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| **Order Decision** |
| Site visit made on 22 August 2022 |
| **by I Radcliffe BSc(Hons) MRTPI MCIEH DMS** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 24 October 2022** |

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| **Order Ref: ROW/3247695** |
| * This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Metropolitan Borough Council of Stockport Definitive Map (Footpath 39, Marple) Modification Order 2012.
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| * The Order is dated 4 October 2012 and proposes to modify the Definitive Map and Statement for the area by upgrading public footpath 39 to the status of public bridleway as shown in the Order plan and described in the Order Schedule.
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| * There was 1 objection outstanding when Stockport Metropolitan Borough 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, subject to the modification set out in the Formal Decision below.** |
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Procedural matter

1. My site visit was unaccompanied and I was able to walk and view the entire length of the Order route.

The Main Issue

1. Stockport Metropolitan Borough Council made the Order under section 53(2)(b) of the 1981 Act. The Council states that it was made on the basis of an event specified in section 53(3)(b). However, as it relates to the upgrading of a highway from public footpath to bridleway the statutory basis for the making of the Order is contained within section 53(3)(c)(ii). This section provides that an order to modify the definitive map and statement should be made following the discovery of evidence which (when considered with all other relevant evidence available) shows that a highway of one description ought to be shown as a highway of a different description.
2. It is clear that the objector understands what is being proposed and I am satisfied that this minor error has not prejudiced the interests of any person who otherwise would have made an objection. I am also satisfied that the error has not rendered the Order misleading in its purpose.
3. The application to upgrade the Order route was made in 2003 by Stockport East Area Bridleways Association (SEABA). In support of the application, SEABA submitted both documentary evidence and evidence of a period of long use of the Order route by members of the public on horseback. In relation to documentary evidence, section 32 of the Highways Act 1980 (the 1980 Act) requires a court or tribunal to take into consideration any map, plan or history of the locality, or other relevant document, which is tendered in evidence, giving it such weight as is appropriate, before determining whether a way has been dedicated a highway.
4. In circumstances where evidence of long use has been submitted, the provisions of section 31 of the 1980 Act are relevant. The tests to be considered under this section are:
5. the date on which the claimed equestrian right to use the route was brought into question;
6. whether the route was used by the public as a right of way and without interruption for a period of not less than 20 years ending on the date on which their right to do so was brought into question; and,
7. whether there is sufficient evidence that there was during this 20 year period no intention to dedicate the claimed bridleway.
8. As a result, the main issue in relation to the Order is whether the discovery by the Council of evidence, when considered with all other evidence available, is sufficient to demonstrate that on the balance of probabilities that the bridleway exists. If it is shown that this is the case, then the Order should be confirmed and the definitive map and statement modified accordingly.

Reasons

*Documentary Evidence*

1. The Council states that the earliest historical evidence of the existence of a track following the Order route is on the First Edition of the 1:25 inch 1880 Ordnance Survey Map of the area. The Council states that the track is present on subsequent editions of Ordnance Survey maps of the area up to and including 1992.
2. In itself this is not evidence that the track is a bridleway as opposed to a footpath. The documentary evidence is therefore inconclusive as to the status of the Order route but given the relatively wide width of the track shown it shows the continued existence of a route capable of use by horse riders as well as walkers.

*User evidence*

1. In the absence of any identifiable event that brought into question the public’s right to use the Order route as a bridleway the application itself is the trigger for the purposes of section 31(2) of the 1980 Act. The twenty year period therefore runs from 1983 to 2003.
2. Twenty three user evidence forms accompanied the application and a further evidence form was submitted in 2004. Of the submitted forms, twenty one were completed in 2000. In 2009 the Council was able to contact eight out of the twenty four users for interview in relation to the relevant twenty year period. Seven out of the eight interviews provided verbal corroboration that indicate that the route had been in regular use by horse riders from 1970 to 2003. The remaining interview supported such use occurring between 1946 and 1968. The frequency of their claimed use varies from ten or less to two hundred and forty times a year.
3. There is nothing to suggest in the user evidence that use of the Order route by horse riders was not carried out openly or that use occurred with force. Similarly, there is no evidence that use was interrupted. No challenges by landowners to use of the Order route by horse riders, whether verbal, in the form of signs or by way of civil action for trespass have been reported. Similarly, there has been no evidence of obstructions or that during the relevant period any landowner expressed an intention not to dedicate the Order route as a bridleway.
4. Taking all these matters into account, I am therefore satisfied that there has been use of the Order route by the public on horseback for the twenty year period in question and that use has been of right and without interruption. There is no evidence from landowners which rebuts a presumption of dedication based on use by the public on horseback. It therefore follows that the relevant tests are met and that the Order should be confirmed.

**Other matters**

1. A slight detour has been identified as an alternative to the Order route by SEABA. It involves making use of a tarmac track to avoid the two field gates and passage of the route through an intervening small area of pasture immediately next to the side of the house between Points C and D on the Order map. If an application is made to divert the Order route, and Stockport Metropolitan Borough Council considers it appropriate, it has the option of doing so, but this is not a matter for me to consider.
2. There is one objector to the Order route who has raise a number of concerns should the footpath be upgraded to a bridleway. These include future access for motor vehicles, increase traffic using the Order route harming his access, and maintenance of the route. He is also concerned about wilful trespass that has occurred by horse riders who have been using the route and the Council taking sides in a civil dispute. The Council has addressed these concerns in letters sent to the objector. As the matters raised are outside the criteria set out in the relevant legislation, I have been unable to take them into account in reaching my decision.

**Overall conclusion**

1. For the reasons given above, and having regard to all other matters raised in the written representations, I conclude that the Order should be confirmed subject to a modification.

**Formal decision**

1. The Order is confirmed subject to the following modification:

In the first paragraph on the sealed page of the Order replace line 4 onwards to the end of the paragraph with the following: ‘*occurrence of an event specified in section 53(3)(c)(ii) namely the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description.’*

Ian Radcliffe

Inspector

