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| **Order Decision** |
| Site Visit on 13 June 2022 |
| **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: 20 January 2023** |

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| **Order Ref: ROW/3255623** |
| * This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as the Hertfordshire County Council (Aldenham 95 & 96 and Elstree & Borehamwood 64 & 65) Modification Order 2017. |
| * The Order is dated 18 August 2017 and proposes to modify the definitive map and statement for the area by adding a public footpath at Aldenham Reservoir near Elstree running from Aldenham Footpath 52 and following the western and southern edges of the Reservoir to Elstree and Borehamwood Footpath 5 Newbury Public Footpath 38, as shown on the Order map and described in the Order schedule. |
| * There was one objection outstanding when Hertfordshire County Council submitted the Order for confirmation to the Secretary of State for Environment, Food & Rural Affairs. |
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**Background**

1. The Order was made by Hertfordshire County Council (the Council) pursuant to an application for a Definitive Map Modification Order made on 23 July 2013 by the Aldenham Country Park Trust Ltd. Nonetheless, in October 2016 the Council decided not to make an order following its investigations at that stage. The applicant appealed against this decision.
2. On 11 May 2017 the Inspector appointed to determine the appeal (the Appeal Inspector), on behalf of the Secretary of State, directed the Council to make an order to add the footpath to the Definitive Map and Statement (DMS). The Council did so on 18 August 2017 and it is that Order that is the subject of this decision. If confirmed without modification, the effect of the Order would be to add a public footpath, known as Aldenham 95 & 96 and Elstree & Borehamwood 64 & 65, to the DMS as described in the Order.

**Main Issues**

1. The Council has relied upon Section 53(3)(c)(i) and (iii) of the Wildlife and Countryside Act 1981 (the 1981 Act). The requirement of Section 53(3)(c)(i) of 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. Section 53(3)(c)(iii) of the 1981 Act includes a requirement that the evidence should show that other particulars contained in the map and statement require modification. The remaining objection relates to the width and alignment of parts of the route as described in the Order.

**Reasons**

1. Although there is documentary evidence before me, particularly in the form of aerial photographs, it does not provide evidence of highway status. Rather, having made the Order, the Council advances a case based primarily on uninterrupted public enjoyment of the Order, as of right, without interruption for a full period of 20 years under Section 31 of the Highways Act 1980 (the 1980 Act), as well as under common law. Under common law a right of way can come into existence in less than 20 years, if it can be shown that there was dedication of the route by the landowner and acceptance of the route by the public.
2. Under Section 31 of the 1980 Act the presumption of dedication can be rebutted if a landowner can demonstrate that they have taken steps to prevent the accrual of new public rights of way through public use of a route. Such steps must be overt and make the public at large aware of the landowner’s intentions, for instance, by placing and maintaining notices on the route stating that it is not public, by erecting and locking gates, or by telling people seen using the route that it is not public.
3. From the evidence before me I have found no good reason to disagree with the Appeal Inspector in respect to the following matters:

* There is no evidence to show that the landowners did not have the capacity to dedicate a public right of way over the land;
* There is no statutory power applied to the land crossed by the Order route;
* Whilst the management of the Country Park might be said to imply that use of the land is by right rather than as of right, there is no indication through that conduct of the landowner’s intentions. None of the signs were inconsistent with the dedication of a public right of way;
* There is no evidence that a 1974 lease, which contains a clause that permits use of the property only for recreational purposes as part of Aldenham Country Park, was made known to the public and it was not specifically communicated to them. Consequently, the public would not have been aware that their use of the route was permissive, by right, or that the landowner had no intention to dedicate a public right of way; and
* There was no dispute between the parties that there has been actual enjoyment of the route by the public such as to raise a presumption of dedication under Section 31 of the 1980 Act. Furthermore, in any event, there is a “body of credible user evidence capable of satisfying the common law requirements prior to 1974”.

1. The Council considers the date of challenge to be the date of the Order application, 23 July 2013, such that the relevant 20 year period under Section 31 of the 1980 Act is 1993 to 2013 (the relevant period). 60 user evidence forms have been supplied by people who claim to have used the Order route, of which 52 relate to the relevant period. Use was predominantly on foot although five users also gave evidence of bicycle use and another gave evidence of horse use. Nonetheless, beyond use by pedestrians, there is no evidence to support uninterrupted public enjoyment of the route by other means. The majority, 29 users, refer to use of the Order route approximately once a month, whilst 16 attest to using it approximately once a week and 7 to use approximately once a year.
2. None of the users provide evidence that they had been given permission to use the Order route or had been challenged whilst doing so. A number of users refer to informative notices on the Order route, such as reference to ‘Lakeside Walk’ signs and to a notice about flora and fauna. None refer to notices prohibiting use or of a permissive nature.
3. During the relevant period part of the land across which the Order route runs was owned by the Council and another part of it was owned by Safari Investments Inc (Safari). The Council held a lease to the reservoir and surrounding land that extended throughout the relevant period. A clause of the lease covenants lessees to use the land only as and for recreational purposes as part of the Aldenham Country Park.
4. Correspondence between the Council and Safari’s agent states in 1992 that the *general public has permissive access to much of the land surrounding the Reservoir, except the area leased by the sailing club*, and in 2016 that *users of the path around the reservoir have done so under the licence of the Country Park in conjunction with their use of the park. Previous 'Aldenham Country Park' branded sign boards have shown the reservoir as forming a part of the larger park where people have been encouraged to walk and explore freely*.
5. The Council recognises that it had control of all the land crossed by the Order route during the relevant period. It erected notices, including in respect to opening times of the Country Park and referring to the control of dogs. It accepts that none of the notices at the site referred to permissive use or indicated an intention on behalf of the landowner not to dedicate a public right of way. It also acknowledges that the terms of the 1974 lease and the correspondence outlined above were not communicated overtly to the general public.
6. On this basis the Council now considers that the landowner did not demonstrate a lack of intention to dedicate a public footpath on the Order route during the relevant period and that during that time there had not been any overt actions capable of disabusing the public of the notion that there was any intention to dedicate a public right of way. From the information before me, I have found no good reason to disagree. Indeed, in my view the evidence firmly supports this conclusion, consistent with the Appeal Inspector’s findings.
7. The remaining objector does not directly challenge any of the foregoing evidence or conclusions. Its submissions relate solely to the width of certain sections of the route and the alignment of part of the route as they are recorded in the Order.
8. In respect to width, the objection relates to the section of the route between points B-C, F‑G and H-I as identified in the Order. Here the application form describes the width claimed as *3 metres along the majority of the path, with 2 metres where the path runs alongside Watford Road and the Reservoir.* The user evidence is varied but generally reflects the varied, physically available width of this part of the Order route. The Council has taken measurements here, taking account of physical boundaries and evidence of use by the public. These have informed the varying width of the route identified in the Order, within the parameters of the user evidence. These are consistent with my observations of this part of the Order route when I visited the area. Accordingly, there is no good reason to conclude that the route widths identified in the Order are incorrect or require modification.
9. The objector has also identified what it considers to be the correct route to the south of point B and a preferred route south of point A. Nonetheless, the Order route was made based on the route identified in the application, supported by user evidence, aerial photographs from 2000 and 2010 and the Council’s inspections of the route itself. As outlined above, collectively the evidence indicates that there has been ongoing, uninterrupted pedestrian use of the Order route during the 20 years period 1993 to 2013. In contrast, there is no substantiated evidence to support dedication of either of the alternative routes identified by the objector.

**Conclusion**

1. The user evidence shows uninterrupted pedestrian use of the Order route, as of right, for a period of 20 years. None of the signs on or near the Order route were inconsistent with the dedication of a public right of way and there is no evidence that the landowner demonstrated no intention to dedicate a public right of way along the Order route. While the width of the Order route and part of its alignment have been challenged, the objection does not seriously call into question these aspects of the Order, whereas the wider evidence supports these and the Order as made.
2. Therefore, I am satisfied on the balance of probabilities that a public footpath subsists along the Order route such that the DMS should be modified to add it and the particulars of those routes with which it connects be amended, in accordance with the tests set out at paragraph 3 above.

Formal Decision

1. I confirm the Order.

G D Jones

INSPECTOR

