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| **Order Decision** |
| on papers on file |
| **by Susan Doran BA Hons MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 03 August 2023** |

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| **Order Ref: ROW/3295524** |
| * This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as the Borough of Trafford (Dunham Massey No. 19) Definitive Map Modification Order 2021. |
| * The Order is dated 19 August 2021 and proposes to modify the Definitive Map and Statement for the area by upgrading a length of footpath to bridleway as shown in the Order plan and described in the Order Schedule. |
| * There were 2 objections outstanding when Trafford Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation. |
| **Summary of Decision: The Order is confirmed** |
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Preliminary Matters

1. This case concerns the proposed upgrading of a length of footpath (Dunham Massey No.19) to bridleway between Sinderland Road and its junction with Restricted Byway No.9 Altrincham.
2. The Order is made by Trafford Council (the Council) following a successful appeal and direction under Schedule 14 to the Wildlife and Countryside Act 1981 (“the 1981 Act”). The Council has adopted a neutral stance and the case for the Order is made by the Supporters.
3. Whilst neither of the objections submitted raise matters that I can consider in reaching my decision, I address them briefly below.

The Main Issues

1. The criteria for confirmation of the Order are contained in sections 53(3)(c)(ii) and 53(3)(c)(iii) of the 1981 Act. These require me to consider firstly, whether the evidence discovered, when considered with all other relevant evidence available, is sufficient to show that Footpath No.19 should be upgraded to a bridleway, and that the Definitive Map and Statement (DMS) require modification. Secondly and further to the above, whether the particulars contained in the DMS require modification.
2. The evidence comprises claimed use by the public as a bridleway. Accordingly, I need to determine whether presumed dedication has arisen under the tests set out in section 31 of the Highways Act 1980. Some documentary evidence is also available to me. My conclusion on the evidence as regards the existence or otherwise of the higher rights claimed is reached on the balance of probability.

Reasons

***Documentary evidence***

1. A series of Ordnance Survey map extracts dating between 1874 and 2018 have been provided. These show the physical existence of the Order route, with the later maps depicting it as a public footpath. This is consistent with the extracts from the DMS and the records relating to its original inclusion within the DMS, which have also been submitted.
2. A series of undated photographs show the Order route and various signs, structures, and other features along or alongside it.
3. I conclude the documentary sources are neutral as regards the possibility of higher rights existing over the Order route.

*User evidence*

*Date of bringing into question*

1. There are two possible dates when use of the Order route was brought into question. The first is January 2017 when a notice was placed at the southern end of the route stating, ‘Private Land No Access Without Permission Unless Using a Public Right of Way’. It was this that prompted the applicant to gather evidence and make a Definitive Map Modification Order application to the Council. The second date is 4 May 2017, when the application itself was received by the Council.
2. A bringing into question arises when at least some of the users are made aware that their right to use a way is being challenged. I consider this occurred when the notice was put up and the applicant was prompted to apply for the Order route to be recorded with the higher rights that they consider it enjoyed. It follows that I will examine use during the 20-year period prior to the date the notice was put up, that is January 1997 to January 2017.

*Whether use was as of right and without interruption*

1. Evidence is provided in 19 user evidence forms claiming use over a period from the early 1950s to 2017. Thirteen individuals claim use on horseback and 10 claim use with a cycle, with none indicating they were challenged or interrupted in their use of the Order route, nor that their use was by permission, or anything other than open.
2. Frequency of use on horseback varied from daily to about 6 times a year, and with a bicycle from 2-3 times a week to about 6 times a year. Use by both types of users was mainly for recreation, with some cycle use to get to work north of the Order route or use in either direction as a short cut. Overall, the average number of users on a horse or bicycle was 16 in any one year and the average number of journeys a month was 86.
3. Claimed use has not been disputed. In my view the evidence of use is sufficient to raise a presumption of dedication. However, this presumption can be rebutted if there is sufficient evidence on behalf of the landowners to demonstrate they had no intention to dedicate the way as a bridleway.

*Whether there is sufficient evidence of a lack of intention to dedicate by the landowners*

1. There is evidence that notices expressing a lack of intention to dedicate were in place on land owned by Network Rail beyond the Order route. However, whilst these were present in 1989, they were not there at the beginning of, nor during, the 20-year period under consideration. There is no evidence that the remaining landowners indicated they did not intend to dedicate higher rights over the Order route for cyclists and horse riders.
2. On balance, I find there is insufficient evidence to rebut the presumption of dedication. Nevertheless, it is argued that the character of the way, crossing a railway line, could not give rise to the existence of higher rights. I consider this next.

*The character of the way*

1. Part of the Order route, at its northern end, crosses a now dismantled railway line, described by Network rail as “mothballed”, but still considered as part of the live rail network. It had been operational in one form or another up to about 1993, just a few years prior to the beginning of the 20-year period. The Council’s view is that use of the Order route by horse riders and cyclists was a criminal offence under section 55 of the British Transport Commission Act 1949 (the 1949 Act). Accordingly, higher rights than those already existing and recorded on foot over the Order route could not have been acquired.
2. Pedestrians were able to cross the former railway line by way of a level crossing which also provided private vehicular access to Birch Farm and was used by those claiming use on horseback and with bicycles. Supporters of the Order argue that by the 20-year period under consideration (1997-2017) the character of the crossing point had changed such that it no longer had the appearance of a railway crossing, and signage had fallen into disrepair. It is suggested that as the railway was no longer operational and since section 55 of the 1949 Act concerned the prevention of danger, in practice no danger existed to users. In addition, there is no evidence that any convictions against users occurred over the entirety of the years of claimed use. Neither were any challenges to users either made or not complied with over those years. Further, the signs present in 1989 (paragraph 14) suggest that Network Rail did not consider relying on criminal trespass offences was sufficient to prevent claims of dedication.
3. Given that the former railway line was not operational and that the signage described did not appear to be in place during the 20-year period under consideration, on balance, I conclude that in this case the Order route is a way the character and use of which can give rise to a presumption of dedication. It follows that the Order should be confirmed.

Other Matters

1. Both objections to the Order raise concerns about health and safety issues where the Order route passes through the yard at Birch House Farm. It is a working farm with frequent activity involving vehicles and machinery and there are concerns that use of the Order route by horses is incompatible with such use. Whilst I understand and sympathise with the points raised, I am unable to take such matters into account under the 1981 Act. I must restrict my findings to whether the tests set out at paragraphs 4 and 5 have been met, such that an existing right of way should be shown in the DMS at a different status and the records amended as necessary.
2. In addition, it is pointed out that a barrier exists at the Manchester United Training Ground where the Order route meets Restricted Byway No.9 Altrincham, meaning that users have nowhere to go other than over land which is cropped or to retrace their steps. The Council confirms that the Order route and Restricted Byway No.9 Altrincham form a cul-de-sac with no connecting public right of way to the north. This has been the case since the DMS was first drawn up, although there is a permissive route which, whilst managed, permits onward travel for pedestrians, cyclists, and horse riders. In the circumstances, I do not regard the lack of an onward public right of way to be an impediment to confirming the Order.

Conclusions

1. Having regard to these and all other matters raised in the written representations I conclude that the Order should be confirmed.

Formal Decision

1. I confirm the Order.

S Doran

**Inspector**

**ORDER MAP - COPY - NOT TO SCALE**

