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| **Order Decision** |
| On papers |
| **by G D Jones BSc(Hons) DipTP DMS MRTPI** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 06 September 2022** |

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| **Order Ref: ROW/3281745** |
| * This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981. It is known as the Kent County Council (Footpaths MU98, MU99 and MU100 at Tonbridge) Modification Order 2020. |
| * The Order is dated 29 October 2020. It proposes to modify the definitive map and statement for the area by recording three public footpaths: between public footpath MU30 and River Lawn Road; between public footpath MU30 and public footpath MU100; and between public footpath MU30 and Lamberts Yard, as shown on the Order map and described in the Order schedule. |
| * There was one objection outstanding when Kent County Council submitted the Order for confirmation to the Secretary of State for Environment, Food & Rural Affairs. |
| |  | | --- | | **Summary of Decision: The Order is confirmed.** | |

**Procedural Matters**

1. There was one objection outstanding at the time the Order was submitted for confirmation, which was made by Tonbridge & Malling Borough Council (TMBC). TMBC has subsequently withdrawn its objection. Although TMBC is no longer actively engaged in the determination of this Order, I have nonetheless noted relevant evidence contained in its representations. In forming my conclusions, I have considered this information along with all other documents submitted by the order making authority.
2. My decision is reached on the basis of the papers on file. Whilst I have not visited the site, I am satisfied that I can reach my decision without the need to do so.

**The Main Issue**

1. The main issue is whether, on a balance of probabilities, the evidence before me is sufficient to show that, in the past, the Order routes have been used in such a way and to such an extent that a public footpath can be presumed to have been established on each of the three routes.
2. Kent County Council (KCC) made the Order under Section 53(2)(b) of the Wildlife and Countryside Act 1981 on the basis of events specified in sub‑section 53(3)(c)(i). If I am to confirm it, I must be satisfied that, on a balance of probability, the evidence shows three public rights of way, in the form of public footpaths, subsist along these claimed routes, respectively described in the Order and labelled A-B, C-D, and A-D-E on the Order map.

Reasons

1. An application was made to KCC by a local resident, Mrs Jane Lloyd, in 2017 to record a claimed bridleway running from River Lawn Road to Buley’s Weir Bridge, a claimed footpath running from Weir View Scout Hut to Lambert’s Yard, and a claimed footpath running from Lambert’s Yard to Buley’s Weir Bridge. These each, respectively, equate to the alignments of the claimed A-B, C-D, and A-D-E routes identified in the Order.
2. The application was accompanied by completed user evidence forms from 42 people who had previously walked the routes. It was also accompanied by documentary evidence, including historical mapping, minutes of the Tonbridge Urban Council of 19 October 1921 and an aerial photograph taken in 1952. KCC, as the order making authority, has also considered wider evidence, including an indenture between Louis Stephen Beale and the Urban District Council of Tonbridge from 1922, further aerial photographs ranging over the period 1946 to 2015, and the submissions of the landowner, TMBC.
3. Although not the only case put forward, the main case in support of the Order is based on the presumed dedication of three public footpaths under statute, the requirements for 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 routes 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. Such use would raise a presumption that the routes have each been dedicated as a public footpath. This may be rebutted if there is sufficient evidence to show that during this period there was no intention on the part of the relevant landowner to dedicate the ways for use by the public; if not, public footpaths will be deemed to subsist.
4. When considering 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. KCC concluded this occurred in December 2013. This is on the basis that TMBC granted a licence, which ran from that time for a period of 18 months, for land over which the claimed routes run, to be partially or wholly closed to the public to allow organisations, such as the Environment Agency, to store their equipment when undertaking repairs or other renovations at the nearby weir.
5. An analysis of the evidence provided by people who had walked the routes showed use of the routes on foot has taken place since the 1930s and that a significant number of people had done so on a frequent basis over the relevant twenty years period. This use appears to have been ‘as of right’ (insofar as it has been without force, secrecy or permission) and without interruption throughout the twenty years period, 1993 to 2013, and beyond.
6. Before withdrawing its objection TMBC had maintained that use of the claimed routes by the public has been ‘by right’ rather than ‘as of right’ on the basis that its permission and consent is conveyed via signage and Byelaws. The signage relates to dog fouling and Section 32 of the County of Kent Act 1981.
7. The evidence indicates that the signage refers generally to the River Lawn area, through which the Order routes run, rather than specifically to the claimed routes. Nor is there any good reason to believe that the signage conveys to the public that they are using the claimed paths with the permission of the landowner. Rather, they inform the public that it is an offence not to clean up after their dog, and that failure to do so may result in a fine. Moreover, it is hard to imagine how they might apply to anyone who uses the paths without a dog.
8. Furthermore, the evidence indicates that the signage can only advise people that, if they were to be removed from the area under Section 32 of the County of Kent Act 1981, they could not return for a defined period. Consequently, the signage and reference to Section 32 do not indicate the public have used the claimed routes ‘by right’ as had been alleged.
9. There had also been reference to Bylaws by TMBC. However, the 1969 Byelaws cited refer to River Walk with no specific mention of River Lawn, while the 1993 ‘Byelaws’ were never made. Neither, therefore, appear to be of any significant relevance.
10. As indicated above, therefore, use of all three routes appears to have been ‘as of right’. There is evidence of use by the public over each of the claimed routes on foot throughout the twenty years period. Although the applicant claimed a bridleway along route A-B there is no evidence before me of use on horseback along that route. Accordingly, such use has not been reflected in the Order, and rightly so in my view.
11. Although a case has also been made under common law, the foregoing matters are sufficient to lead me to conclude that the evidence shows the required level of use of all three routes by the public on foot during the twenty years prior to December 2013, and insufficient evidence to rebut the presumption of dedication that arises from that use. It follows, therefore, that three public footpaths are deemed to have been established along the Order routes.
12. In conclusion, and on the basis of the information provided, I am satisfied that the relevant statutory test is met in each case: that, on a balance of probability, a public right of way for pedestrians has been shown to subsist over the Order routes A-B, C-D, and A-D-E. Consequently, I conclude that the Order should be confirmed.

**Conclusion**

1. Having regard to the above and all other matters raised in the written representations, I conclude the Order should be confirmed.

Formal Decision

1. I confirm the Order.

G D Jones

INSPECTOR

ORDER MAP – COPY NOT TO SCALE

