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| **Order Decision** |
| Inquiry held on 15 November 2022  Site Visit on 14 November 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: 23 January 2023** |

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| **Order Ref: ROW/3289773** |
| * This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as the West Berkshire District Council (Newbury, Donnington Square) Definitive Map Modification Order 2020. |
| * The Order is dated 8 October 2020 and proposes to modify the definitive map and statement for the area by adding Newbury Public Footpath 38, running from point A on Oxford Road to point X1 and then past points X2 and X3 to point B and then to point B1 at the east end of Burchell Road, and Newbury Public Footpath 39, running from point B to point Y and then to point C on Herewood Close, as shown on the Order map and described in the Order schedule. |
| * There were three objections outstanding when West Berkshire District 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 West Berkshire District Council (the Council) following an application for a Definitive Map Modification Order made on 17 July 2018 by Speen, Shaw and Donnington Community Forum. Together the Order routes form a roughly horseshoe shape running along a track located behind Nos 3 to 30 Donnington Square, Newbury, from Oxford Road to the northeast to Herewood Close to the southeast, via Burchell Road to the west. If confirmed without modification, its effect would be to add Public Footpath Newbury 38 and Public Footpath Newbury 39 to the Definitive Map and Statement (DMS) as described in the Order.

**Main Issue**

1. The Council has relied upon Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981, such that the main issue for both routes relates to whether or not, on the balance of probabilities, the evidence shows that public footpaths subsist over the two routes identified in the Order.

Reasons

1. Although the information before me contains reference to documentary evidence, the case made for confirmation of the Order is solely on the basis that there has been uninterrupted public enjoyment of the two routes in question, as of right, without interruption for a full period of 20 years under Section 31 of the Highways Act 1980.
2. The application was accompanied by 30 User Evidence Forms completed by 30 different people claiming use of the routes as far back as 1959. Of these, 23 gave evidence of use on foot only, 5 of use on foot and bicycle and 1 of bicycle use only. Reference is also made to use by motor vehicles, however, this appears to be limited to private use by residents accessing their properties off the routes or by parties visiting them. The evidence also refers to ‘No Cycling’ signs being displayed on the routes at various times. Consequently, the evidence is not consistent with the dedication of a public right of way for motor vehicles or bicycles. Beyond use by pedestrians, there is no evidence to support uninterrupted public enjoyment of the two routes by other means.
3. There is anecdotal evidence that the routes were closed off once a year up until around 1960. There are also more recent accounts of incidents when the routes were temporarily impeded, for instance by fallen trees and by builders’ equipment and material. These were, nonetheless, very short-lived and sometimes only partially impeded use. There is also no evidence to suggest that such incidents were intended to prevent public use of the routes. Accordingly, they do not amount to interruptions to use.
4. In the absence of an identifiable event, the date on which an application was received by the Council, 17 July 2018, serves as the date that the right of the public to use the route was brought into question. Collectively, the evidence, including comments and submissions from both path users and adjacent landowners, indicates that there has been ongoing, uninterrupted pedestrian use of the Order routes during the 20 years period 1998-2018, as was concluded by the Council when it made the Order. None of the objectors or those who spoke at the Inquiry, have contradicted this evidence or called into question this conclusion in any way. The concerns raised largely relate to other matters, which are considered in the following section of my decision.
5. Accordingly, the evidence is sufficient to show, on the balance of probabilities, Public Footpath Newbury 38 and Public Footpath Newbury 39 subsist as public footpaths and should be added to the DMS.

Other Matters

1. Other considerations have been raised by interested parties, including those who have expressly objected to the Order. These include:

* Parts of the routes should be omitted in the event that the Order is confirmed;
* Parts might also be better designated as a byway open to all traffic;
* The Order should be modified to include motor vehicles;
* Since its creation, the main and established use of the track along which the Order routes run, is associated with motor vehicles;
* Section 67 of the Natural Environment and Rural Communities Act 2006 (NERC) provides a private right of way for those persons who have a reasonable need for vehicular access to land in which they have an interest;
* Concerns relating to the confirmation of the routes as public footpaths potentially affecting any legal use of the track by vehicular traffic accessing private properties; and
* Concerns regarding potential surface treatment and lighting, including any effects on wildlife.

1. For the reasons outlined in the preceding section, there is good reason to include the whole of both routes in the Order, yet there is insufficient evidence to support the dedication of a public right of way other than for pedestrians. Even if public motor vehicle rights could be established to have existed along the route on 2 May 2006, then they would have been automatically extinguished under the provisions of the NERC. Should the Order be confirmed unmodified, it would not affect any pre-existing easements/private access rights, including for motor vehicles. There are no proposals to surface the routes or to add lighting. Consequently, none of these considerations or any other points raised affect the foregoing findings.

**Conclusion**

1. Based on the evidence before me I am satisfied on the balance of probabilities that public footpaths subsist along both Order routes such that the DMS should be modified accordingly.

Formal Decision

1. I confirm the Order.

G D Jones

INSPECTOR

**APPEARANCES**

**For the Order Making Authority:**

Sharon Armour, representing West Berkshire District Council

*She called*

Stuart Higgins Definitive Map Officer

**For the Objectors:**

Mr & Mrs Rodway, Local Residents

Len Rodway

*He called*

Himself

**Interested Parties:**

Cllr Masters Local Councillor

Michael Butler West Berkshire District Council

Mr Rossiter Resident

Mrs Burden Resident

Mrs Burke Resident

Mr Smith Resident

