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| **Order Decision** |
| Site Visit made on 1 February 2023 |
| **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:22 June 2023** |

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| **Order Ref: ROW/3280388** |
| * This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981. It is known as the Herefordshire Council (Addition of Footpaths SP2 and SP4 Stoke Prior) Modification Order 2020. |
| * The Order is dated 28 January 2020. It proposes to modify the definitive map and statement for the area by recording two public footpaths: between the County Road C1112 and public footpath Stoke Prior SP2, via points A-B-C; and between point B of the foregoing and public footpath Stoke Prior SP4, as shown on the Order map and described in the Order schedule. |
| * There were two objections outstanding when Herefordshire Council submitted the Order for confirmation to the Secretary of State for Environment, Food & Rural Affairs. |
| |  | | --- | | **Summary of Decision: The Order is confirmed subject to the modifications set out below in the Formal Decision.** | |

**Procedural Matters**

1. Humber, Ford and Stoke Prior Parish Council (the Parish Council) applied to Herefordshire Council (the Council) on 14 January 2019 for a Definitive Map Modification Order to add two sections of footpath to the Definitive Map and Statement (DMS). The effect of adding the two sections of footpath is to link together two existing footpaths, SP2 and SP4, which were previously dead-ends, and to also link them through to the county road C1112. Points C and D were the two ends of SP2 and SP4 respectively, point B is where the two new sections meet and from which one continues from point C to point A where it meets the C1112.
2. The Order and the associated Plan refer to the addition of a footpath called SP35. However, the Council requests that, should the Order be confirmed, this be amended to reflect the continuation of footpath SP2, to be called SP2, and the continuation of footpath SP4, to be called SP4. In the event that I decide to confirm the Order I shall make the modifications as requested, which would not affect the Order such as to require advertising.

**The 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

*Documentary Evidence*

1. Two County maps, Henry Price 1817 and Bryant 1835, show all or part of the claimed routes. At least part of the purpose of such maps was to assist private individuals while travelling. Consequently, although the presence of the routes on these maps does not demonstrate that they were public rights of way, it might suggest that the respective mapmakers understood the routes shown on these sections to be public. Moreover, a significant amount of the routes shown on these maps in the wider area are now public.
2. A range of Ordnance Survey (OS) maps for the area, dating from 1831 to 1928, consistently show the claimed routes as enclosed tracks. The purpose of these maps was to record features in the landscape, so their surveyors were not tasked with identifying the rights which might have existed over any routes. Consequently, it is not possible to establish from them alone whether or not such routes are public rights of way.
3. The Tithe Map for Stoke Prior dated 1844, clearly shows the claimed routes bounded by solid lines in a comparable manner to other roads in the area. The Order routes appear to be excluded from the identified tithable area, thus inferring that they may have been public routes. Nonetheless, it might also imply, for instance, that they were accommodation roads providing shared private access.
4. The Order routes are not coloured or numbered on the Finance Act 1910 Map for the area, which uses an OS base. This implies that at that time they were not assessed to have a value directly attributable to an individual landowner or set of landowners. While not conclusive, comparable to the Tithe Map evidence, their treatment may be because they were considered to be public highway of some sort.
5. In the early 1950s the Parish Council submitted a number of routes for inclusion in the Draft Map and Statement for the first definitive map to be produced by Herefordshire Council pursuant to the National Parks and Access to the Countryside Act 1949. Nonetheless, it did not put forward the Order routes as part of this process. It did though put forward Footpath SP2 and Footpath SP4, in their shorter form as they appear on the DMS, which led to them being added to the DMS.
6. Both of these footpaths are described in the first draft statement as starting from an ‘Accommodation Road’, which might imply a private road. Nonetheless, while I note the objectors’ submissions on this aspect of the evidence, it seems unlikely that the Parish Council would have put forward two dead ends as public footpaths. Indeed it seems more likely that at that time the Parish Council would have been content that the public were legitimately able to move between these routes and the highway, county road C1112.
7. Those objectors have also submitted a copy of the 1857 deed for land around the Old Rectory. The deed shows that it was Glebe Land, which may have affected whether the land was accessed by the general public. However, the Order routes do not cross the Glebe Land indicated on the plan nor is it clear whether the track was only for access to the Glebe Land. Consequently, these deeds are of limited evidential value, albeit that the plan appears to be consistent with the equivalent part of the 1844 Tithe Map.
8. Other objectors have submitted a copy of a letter from the Council concerning ‘Grovefields Lane’ becoming a public right of way. Nonetheless, the letter appears to refer to access land in relation to Glebe Land rather than specifically public rights of way along the claimed route. Consequently, it too is of limited evidential value in respect to the matter before me.
9. In conclusion on the documentary evidence, no one piece of evidence is conclusive and I also note the objectors’ submissions regarding the accuracy of the maps within the evidence. However, when the foregoing information is taken together it collectively builds a picture that strongly suggests that both Order routes were for public use, such that on the balance of probabilities public footpaths do subsist over each route.

*User Evidence*

1. There is evidence of a challenge to the routes’ use in July 2017, such that this is the point in time when their use was brought into question. Accordingly, the relevant date for user evidence is up to July 2017. The application was accompanied by 12 user evidence forms. While not a large quantity, collectively they provide a helpful picture of claimed use of the routes. All 12 cite use on foot, ranging from twice a year to over one hundred times a year. The earliest use identified was 1948 and ranges to 2019, with a minimum and maximum number of years used of 9 and 28 years. All bar one considered the routes to be footpaths, with one person referring to bridleway status.
2. Some of these users refer to footpath signposts by the road and at where the two Order routes meet, and also refer to encountering landowners, but not to their use of the routes having been directly challenged, although some state that they were aware of walkers having been challenged. The evidence also indicates that the routes have been signposted as footpaths since 1987 by the local Highway Authority and there is no record of local landowners objecting to the introduction of such signage.
3. Nonetheless, this user evidence is very much at odds with the circumstances and use described by all of the objectors. It is claimed, for instance, that SP4 was impassable for many years. However, no evidence is produced to support this claim. At least one of the people who completed a user evidence form is also said to have been exercising private rather than public access rights in using the routes, to visit relatives. From the information before me, I have found no reason to conclude that that was not the case.
4. While the accuracy of the evidence within the user evidence forms is called into question by the objectors and comments are made regarding the users, including in respect to their walking habits, the picture that emerges from the totality of the user evidence indicates that there has been ongoing, uninterrupted pedestrian use of the Order routes as of right (without force, secrecy or permission) during at least the 20 years period prior to July 2017. Moreover, there is insufficient evidence of a lack of intention to dedicate on behalf of the landowners such as to rebut that presumption of dedication.
5. Accordingly, the user evidence is also sufficient to show, on the balance of probabilities, that Footpaths SP2 and SP4 Stoke Prior in their extended form, subsist as public footpaths and should be added to the DMS.

**Other Matters**

1. Other considerations have been raised, including the need for these routes as public rights of way, as well as their desirability, safety and usability, and their effect on property and living conditions of residents. I have no doubt that these are genuine concerns. However, as outlined above, there is good reason to include the whole of both routes in the Order and none of these considerations or any other points raised affect that.

**Conclusion**

1. Having regard to the above and all other matters raised in the written representations, I conclude the Order should be confirmed with modifications.

**Formal Decision**

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

* In the Order, the Order name be replaced with ‘Herefordshire Council (Addition of Footpaths SP2 and SP4 Stoke Prior) Modification Order 2020’ in the title and in the final sentence/paragraph;
* In Part I of the Schedule to the Order:
* Under the heading ‘Addition of Public Footpath A – B – C’: replace ‘C1110’ with ‘C1112’ and replace ‘SP35’ with ‘SP2’, and
* Under the heading ‘Addition of Public Footpath B – D’: replace ‘SP35’ with ‘SP4’;
* In Part II of the Schedule to the Order: replace ‘SP35’ with ‘SP2’, replace ‘C1110’ with ‘C1112’, and replace ‘This section of the route’ with ‘Public Footpath SP4 Stoke Prior’; and
* In the Map, the text in the title of the Map to be replaced with ‘Herefordshire Council (Addition of Footpaths SP2 and SP4 Stoke Prior) Modification Order 2020’.

G D Jones

INSPECTOR

