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| **Order Decision** |
| On papers on file |
| **by A Behn Dip MS MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 3 August 2023** |

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| **Order Ref: ROW/3303342** |
| * This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Staffordshire County Council (Public Footpath from Tower Road in Winshill Parish to Darley Close in Brizlincote Parish) Modification Order 2019.
* The Order was made by Staffordshire County Council (the Council) on 21 November 2019 and proposes to add a footpath to the Definitive Map and Statement (DMS), as shown on the Order Map and described in the Order Schedule.
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| * There were no objections outstanding when the Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs, however the Council requested that the Order be amended to correct an error in the recording of the width.
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| **Summary of Decision: The Order is confirmed subject to the modification set out in the Formal Decision.** |
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Procedural Matters

1. I have been appointed by the Secretary of State for Environment, Food and Rural Affairs to determine whether this Order should be confirmed on the basis of the papers submitted. I have not visited site but I am satisfied that I can make my decision without the need to do so.
2. The Order was made further to an application by Mr Payne, in September 1994, to add a public footpath to the DMS for the area, running south of the Water Tower on Tower Road to the County Boundary. No objections were received but the Order as drafted contained an error whereby the width of the path was stated to be 1.8 metres, as opposed to the 1.5 metre width which was considered and approved by the Council’s Legal Services Team on 18 July 2018.
3. Having made the Order the Council has no power to modify it before confirmation. Accordingly the Order has been submitted to the Secretary of State with a request that it be confirmed subject to the modification described above.

Legal Framework

1. The Council made the Definitive Map Modification Order (DMMO) under Section 53(2)(b) of the 1981 Act on the occurrence of an event specified in sub-section 53(3)(c)(i). Accordingly, it needs to be determined whether, on the balance of probabilities, the evidence discovered (when considered with all other evidence available) is sufficient to show that a public right of way which is not shown on the DMS, subsists over land to which the map relates.
2. The dedication of a public right of way may occur under Section 31 of the Highways Act 1980 (the 1980 Act), or at common law.

**Main issues**

1. There being no objections to the confirmation of the order, the issue before me is whether the modification requested by the Council should be made and whether it is appropriate for the order to be confirmed.

**Reasoning**

1. The application made by Mr Payne was accompanied by 13 user evidence forms, with 4 of the users exceeding the required 20 years usage, in accordance with Section 31 of the 1980 Act. The earliest use dates back to the 1930’s and 1940’s. All 13 users confirmed that use of the claimed route was without force, secrecy, permission, or interruption. Use was on foot, occasional in frequency, and recreational by nature, with several users mentioning the historic presence of stiles, as well as footpath signs near Point A on the Order map.
2. An Ordnance Survey map from the 1920’s submitted in evidence, clearly shows a route on the claimed line, labelled ‘FP’, and illustrated by double pecked lines. Albeit this is not proof of the existence of public rights, it does serve to confirm the physical presence of the claimed route over a long period of time, as suggested by the earliest users of the route.
3. It is clear that use of the route, albeit over an extensive period, was infrequent. Correspondingly there is a question as to its sufficiency to bring use of the route by the public to the attention of the landowners. Nevertheless, Mr Lomas, whose land was crossed by the majority of the claimed route was aware of use by the public and considered the route to be a public footpath, as did East Staffordshire Borough Council who also owned some of the land across which the route ran. The third landowner did not respond when consulted.
4. It is of note that a Diversion Order was made in 1970 by the Borough Council of Burton Upon Trent, amending the line of a footpath onto the section of the claimed route, from point A to midway between points B-C. Also noteworthy is that when building on land over which part of the claimed route crosses, the developers retained a strip of land which corresponds to the relevant part of the line of the claimed path. These events both infer a presumption of dedication.
5. No evidence or testimony, formal or otherwise appears to have been received, that questions, or refutes the evidence provided by the applicant. Indeed, Brizlincote Parish Council minutes of a meeting in December 2015 mention the claimed route, discussing resolution of the issue and appearing to indicate their support. Albeit not evidence in support of the claim, which was submitted many years earlier, it does serve to show a public interest in the recognition of the route as a public right of way.
6. When considering the satisfying of the legal tests, overall, on the balance of probabilities, the information provided is supportive of the dedication of a public footpath in accordance with Section 31 of the 1980 Act. Additionally there is no conflicting evidence rebutting the claim. I therefore consider the tests are met.
7. Regarding the width for the claimed route, users quoted varying widths of the route, ranging from 3 feet to 18 feet, with some users stating they were unsure of the width. The Council consider that a width of 1.5 metres would be appropriate and this was what was recommended following investigation of the claimed path.
8. Considering the evidence before me, together with the urban location of the route and the type and number of users, I am satisfied that the width of 1.5 metres suggested by the Council is both appropriate and reasonable.

**Conclusion**

1. Having regard to all matters raised in the papers on file, I conclude that the Order should be confirmed subject to the modification detailed in the formal decision below.

**Formal Decision**

1. I confirm the Order subject to the following modification:
* In Part II of the Order Schedule, Modification of the Definitive Statement, Variation of particulars of path or way, **delete** ‘*The width of the public footpath will be 1.8 metres.’* and **insert** ‘The width of the public footpath will be 1.5 metres.’

A Behn

**Inspector**

