, these are not matters which can be taken into consideration under the 1981 Act.

Conclusions

1. I have found that there is sufficient user evidence to demonstrate use of the Order route between 1994 and 2014. There is no suggestion nor evidence that use was interrupted or that it was not ‘as of right’. I have not identified any evidence to show a lack of intention to dedicate a public right of way over the Order route within the 20-year period. I am also satisfied that the evidence meets the test for dedication under common law.
2. Therefore, on the balance of probabilities, and considering the evidence as a whole, I am satisfied, that the Order route should be recorded as a public footpath. Having regard to these and all other matters raised I conclude that the Order should be confirmed.

**Formal Decision**

1. The Order is confirmed.

D. M. Young

**Inspector**

**APPEARANCES**

**For Buckinghamshire Council**

Daniel Stedman Jones of Counsel

*He called*

Ann Alderson Local Resident

Len Worley Local Resident

Jon Walden Local Resident

Edward Kinsey Local Resident

Jane Maiden Local Resident

Chris Whitby Local Resident

Patricia Whitworth Local Resident

Helen Francis Rights of Way Officer Buckinghamshire Council

**In opposition to the Order**

Debra Olleveant Landowner

