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| **Order Decision** |
| Inquiry opened on 17 January 2023 |
| **by Nigel Farthing LLB** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 26 April 2023** |

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| **Order Ref: ROW/3281497** |
| * This Order is made under Section 53 (2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Wigan Borough Council (Public Footpath No. 207A, Leigh) Definitive Map Modification Order 2020. |
| * The Order is dated 1 September 2020 and proposes to modify the Definitive Map and Statement for the area by adding a public footpath as shown in the Order plan and described in the Order Schedule. |
| * There were 525 objections outstanding at the commencement of the inquiry. |
| **Summary of Decision: The Order is not confirmed.** |
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Preliminary Matters

1. I held an inquiry at Leigh Sport Village on 17 and 18 January 2023 with closing submissions given virtually on 20 January. I made an unaccompanied site visit on the afternoon of 16 January. At the conclusion of the inquiry it was agreed that no further site visit was necessary.
2. This Order concerns the addition of a public footpath from Sandy Pool Farm, Timperley Lane, Leigh (point A on the plan attached to the Order), following a farm track to its junction with Public Footpath Leigh No. 209 at point B.
3. Although 525 objections were recorded and not withdrawn, only one Objector appeared at the Inquiry who I shall refer to as the Objector.
4. In this decision letter I have found it convenient to refer to the Order plan and for ease of reference a copy is attached.

**The Main Issues**

1. The Order has been made under section 53(3)(c)(i) of the 1981 Act which requires me to consider whether, on a balance of probabilities, the evidence shows that a public footpath subsists along the Order route.
2. The evidence adduced is of claimed use by the public. Wigan Borough Council relies upon a presumption of dedication arising further to the tests laid down in Section 31 of the Highways Act 1980 (the 1980 Act).
3. Accordingly, I must establish the date when the public’s right to use the Order route was brought into question. The evidence can then be examined to determine whether use by the public has been as of right and without interruption for a period of not less than 20 years ending on that date. Finally, it is necessary to consider whether there is sufficient evidence that there was no intention on the part of the landowners to dedicate public footpath rights during this 20-year period.
4. The main issues in this case are whether use by the public was as of right, whether it was interrupted and whether there was no intention by the landowner to dedicate a public right of way.

Reasons

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

1. It is not disputed that use of the Order route by the public was challenged in 2015 when it was blocked off following a change in land ownership. I have considered whether other actions at an earlier date could constitute a bringing into question for the purposes of Section 31 of the 1980 Act. There is compelling evidence that at the time when an earlier wooden gate at point A was replaced with a metal five bar gate, repeated efforts were made by the landowner to board off the gap to the side of the gate and to keep the gate locked. The date that the gate was changed is less clear, but the best evidence would suggest this was in about 2000.
2. Taking first 2015 as the appropriate date provides a 20-year period of 1995 to 2015.

***Whether the claimed route was used by the public as of right and without interruption***

1. 74 individuals completed user evidence forms (UEFs). Of these 14 provided written statements and I was provided with a statutory declaration completed by one witness who has since died. Eight people gave oral evidence of use at the inquiry, one of whom had not given a written proof of evidence.
2. The evidence given was of recreational use of the route, mostly for dog walking and frequently using the claimed route as one leg of a triangular route with footpaths 207, 208 and 209 forming the other two sides. The earliest claimed use was from 1949, but several witnesses claimed to have used the route from the 1960s. Most claimed to have used the route up to the date it was securely fenced off in 2015.
3. The frequency of use varied but a significant number of witnesses claimed regular use being at least weekly. The user witnesses claimed to have seen others using the route on a regular basis. The extent of use was contested by the objector, but a number of the objector’s witnesses did acknowledge a degree of use by the public.
4. I heard evidence about signs being displayed on the Order route requesting that people clear up after their dogs and not to feed the horses. The signs were put up by tenants of the landowner. Witnesses for the Objector acknowledged these signs. I accept that the presence of and need for these signs does suggest a level of public use of the Order route.
5. Taking the evidence as a whole I am satisfied, on a balance of probabilities, that the extent of use was sufficient to amount to use by the public.

*Whether use was as of right*

1. Use would not be as of right if it was undertaken by force, secretly or with permission.
2. I heard evidence from a neighbouring landowner about how an earlier wooden gate at point A was replaced in about 2000 with a metal gate which the witness gave to the landowner in exchange for a different gate. The earlier wooden gate spanned the entire width of the Order route. The replacement metal gate did not span the width of the track, leaving a gap on the southern side. Various witnesses gave evidence that the landowner at the time erected a barrier of wooden rails to close the gap. The barrier was described as being of the same height as the gate. I was told that the barrier was repeatedly and deliberately broken down by unknown persons and replaced several times by the landowner.
3. I accept that use of the Order route by a person who accessed the track by breaking down the barrier would be contentious use, and thus not as of right. However, none of the users who gave evidence recalled the barrier being an obstacle to their passage and there was no evidence of any specific individuals damaging it.
4. Evidence was also given by various witnesses for the Objector that both the earlier wooden gate, and the subsequent metal gate were regularly closed and locked. None of the users acknowledged that they had ever been prevented from using the route because of the gate or barrier at point A. Climbing over the locked gate, or over the barrier would amount to contentious use, but I had no direct evidence of this occurring. Some evidence was given that users had by-passed the gate at point A by diverting through the yard at Sandy Pool Farm. Such use would suggest that access to the Order route at point A was blocked. Use of a diverted route would not support the Order route but again no user acknowledged having made this diversion, and I have no evidence of specific individuals having done so.
5. The Objector asserted that some use of the route was with permission of the landowner. One user did acknowledge that he had used the route with permission when he was using it to access Grange Farm where he was undertaking some building work. I discount this use. I also heard evidence from various employees and tenants who had a legitimate entitlement to be on the land over which the Order route runs, and I recognise that these could have been amongst the people seen by other users. For this reason I can attach little weight to evidence of unidentified individuals said to have been seen using the route as of right.

*Whether use was interrupted*

1. At the inquiry evidence was given by various witnesses for the Objector that, for a period up to 2001, it had been the custom of the landowners to close and lock farm gates, including the gate at point A, for a period of 24 hours annually on either 1 May or May bank holiday. It was asserted that this was done for the specific purpose of interrupting any public use and thus to prevent any inference of dedication arising. I accept that if I had clear evidence that this practice was carried out during the relevant 20-year period, it would amount to evidence of an interruption of public use.
2. I did not hear evidence directly from any of the landowners from the relevant period, all having died. I do have a witness statement from one of the landowners, made in 2016, and I note this makes no reference to annual closure, and nor do any of the other proofs of evidence submitted by or on behalf of the objector. Two of the Applicant’s witnesses thought that the landowner did close and lock the gate annually but had no direct experience of this. I am however not satisfied that the evidence meets the threshold of proving, on a balance of probabilities, that use of the Order route was interrupted by the annual locking of the gate.

*Conclusions on user evidence*

1. I am satisfied that there is sufficient evidence of uninterrupted use by the public as of right to give rise to a presumption of dedication.

***Whether there was no intention to dedicate a public right of way***

1. The Objector relies upon three actions on the part of the landowner to demonstrate a lack of intention to dedicate the Order route as a public right of way being; the regular closing and locking of the gate at point A and the blocking of the gap to the side, the presence of signs and the regular challenge to users.

*Locking of gate and closing gap*

1. The evidence was largely consistent in demonstrating that at point A there had been a wooden gate which was, as described earlier, replaced with a metal gate which remains in situ. There was little, if any dispute that the wooden gate hung from either a post alongside the farm buildings to the south of the track or was fixed directly to the structure of the buildings, and that it closed onto a post on the north side of the track such that there was no gap, and when the gate was closed it spanned the entire width of the track with no gap for a pedestrian to pass.
2. Clear and compelling evidence was given as to the circumstances in which the wooden gate was replaced with the metal gate. I was told that this occurred in about 2000 and this date was not challenged. I accept the evidence that when the metal gate was installed the gap to the side was blocked with wooden rails which were broken down and replaced several times. I accept that the rails were installed, and replaced, for the purpose of preventing access onto the Order route at point A.
3. Some witnesses for the Objector recalled a regime where the gate would be opened in the morning and shut and locked at night. Others said that the gate was opened only when the landowner required access, for himself or other agencies, and that at other times it was usually closed and often locked.
4. Most of the user witnesses recalled occasions when the gate was closed but were uncertain whether it was locked. Most users specifically referred to having accessed the Order route using the gap to the side of the gate, which would suggest that on those occasions the gate was closed. It would also suggest that the use being referred to took place after 2000 since before that date the gate spanned the track and there was no gap.
5. The impression I gained was that after the death of the landowner in or about 2001 efforts to replace the barrier waned and for a period of time thereafter, until the change in ownership in 2015, the gap was left open and possibly the gate was not closed with the same rigour as in the preceding period.
6. Having regard to the 20-year period under consideration (1995 – 2015) I am satisfied that for at least the period 1995 to 2001 the landowner did regularly shut and usually lock the gate and that he did so with the intention of preventing unauthorised use of the Order route of any nature. I have accepted the evidence that the barrier across the gap was repeatedly broken down which would suggest that it was done to gain access to the Order route because the gate was locked shut. In reaching this conclusion I am reassured by the evidence relating to the compilation of the first Definitive Map and Statement in the late 1950s. In particular I note that the Order route was included on the draft map but following objection by the landowner the route was deleted and did not appear on the provisional or final map. Whilst it has been suggested to me that I should regard this as evidence of reputation of the Order route as a public right of way, I draw the opposite conclusion. The fact that the landowner objected, and the objection was upheld, is consistent with the Objector’s case that efforts to prevent public use and status are long standing and consistent. This is further reinforced by the fact that both relevant landholdings were in the same family ownership from before the 1950s until 2001.
7. The actions of the landowner in closing and securing the route at point A were overt and would necessarily have come to the attention of anyone trying to use the route. Accordingly I am satisfied that these actions were sufficient to demonstrate a lack of intention to dedicate.

*Signs*

1. A wooden sign was displayed at point A and was present for much, if not all’ of the relevant 20-year period. The consensus was that the sign hung from the Sandy Pool Farm building although there was some evidence that it was displayed on the gate. Most witnesses recalled the sign, and it was not contested that it was readily visible and apparent.
2. The original sign was produced at the Inquiry. It reads ‘PRIVATE ROAD TO GRANGE FARM’. Witnesses for the Objector who knew the landowner responsible for erecting the sign said that his intention was to assert that no public access of any nature was allowed over the Order route. Most of the users interpreted it as being directed at vehicular traffic only as it referred to the route as a ‘road’.
3. I am required to assess how the wording of the sign would appear to an impartial and reasonable member of the public. The term ‘Private Road’ does not preclude the possibility that the route could be used by the public for a purpose other than as a road, for example as a footpath. I am therefore not satisfied that the sign was sufficient on its own to demonstrate a lack of intention to dedicate a public footpath.
4. The Objector also sought to rely upon a sign erected at or close to point B. This sign included a map of recorded public rights of way in the vicinity and urged those reading it to keep to those routes and not to venture onto other land. The Order route was not identified as a public right of way on the map.
5. Evidence as to the date when this, or any earlier similar sign was first displayed was unclear, and I cannot therefore be certain that the sign was present during the relevant 20-year period.

*Challenge*

1. Graphic evidence was given by one landowner and his partner about the damage caused by dogs worrying livestock on the fields adjoining the Order route. This has clearly been a significant issue and I have no doubt that the landowners have challenged users whenever they have had the opportunity to do so. Other persons associated with the land, whether as employees, tenants or graziers gave similar evidence about the problems caused by dogs not being under control. These witnesses also gave evidence of challenging people on the Order route.
2. None of the user witnesses acknowledged having been challenged when using the Order route although in the case of one witness this was contested by the Objector.
3. A statutory declaration made by a relative of one of the landowning families was put in evidence by the Applicant. The nature of the evidence given in the declaration was to the effect that the landowners had tolerated unobstructed and unchallenged use of the route. The deponent has died since making the declaration. This evidence was at odds with the consistent evidence given by other members of the family and their tenants and employees.

*Conclusions on lack of intention to dedicate*

1. I do not find the evidence in relation to signs and challenge, on their own, to be sufficient to demonstrate a lack of intention to dedicate. However, I have concluded that the evidence for the period 1995 – 2001 in relation to the locking of the gate together specifically with the evidence of the landowner’s repeated efforts to close off the gap to the side of the gate, is sufficient to demonstrate a lack of intention to dedicate during the relevant period.

***Other possible periods for consideration***

1. Having concluded that the landowner has sufficiently demonstrated a lack of intention to dedicate in the initial period 1995 – 2015, it is necessary to consider whether there is any other date, or dates, when the public’s right to use the Order route was brought into question.
2. I have concluded that the actions of the landowner in closing and locking the gate and repeatedly blocking the gap were sufficient to demonstrate a lack of intention to dedicate. I must therefore consider whether these actions also brought into question the right of the public to use the route. These actions represent an unequivocal and overt challenge to the public. The most compelling evidence is of the blocking of the gap which occurred between 2000 and 2001. On that basis a period of 1980 – 2000 falls for consideration.

*Use 1980 - 2000*

1. Of the witnesses who provided proofs of evidence, 10 refer to use from 1980 or earlier. The frequency of use is varied with most referring to regular use being at least weekly. The nature of use is identical to that for the period previously considered. Although the evidence of use is less than for the later period, I find that it was sufficient to give rise to a presumption of dedication.

*Lack of intention to dedicate 1980 - 2000*

1. I have found that prior to 2000 the wooden gate at point A completely spanned the road, and that this was regularly closed and often locked, although there were times during the day when the gate was left open.
2. I have referred to a long standing and consistent pattern of action on the part of the landowner in seeking to resist public use of the Order route. Whilst accepting that there was sufficient use of the Order route during this period, my conclusion is that this occurred when the gate was not locked, and probably when it was open, as no witnesses refer to having to open the gate to gain access. Notwithstanding this I am satisfied that the landowner closed and locked the gate on a regular basis and that the effect of doing so was to prevent public access. I accept that the gate may have been more frequently closed and locked at times when the landowner was not working on the land, and that this may have been predominantly at night. However the effect of locking the gate was to prevent access and thus to interrupt use and to demonstrate a lack of intention to dedicate. Accordingly I conclude that there is sufficient evidence of a lack of intention to dedicate during that period.

***Conclusions on the Section 31 tests***

1. For the primary period of 1995 - 2015 I have concluded that there is sufficient credible evidence of use as of right and without interruption to give rise to a presumption of dedication. However I have further concluded that the actions of the landowner during that period were sufficient to convey to the public that there was no intention to dedicate a public right of way over the Order route.
2. I have considered an alternative period and concluded that for that period also there is sufficient evidence that the landowner had and demonstrated a lack of intention to dedicate.

**Other matters**

1. The objector and his witnesses gave evidence of significant anti-social behaviour and harassment directed towards him and his family. As detailed earlier I also heard evidence concerning the problems caused by dogs on the land in the vicinity of the Order route. I understand these events have been most distressing for those concerned but they are not matters which I am able to take into account in reaching my decision.

**Overall Conclusion**

1. Having regard to these and all other matters raised in the written representations I conclude that the Order should not be confirmed.

**Formal Decision**

1. The Order is not confirmed.

Nigel Farthing

Inspector

