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| **Interim Order Decision** |
| Inquiry opened on 6 December 2022 |
| **by Claire Tregembo BA(Hons) MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 30 June 2023** |

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| **Order Ref: ROW/3259625** |
| * This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as The Staffordshire County Council (Public Footpath from Gallowstree Lane to Keele Road, Newcastle under Lyme Borough) Modification Order 2019. |
| * The Order is dated 19 November 2019 and proposes to modify the Definitive Map and Statement for the area by adding two public footpaths between Gallowstree Lane and Keele Road as shown in the Order plan and described in the Order Schedule. |
| * There were two objections outstanding at the commencement of the Inquiry. |
| **Summary of Decision: The Order is proposed for confirmation subject to the modifications set out below in the Formal Decision.** |
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Preliminary Matters

1. The Inquiry was scheduled to open in person on 6 December 2022. However, it was not advertised for the full four-week period as required by the Rights of Way (Hearings and Inquiries Procedure) (England) Rules 2007. Staffordshire County Council (the Council) brought this to the attention of The Planning Inspectorate and the Inquiry was opened virtually instead. An adjournment was agreed, and it resumed in person on 10 May 2023.
2. The Council took a neutral stance at the Inquiry and the case for confirmation of the Order was made by the applicants, Thistleberry Residents Association (TRA). Although the TRA supported the Order, they made an objection because they considered the path widths to be incorrect.
3. I carried out an unaccompanied site inspection of the Order routes on 9 May 2023. Following the close of the Inquiry, I carried out another inspection accompanied by representatives of the supporters and objectors.
4. There are two routes within the Order. For ease of reference, I shall refer to the footpath between A and B as Path 1 and the footpath between C and D as Path 2. I have appended a copy of the Order map to the end of my decision.

The Main Issues

1. The Order has been made under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 which requires me to consider if, on the balance of probabilities, the evidence shows that public footpaths subsist along the Order routes. This is a higher standard of proof than the reasonably alleged to subsist test to determine if an Order should be made.
2. The evidence submitted in support of the Order relies on the presumption of dedication arising from tests laid out in Section 31 of the Highways Act 1980 (the 1980 Act). This requires me to consider if the public have used the routes as of right and without interruption, for a period of twenty years immediately prior to their status being brought into question. I must establish the date when the right of the public to use the Order routes was brought into question and determine if use by the public occurred for a twenty year period prior to this that is sufficient to raise a presumption of dedication. If this is the case, I must then consider if there is sufficient evidence that there was no intention on the part of the landowner to dedicate public footpaths during this period.
3. Some documentary evidence has also been submitted in support of the Order. Section 32 of the 1980 Act requires me to take into consideration any map, plan or history of the locality, or other relevant document provided, giving it such weight as is appropriate, before determining whether or not ways have been dedicated as highways.
4. Non-statutory Defra guidance issued in February 2007 and Rights of Way Advice Note No. 16- Widths in Orders advise that widths should be determined according to the evidence available. This can be indicated by historic documents, maps, or plans. Reference may be made to reliable sources of mapping which indicate the width. Occasionally the available evidence may not indicate the width of a route. In these cases, a reasonable width to allow two users to pass comfortably should be determined having regard to all relevant factors such as type of user, location, nature of surface and physical features.

Reasons

***Documentary evidence***

1. Various maps and plans between 1842 and 1982 show the northern half of Path 1 as an enclosed track from Keele Road. The earlier maps show it as running between fields, but from 1940 it is shown between fields and Norton House, now the site of Hampton Court. It is shown as a cul-de-sac and does not connect to Gallowstree Lane. Some Ordnance Survey maps note its area as 0.318 acres.
2. On a 1925 Indenture for the Norton House site and a 1932 Conveyance for land which is now part of Thistleberry Parkway, the northern half of Path 1 is shown as a track and excluded from both parcels. The tenants and purchasers had to erect and maintain fences along the boundary of the track. Various other Conveyances for parcels adjoining the track also contained requirements to fence the boundaries with rights to pass and repass. The rights to pass relates to private rights for those purchasing, selling, or leasing the land.
3. A 1952 Auction Catalogue for the Keele Estate shows the northern half of Path 1 as parcel 567 within plot 26. It is described as a roadway of 0.318 acres. The southern end of Path 1 is also within this plot. Schedule 1 in the Condition of Sale granted full rights and liberty to pass and repass along the roadway known as Thistleberry Avenue (now Gallowstree Lane) to the purchasers and their successors as well as the vendors and all other persons who had a right to use it. The Schedules granted other rights of way and easements which had been enjoyed, and all public rights of way, but the routes of these are not identified in the extracts before me. The cost of repairing, adopting, or making up any unadopted road, track, or footpath abutting the land had to be met by the purchaser, but these routes were also not identified.
4. Path 1 is shown on various development plans for Hampton Court as an enclosed track between hedges. One plan shows the track with a width of 6.49 metres near the northern boundary of 1 Hampton Court. Some plans indicate the hedge and trees along the western side of Path 1 were to be retained but the approved planning permission did not condition this.
5. Several Land Registry Title Plans show Path 1 as an enclosed track to the side of Norton House or the rear of 1, 3 and 5 Hampton Court. However, the plan for 1 and 5 Hampton Court appears to show the rear boundary of 1, 3 and part of 5 slightly further west of the original track boundary. The Title Plan for the whole of the Hampton Court development site shows the red line ownership along the western boundary of the track. The individual properties as sold are edged green and are not part of the title. This plan indicates a narrow strip of land between the rear boundary of 1 and 5 Hampton Court and the western boundary of the track was retained by the developer. Apparently, this land and Hampton Court road were purchased by the residents after the developer went into administration.
6. I consider the maps and plans provide evidence of the physical existence of the northern half of Path 1, but do not indicate public rights or their status. It is consistently shown on the same straight alignment with a slight bend at the very northern end just before joining Keele Road. The width appears to be the same on all maps apart from two of the Land Registry titles. One of the planning documents indicates the width at one point. The documentary evidence does not show the rest of the Order routes.

***User Evidence***

*Bringing into question*

1. To bring into question the right of the public to use the Order, some actions or events must have occurred that brought home to at least some of those using them, that their right to do so was being challenged. These must be sufficiently overt to bring that challenge to the attention of the public using them.
2. The user evidence referred to various challenges by security guards and obstructions including fences, lorries, machinery, vegetation, and soil deposits from the Hampton Court development site in 2007. Several people referred to a vehicle parked or abandoned on the northern end of Path 1. One person believed that it was left there to prevent vehicular access and others stated that it did not prevent access on foot. One person referred to a fence erected in 1995 which was removed six or seven years later. However, twenty other people used the Order route during this period and do not recall a fence. Additionally, there is no documentary evidence indicating a fence in this location and no landowner has claimed to have erected one. On balance, this would suggest their recollection of the fence was a inaccurate.
3. Therefore, I consider the date of challenge to be 2007 with the relevant twenty year period being 1987 to 2007.

*Analysis of use*

1. To satisfy the requirements of section 31, use must be by those who can be regarded as the public. For use to be as of right it must be without force, secrecy, or permission. Use should be without interruption, and to be effective, the interruption must be by the landowner, or someone acting on their behalf. The interruption should be with the intention of preventing use of the way by the public and not for other purposes such as car parking or building works. I must also be satisfied that there was sufficient use by the public to raise a presumption of dedication.
2. User evidence was submitted by forty-one people who used the Order routes between 1952 and 2018. Only fifteen people submitted maps showing the routes that they used. Accordingly, I have reduced the weight I can place on the evidence of those who did not provide maps or otherwise clarify the routes they used. Only four people who completed user evidence forms gave evidence at the Inquiry. The written evidence of the others has not been tested. Therefore, I have also reduced the weight that I can place on their evidence. Some people only used the Order routes after the date of challenge, so I have not considered their evidence.
3. Twenty seven people used the Order routes between 1987 and 2007, fifteen for the full twenty year period. Ten people used it daily, and twelve people at least once a week. Most people used it for dog walking, pleasure, or recreational purposes with some also using it to reach the pub, shops, or other places. Use appears to have been open without secrecy or force.
4. Most of those providing maps indicated use of all the Order routes. One person only used the eastern end of Path 1, two people only used the eastern end of Path 1 and all of Path 2, and one person only used the southern half of Path 1. Two witnesses who gave evidence at the Inquiry had not completed maps but confirmed they used all the Order routes. It was suggested that the public had not used section B to C because there was no pavement along the south side of Keele Road, and it was difficult to cross before the lights were installed in the late 2000s. Those giving evidence at the Inquiry acknowledged that they used this section less frequently because of this but had used it. They also stated there was a small area of pavement or tarmacked area they could stand on while waiting to cross.
5. Nobody was challenged when using the Order routes until 2007 by security guards acting for the developers of Hampton Court. Later challenges by residents of Hampton Court were also referred to.
6. A vehicle was left on the northern end of Path 1 in the late 1990s obstructing part of the width, but path users indicated that it was possible to get around it. Witnesses at the Inquiry stated they sometimes went around fallen branches or overgrown vegetation, but this was still within the width of the track. No other obstructions were referred to until the construction of Hampton Court in 2007. I have dealt with possible fence across the Order route in paragraph 16 above.
7. Two people referred to a footpath sign at the ends of Path 1, with one person indicating that it disappeared in the late 1990s. No other evidence to support these signs is available and I give little weight to this recollection.
8. Questions were raised about the quality of the maps submitted with the user evidence and inconsistencies in them. It was also suggested that other routes shown on the maps reduced the value of the evidence. Witnesses at the Inquiry confirmed they used other paths through Thistleberry Park as part of a circular walk or to vary their route. I do not consider the use of other paths casts doubts on the use of the Order routes. One user explained that his map showed a mound of soil that blocked the footpath he used in 2007 and the alternative route he used to get around it. Other path users clearly indicated the footpaths they had originally used and the alternative routes they used when they were obstructed. In my experience discrepancies do sometimes occur between the routes that people use and what they mark on the map. I do not consider that this reduces the overall value of the user evidence.
9. It has been suggested that Path 1 has been used for hundreds of years as part of a longer route between Silverdale and Clayton. After Gallowstree Lane was tarmacked and widened in the late 1960s it is claimed that the enclosed track was extended to join it with a similar width. No evidence of this has been presented.
10. Overall, I consider there is sufficient evidence of use of the Order routes by the public during the relevant twenty year period to demonstrate a presumption of dedication as public footpaths. Section B to C was less well used but I consider that there is still sufficient use of this section.

*Lack of intention to dedicate*

1. In order to demonstrate a lack of intention to dedicate, a landowner is required to have taken action to make the public aware that they have no intention of dedicating public rights of way. There are various ways of demonstrating this, but the most common ways are erecting notices denying public rights or granting permission, physical obstructions, or verbal challenges.
2. Prior to 2007 the only challenges or obstructions mentioned were a fence for six years from 1995 and a vehicle at the Keele Road end which one person recalled appeared in the late 1990s. Both obstructions were on Path 1 and there do not appear to have been any challenges to use of Path 2.
3. The vehicle does not appear to have completely prevented access as witnesses stated it was possible to get past. It is believed that the vehicle was parked there by the owners of Norton House with one person stating that it was to prevent vehicles driving along the track. The owners of Norton House during the relevant period have not provided evidence of actions taken by them to prevent use of the Order routes. Furthermore, the Land Registry documents and Indenture for Norton House show that the Order routes were not within their ownership.
4. Path 1 was part of lot 32 sold at Auction in 1952 and Path 2 was within the land covered by the 1932 Conveyance. It was accepted that Newcastle-under-Lyme Borough Council (NULBC) own both parcels of land and letters from them stated that they own most of the Order routes except for the very northern end of Path 1 just before it meets Keele Road. There is no evidence before me to indicate that NULBC has taken any action during the relevant twenty year period to prevent access. There is evidence that they have cleared vegetation along Path 1 and permitted volunteers to undertake works along it until 2018 when permission was withdrawn.
5. I conclude there is insufficient evidence to demonstrate a lack of intention to dedicate public rights by any landowner during the relevant twenty year period.

*Conclusions on Section 31*

1. I consider there is sufficient evidence of use of the Order routes on foot as of right and without interruption or challenge between 1987 and 2007. I do not consider there is sufficient evidence of challenge, permission, or other actions by any landowners to demonstrate they had no intention of dedicating public rights during the relevant period.
2. I am satisfied the evidence before me is sufficient to show, on the balance of probabilities, that public footpaths subsist over the Order routes.

***The width of the Order routes***

1. An objection was made to the width of Path 1 on the grounds that it is wider than the 1.8 metres specified in Part II of the Order.
2. The parties were invited to comment on the width of the Order routes. The Council advised that the consultant who assessed the evidence had not indicated the width of the footpaths, so they applied a standard width of 1.8 metres. Supporters of the Order made detailed comments on the width of Path 1 based on historic maps and plans, overlays of historic and modern maps, site photographs, and measurements. Other parties considered the widths measured by the supporters to be greater than those used and shown on maps and plans.
3. The southern half of Path 1 is not shown on the maps before me. A field boundary is shown along its western edge. Currently, there is a paladin fence along this boundary with tree stumps, trees, and hedging alongside which appear to be the remains of an earlier hedge. Along the eastern boundary, there is a straight tree line with a shallow ditch and low earth bank in places. Some parties considered the western boundary shown on the historic maps to be the current fence line, others considered it to be the remains of the hedge. Based on the mapping evidence and site visit, I consider the remains of the hedge to be the original historic boundary and the fence had been set back further from the Order route.
4. Furthermore, this section of Path 1 has not been obstructed and continues to be used. It is clear from the worn line, that people have walked between the hedge remains and the tree line. They do not appear to have walked between the fence and the old hedge. Therefore, I consider the southern half of Path 1 to be between the tree line and the remains of the hedge. The walked width here is 3 metres.
5. The northern half of Path 1 is consistently shown between boundaries on historic maps and most Land Registry plans. One of the development plans indicates the width alongside 1 Hampton Court to be 6.49 metres. Where scale maps are available, I have measured the width to be between 5 and 6.5 metres for most of its length with a width of up to 8 metres just before Keele Road. I note that the consultant’s report recommends this section should be defined as running over the full width of the historic lane. I consider this to be a sensible approach to determine the width of this section.
6. None of the parties commented on the width of Path 2. It runs across grass or through woodland and is not shown on any of the maps before me. The woodland section is overgrown in places, but some sections are available and there are other paths through the woodland. These vary in width between 1 and 4 metres. Therefore, I consider a width of 1.8 metres, as specified in the Order, to be appropriate for two people to pass each other having regard to my observations and the features on site.

**Other Matters**

1. Issues relating to the availability of alternative routes, road safety, the removal of hedges, and anti-social behaviour were also raised. These issues concern matters of suitability or desirability which I cannot legally take into consideration.
2. Questions were raised over the current ownership of the land and how it was acquired. This is not a matter for me to determine. I only need to establish the ownership of the land during the relevant twenty year period when considering the lack of intention to dedicate.
3. It has been asserted that the Hampton Court properties have encroached onto Path 1. I note from my site visits that Path 1 narrows towards its northern end and appears narrower than the track shown on maps. However, I have not undertaken a detailed survey and it is not for me to determine if property boundaries have been erected in the correct position. If the Order is confirmed, the Council would need to ensure the full width of the footpaths are available, taking any surveys or enforcement action they consider necessary to achieve this.
4. In the Order title the S from Gallowstree is omitted. This does not affect the validity of the Order. However, as I consider the width of Path 1 needs modifying, I will also propose to correct this spelling error.

Conclusions

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

Formal Decision

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

In the Order Title

* Replace ‘Gallowtree’ with ‘Gallowstree’

In Part II of the Schedule to the Order

* Under Path 1 delete ‘1.8 metres’ and add ‘3 metres between SJ 383437 345221 and SJ 383465 345413 and the full width of the track as shown on historic Ordnance Survey maps between SJ 383465 345413 and SJ 383482 345613.’

1. Since the confirmed Order would affect land not affected by the Order as submitted, Paragraph 8 (2) of Schedule 15 to the Wildlife and Countryside Act 1981 requires that notice shall be given of the proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modifications. A letter will be sent to interested persons about the advertisement procedure.

Claire Tregembo

INSPECTOR

**APPEARANCES**

**For the Council (Neutral)**

Clare Gledhill Legal Rights of Way Officer

**In Support of the Order:**

Angela Drakakis-Smith Chair Thistleberry Residents Association

Who called

Christopher Larkin Thistleberry Residents Association

Susan Hollingworth

John Hollingworth

**In Objection to the Order:**

Nathan Cook

**DOCUMENTS PRODUCED AT THE INQUIRY**

Thistleberry Residents Association Final Statement of Case

Retrospective Planning Application for Change of Use

Original Planning Application for Norton House Development

Thistleberry Residents Association Meeting Minutes

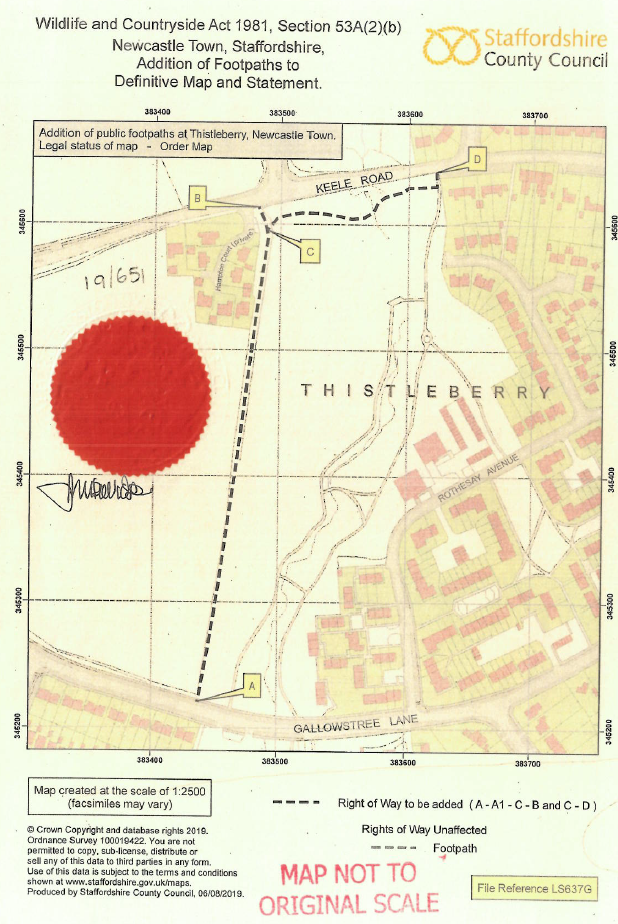
Thistleberry Residents Association Analysis of Measurements

Thistleberry Residents Association Minutes re Petition

Statements of Use of Trackway from E Pattison, Eileen Hampson, Mr and Mrs Fullwood, and P and B Rutter

Apologies Received from Thistleberry Residents Association

**Order Plan**

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