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| **Order Decision** |
| Inquiry Held on 7 February 2023Site visit made on 7 February 2023 |
| **by Paul Freer BA (Hons) LLM PhD MRTPI** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs**  |
| **Decision date: 15 March 2023** |

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| **Order Ref: ROW/3284160** |
| * This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Public Footpath Nos. 30.19/34, 30. 19/35, 30. 19/36 & 30.19/37, Weaponness Valley Close and Oriel Close to Queen Margaret’s Road and Seamer Road, Scarborough Modification Order 2019.
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| * The Order is dated 28 November 2019 and proposes to modify the Definitive Map and Statement for the area by adding a footpath as shown in the Order plan and described in the Order Schedule.
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| * There were two objections outstanding when North Yorkshire County Council (NYCC) submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation and at the commencement of the Inquiry.
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| **Summary of Decision: The Order is confirmed** |
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Procedural Matters

1. The Order was sealed on 28 November 2019 and advertised on 2 January 2020. Two objections were received, both in relation to path 30. 19/36. No objections were made to the other paths on the Order. NYCC therefore decided to sever the Order and to confirm the unopposed paths comprising paths 30.19/34, 30. 19/35 and 30.19/37. Those paths have subsequently been included on the Definitive Map for the area. Consequently, the Inquiry was only in relation to path 30. 19/36.
2. The route shown as path 30.19/36 was, in part, the subject of an earlier application for it be included on the Definitive Map, made in 2007. The route then claimed linked Weaponness Valley Close to a parcel of land known as the Donkey Field, but did not carry on beyond that. However, because the route claimed did not connect to a highway, NYCC considered that the application had no realistic prospect of being progressed and ultimately it was not pursued.

**Main Issues**

1. The main issue here is whether the evidence is sufficient to show that in the past the Order route has been used in such a way that a public footpath can be presumed to have been established.
2. The Order was made under 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 a public right of way on foot subsists along the route described in the Order.
3. The case in support is based primarily on the presumed dedication of a public right of way under statute, the requirements for which are set out in Section 31 of the Highways Act 1980. For this to have occurred, there must have been actual use of the claimed route 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, thereby raising a presumption that the route had been dedicated as a public footpath. This may be rebutted if there is sufficient evidence that there was no intention on the part of the relevant landowner(s) during this period to dedicate the way for use by the public; if not, a public footpath will be deemed to subsist (or, put another way, to exist).
4. In the interest of clarity, and to address the point made by Mr Barton in giving his evidence, if I am satisfied that a public footpath has been shown to subsist at the end of the relevant 20-year period, any events that may have taken place subsequently cannot alter that status. The public right to use the path would be deemed to exist from the end of the 20-year period, albeit not recorded as such on the Definitive Map.

 Reasons

1. NYCC made this Order in response to an initial application dated 17 April 2017 from Mrs Sheila Vickers, supported by thirty-two forms giving evidence of use (UEFs).

*Bringing into question*

1. The application submitted in April 2017 itself arose from the locking of gates and the erection of signs. However, the earlier application submitted in 2007 was prompted by the submission of a planning application for the erection of a dwelling at (what is now) 10 Weaponness Valley Close. The plans submitted with that planning application showed the development as encroaching on a strip of land that was being used by the public to access Donkey Field. I am mindful that the route claimed in 2007 was only part of the route shown as path 30.19/36 on the Order. Nevertheless, I am satisfied it was the submission of the planning application in late 2006 that first challenged the rights of the public to use that path and therefore brought the use of the way into question. Consequently, I need to examine use by the public during the period between December 1986 and December 2006.

*Assessment of the evidence*

1. In addition to the thirty-two UEFs submitted with the 2017 application, a further seven UEFs were added subsequently. Of the 32 UEFs originally submitted, four provide no real evidence of use during the relevant period. The remaining 28 UEFs originally submitted mostly relate to the period from 1990 onwards, although some relate to the 1960’s and the 1950’s. Four of the forms cover the entire relevant period from 1986 to 2006. Of the additional seven UEFS added later, one relates to use wholly outside the relevant period. Of the remaining six forms, five record use over the whole of the relevant period and the other very nearly so.
2. Analysis of the user evidence forms reveals that some of the respondents used the route on a regular basis, some as frequently as daily or weekly, whereas others record only very occasional use. The recorded use was mostly for recreational purposes, including jogging and dog walking, as well as in at least one case for escorting children to school. I am satisfied that this level of use was sufficient to have brought the use of path by the public to the attention of a reasonably alert landowner.
3. In addition to these UEFs, I heard evidence from two supporters of the Order at the Inquiry. Both had previously submitted UEFs and, in Ms Tasker’s case, a written Statement of Case with detailed appendices.
4. Ms Diane Clough Tasker has been the occupier of a property in Weaponness Valley Close since 1974 and was resident in the local area prior to that. She first used the route in the 1950’s, and used it throughout the relevant period. The frequency of her use of the route varied over time, but was only ever during the summer months and only for recreational purposes. She never asked permission to use the route. In giving her evidence, Ms Tasker’s recollection of dates and details was at times somewhat vague but, overall, I am satisfied that Ms Tasker was a reliable witness in terms of her general use of the route. In that context, her recollections at the Inquiry were supported by her UEF and her written Statement of Case.
5. Mr James Jamieson, also a resident of Weaponness Valley Close, confirmed that he used the route on a weekly basis in 1992/3, but thereafter less regularly. Mr Jamieson witnessed others using the route on a daily basis, including hikers, joggers, dog walkers and parents taking their children to school.
6. I have also received a written Statement of Case from Mr Mick Prince on behalf of the Weaponness Valley Community Group (WVCG), purportedly in support of the Order. However, whilst containing some helpful background information, the Statement of Case on behalf of the WVCG does not provide any information regarding the actual use of the Order route.
7. The footpath from Weaponness Valley Close does not appear on any documentary evidence. By contrast, the footpath from Oriel Close, now included on the Definitive Map as path 30. 19/34, is clearly shown on Ordnance Survey maps dating from 1928, 1929, 1947 and 1953, on which its annotated ‘F.P.’. The footpath from Oriel Close is also clearly visible in an aerial photograph taken in June 1950, whereas there is no indication of the path from Weaponness Valley Close in that photograph. However, I am mindful that all of this documentary evidence pre-dates the construction of Weaponness Valley Close in the late 1960’s, prior to which the land was allotments. The logical inference is that the use of path began, or at least intensified, only after the construction of Weaponness Valley Close. The evidence from the UEFs supports that.
8. I am satisfied that this evidence is, when taken as a whole, sufficient to raise a presumption that the way in question had been dedicated as a public footpath.

*Intentions of the landowner*

1. There is evidence of a long-established gate across the path where it crosses into Donkey Field (Point N on the Order route). However, there is also evidence that there has always been a stile next to that gate which, if anything, indicates that the landowner acquiesced to the use of the path. No evidence has been provided to demonstrate actions by or on behalf of the owner of the land affected by the Order route during the period December 1986 - December 2006 to challenge the claimed use or to otherwise rebut the presumed intention to dedicate a right of way for the public on foot. I conclude therefore that any presumption of dedication raised would not have been rebutted.
2. In 2016, work commenced on the construction of a new stadium for Scarborough Athletic FC on land south-west of Weaponness Valley Close. The stadium opened in July 2017. To discourage car parking on Weaponness Valley Close by supporters attending the matches, a gate was erected across the path and was locked during match days. A sign saying “Private: no public right of way” was erected at that point in February 2018. Whist these actions clearly showed a lack of intention to dedicate a right of way on the part of the landowner(s), they all took place after the relevant period.
3. There is also some anecdotal evidence that the path was blocked on bonfire night each year to prevent spectators viewing the display from there. However, there is no documentary evidence to support that, particularly in terms of when and how the path was blocked. I therefore attach very limited weight to that anecdotal evidence.
4. Consequently, I conclude that, on a balance of probability, a public footpath has been established along this route.

**Width of the route**

1. The width of the Order route is recorded in Part II of the Order Schedule as 1.7 metres for the first 21 metres of the route, and 2 metres for the remainder. There is some evidence that width of the route where it meets Weaponness Valley Close was wider than 1.7 metres, and was nearer to 5.6 metres in width. There is some photographic evidence to support that. In his UEF, Mr Jamieson provides a photograph (undated) which appears to show the entrance to Weaponness Valley Close as being wide open. In her Statement of Case, Ms Tasker provides a photograph taken in or around 2007, which shows three donkeys roped together emerging onto Weaponness Valley Close but does show the Order route itself. It was suggested by Ms Tasker that donkeys would be led three abreast in this fashion from the Donkey Field, albeit that evidence was disputed by the objectors.
2. This width of 5.6 metres would be consistent with the encroachment of the path that brought the use of the way into question in December 2006. However, there is no documentary evidence to show that the width of the route itself was wider than stated in Part II of the Order Schedule. The UEFs are consistent as recording the width of the route as around 2 metres. Consequently, whilst I accept that there is a possibility (and I put no higher than that) that the width of the path may have been wider where it joined Weaponness Valley Close, I am satisfied that the width of the route itself is properly recorded in Part II of the Order Schedule. Accordingly, I do not propose to modify the Order in this respect.

 **Other matters**

1. The objectors raise concerns about the implications of confirming the Order route as a public footpath on the enjoyment of their properties. Following the construction of the new stadium for Scarborough Athletic FC, the objectors have experienced increased car parking in Weaponness Valley Close on match days, resulting in noise, littering, vandalism and anti-social behaviour. Mr Barton cites being verbally abused by football supporters using the path to access the turnstiles for the stadium and is concerned about repercussions should he confront them. Mr Clifton questions the need for the Order route, given that the path from Oriel Close has now been included on the Definitive Map. There is also concern expressed about the effect on the value of the objector’s properties should the Order be confirmed.
2. Whilst these are all clearly matters of importance to the objectors, they are not relevant to my consideration of this Order which seeks to determine whether or not the right to use the way on foot has already been established in law through long unchallenged use.

 Conclusion

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

 Formal Decision

1. I confirm the Order.

Paul Freer

INSPECTOR

**APPEARANCES**

**For the Order making Authority**

Mr Ron Allan BA (Hons) MA Principal Definitive Map Officer

He called:

Mr Andrew Hunter Definitive Map Officer

Ms Diana Clough Tasker Local resident

**In support of the Order**

Mr James Jamieson Local resident

**Objectors to the Order**

Mr Andrew Barton Local resident

Mr Antony Clifton Local resident

ORDER MAP - COPY NOT TO SCALE

