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| **Order Decision** |
| Inquiry Held on 22 November 2022  Site visit made on 21 November 2022 |
| **by A Behn Dip MS MIPROW** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 14 December 2022** |

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| **Order Ref: ROW/3273588** |
| * This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as The Derbyshire County Council (Footpath from Bowmer Lane to Public Footpath No 78 – Parish of Crich) Modification Order 2019. |
| * The Order is dated 5 December 2019 and proposes to modify the Definitive Map and Statement for the area by adding a public footpath at Bowmer Lane as shown on the Order plan and described in the Order Schedule. |
| * There was 1 objection outstanding at the commencement of the Inquiry. |
| **Summary of Decision: The Order is confirmed subject to the minor modification set out in the Formal Decision below.** |
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Procedural Matters

1. At the Inquiry an application for costs was made by Derbyshire County Council (DCC) against the objector. This application will be the subject of a separate Decision.
2. I held a public Inquiry into the above Order on 22 November 2022 at Crich Glebe Field Centre, near Matlock. I made an unaccompanied site visit on Monday 21 November 2022 when I was able to walk the entire length of the Order route. It was agreed by all parties at the Inquiry that a further accompanied visit was not necessary.
3. Three objections were received following the making of the Order and its subsequent submission to the Planning Inspectorate. Two of these were withdrawn before the Inquiry.
4. The remaining objector, who owns the land across which the claimed route runs, did not wish to attend the Inquiry.
5. At the Inquiry a very minor error was noted in the drafting of the Order; In Part I of the Schedule the word Ordnance was misspelt. I do not consider there to be any likelihood of this causing the Order to be misinterpreted and DCC have requested that should the Order be confirmed, that Schedule I be amended to correct the error.
6. 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. DCC made the Definitive Map Modification Order (DMMO) under Section 53(2)(b) of the 1981 Act on the occurrence of an event specified in sub-section 53(3)(c)(i). Accordingly, the main issue is whether the evidence discovered (when considered with all other evidence available) is sufficient to show that a public right of way which is not shown in the definitive map and statement subsists over land to which the map relates.
2. Whilst it suffices under section 53(3)(c)(i) for a public right of way to be reasonably alleged to subsist in order to make a DMMO, the standard of proof is higher for it to be confirmed. At this stage, evidence is required to show, on the balance of probabilities that a right of way subsists.
3. The evidence in support of this case comprises of User Evidence Forms (UEFs). As a result, the statutory requirements of Section 31 of the Highways Act 1980 (the 1980 Act) are relevant. This sets out that where a way has been enjoyed by the public as of right and without interruption for a full period of twenty years, the way is to be 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 twenty years referred to, is to be calculated retrospectively from the date when the right of the public to use the way was brought into question.
4. If statutory dedication is not applicable, I shall consider whether an implication of dedication has been shown at common law. Common law requires me to consider whether the use of the path and the actions of the landowner have been of such a nature that the dedication of the path by the landowner can be inferred.

**Reasoning**

***Statutory dedication***

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

1. The status of the claimed route was first brought into question by the locking of a gate at point A on the Order Map, in 2017. Accordingly, the relevant twenty-year period to be considered for the purpose of statutory dedication is 1997-2017 (“the relevant period”).

*Evidence of use by the public*

1. Thirty-one UEFs were provided in support of use of the claimed route, with twelve of these stating use in excess of twenty years and a further thirteen stating use between ten to twenty years. Use was mainly on foot, with most stating daily or weekly use. Greater weight is given to the evidence of those witnesses who spoke at the Inquiry.
2. The majority of users frequently saw other people when using the route, mostly walkers, but some cycle and equestrian use was also observed.
3. Evidence submitted shows that usage was predominantly recreational with many users incorporating the claimed route as part of longer circular walks around the parish, often, although not exclusively, accompanied by dogs.
4. None of the users sought or were given permission to walk the route, and use appeared to be so open and persistent that it was assumed by all who used it to be a right of way. The tenant farmer resided close to and overlooking the claimed path and was frequently seen by many of the users when they were walking the Order route. Several asserted that the farmer would sometimes stop to chat to them but never challenged their use in any way. One user recalled being told by the wife of the tenant farmer that the only time they had to speak to walkers was to request they keep to the path when the grass cover crop was growing.
5. Many users recall only ever seeing a gate at Point A on the Order route and stated that until the calling into question of the claimed path, the gate was always open unless cows were grazing, or occasionally when the field was sprayed, in which case it was closed but not locked. Some users commented that they preferred not to use the route when livestock were present, or the field had been sprayed but others still continued to walk the claimed path. Witnesses advised that cattle grazing was infrequent and was thought to have taken place in the late 1980’s and early 1990’s, which is outside of the relevant period.
6. Witnesses do recall the gate at point A being locked in 2017, with one user stating that the farmer’s son had told her not to use the claimed route. However, it is this locking of the gate that brought the public’s right to use the Order route into question.
7. More than half of the users remember signs being intermittently erected in recent years, at each end of the asserted path. This occurred whenever the crops had been sprayed, with some users recalling that occasionally the gate was pulled across the path at this time, although not always.
8. Many were unclear as to the exact wording of the signs, but photographs of broken signs submitted in evidence by the landowner do correlate with the evidence of some witnesses who recalled that the painted red signs read ‘SPRAYED KEEP OUT’. Photographs submitted with the original application by the applicant also show an intact sign bearing a remarkable resemblance to the broken sign and worded the same.
9. Users stated the signs were generally removed a few weeks after the spraying had taken place and they believed that the signs were there to warn dog walkers of possible toxicity to their pets. One witness recalled being told by the farmer that the spray was harmful to animals.
10. The spraying occurrences were temporary in nature and the wording and presence of the signs during these periods does appear to indicate an acknowledgement of the use of the claimed route, as suggested by DCC.
11. Having regard to the above, I find that there is sufficient user evidence to raise a presumption of the dedication of a public footpath. Therefore, the first part of the statutory test is satisfied.

*Evidence of the landowner and whether the landowner demonstrated a lack of intention to dedicate a public footpath*

1. The landowner advised that the land had been in their family for many generations, and that it had been managed by an agent for several years. They wrote of historical documents in their possession which show there was never a public right of way through the land. Copies of these documents were not provided.
2. The submission of the landowner correlates with the research undertaken by DCC which did not uncover any evidence of a historical right of way. However, the claim is being made under statutory dedication based on user evidence for the requisite twenty-year period, and not on historical documentation and evidence.
3. The landowner felt that any use of the claimed path was trespass. This conflicts with the users who believed that their use had been as of right, without secrecy and without permission both during the relevant period and also before that timeframe.
4. The landowner stated the land was gated and locked and submitted photographs with the original objection to the application, showing a padlocked gate. The photographs were not dated, and no time frame was given for when the photographs had been taken. It is certainly the case that the gate was locked in 2017, as this served to bring the right of use into question, however there is no evidence before me to show that there was any locking of the gate prior to this.
5. The landowner also stated that the gate was broken, and signs were smashed, however no details were provided as to when these incidents occurred. One witness recalls a broken gate and padlock at point A in 2017, which ties in with the challenge to use of the claimed path. Photographs submitted by the landowner also show broken signs, however these appear to be the signs that were erected to notify that the field had been sprayed, rather than specific signs demonstrating there was no public right of way.
6. On balance, no action was taken by the landowner during the relevant period that was sufficient to demonstrate that there was a lack of intention to dedicate a footpath.

*Conclusions on statutory dedication*

1. I have concluded that the user evidence is sufficient to raise a presumption that the claimed route has been dedicated as a public footpath. In addition, there is no evidence that the landowner demonstrated to the public, 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. In light of this conclusion, there is no need for me to address the evidence in the context of common law dedication.

**Other matters**

1. The landowner questioned the necessity of the claimed route given that Bowmer Lane itself terminates at the same junction with Footpath No.78, however the necessity of a route is not within the criteria that can be considered under the legislation to be applied.
2. The landowner was also understandably anxious that should the Order be confirmed, users would stray from the route onto the fields and into surrounding buildings. On my site visit I did observe one user briefly wander off the path onto the field and I do understand the worry this may cause. The landowner’s other concern related to the risk of livestock being infected with Neosporosis from dog faeces when the grass on the fields was used for silage.
3. I recognise the above as very real and genuine concerns, however the legal basis on which this case must be determined does not allow for consideration of such matters and accordingly these issues should be directed to DCC.

Conclusions

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 modification.

Formal Decision

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

* Remove the ‘i’ from the word Ordinance in Part I of the Order Schedule.

A Behn

**INSPECTOR**

**APPEARANCES**

**For the Council:**

K Zasada Solicitor, Derbyshire County Council

who called:

L Phillips Legal Assistant (Rights of Way), Derbyshire County Council

S Clarke

D Siddons

R Allsopp

S Midgley

J Midgley

**Objector:**

Not in attendance

**DOCUMENTS HANDED IN AT THE INQUIRY**

1. Opening and closing statements of Derbyshire County Council
2. Photograph from J Midgley
3. Application for costs by Derbyshire County Council

ORDER MAP – COPY – NOT TO ORIGINAL SCALE

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