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| **Order Decision** |
| Site visit undertaken on 1 August 2023 |
| **by A Behn Dip MS MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 30 August 2023** |

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| **Order Ref: ROW/3291861** |
| * This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as The West Sussex County Council (Chanctonbury No.1 (Steyning) (Addition of a footpath)) Definitive Map Modification Order 2020. |
| * The Order is dated 29 December 2020 and proposes to modify the Definitive Map and Statement (DMS) for the area by adding a public footpath as shown on the Order plan and described in the Order Schedule. |
| * There was one objection outstanding when West Sussex County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation, with 2 representations of support being received subsequent to the submission. |
| **Summary of Decision: The Order is confirmed subject to the modification set out in the Formal Decision.** |
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Preliminary Matters

1. In February 2019, an application to add a footpath in the parish of Steyning to the Definitive Map and Statement for West Sussex was made by Steyning Parish Council (SPC). In November 2020 after due investigation, West Sussex County Council (WSCC) consented to make an Order which, following advertisement, received one objection.
2. I made an unaccompanied site visit on 1 August 2023 when I was able to walk the entirety of the Order route.
3. In writing this decision I have found it convenient to refer to points marked on the Order Plan, and I therefore attach a copy of this plan.

The Main Issues

1. The Order has been made under section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) on the occurrence of an event specified in sub-section 53(3)(c)(i) of that Act. Accordingly, the main issue is whether the evidence discovered, when considered with all other evidence available, is sufficient to show that a public right of way not shown on the definitive map and statement, subsists over land to which the map relates.
2. Whilst it suffices under section 53(3)(c)(i) for a public right of way to be reasonably alleged to subsist to make a Modification Order, the standard of proof is higher for it to be confirmed. At this stage, the evidence is required to show, on the balance of probabilities that a right of way subsists.
3. The evidence in support of this case comprises of User Evidence Forms (UEFs). As a result, the statutory requirements of Section 31 of the Highways Act 1980 (the 1980 Act) are relevant. This sets out that where a way has been enjoyed by the public as of right and without interruption for a full period of twenty years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The period of twenty years referred to, is to be calculated retrospectively from the date when the right of the public to use the way was brought into question.
4. If statutory dedication is not applicable, I shall consider whether an implication of dedication has been shown at common law. Common law requires me to consider whether the use of the path and the actions of the landowner have been of such a nature that the dedication of the path by the landowner can be inferred.
5. WSCC undertook some documentary research whilst investigating this case. As regards the documentary evidence adduced, Section 32 of the 1980 Act requires a court or tribunal to take into consideration any map, plan or history of the locality, or other relevant document provided as evidence, giving it such weight as is appropriate, before determining whether a way has been dedicated as a highway.

**Reasoning**

***Documentary Evidence***

1. WSCC researched a number of sources of historic mapping, which did not reveal any supporting evidence for a public right of way of any antiquity. The County Council archive records and the Parish records were also consulted.
2. Correspondence was found from 1974 between Mrs How who was a previous tenant of the land, a local resident and WSCC concerning the matter of trespassing and the ploughing up of the rights of way in the area of Mouse Lane. The resident requested advice from the Council regarding what could be done about the conditions of the footpaths along Mouse Lane and Charlton Cottages, which is close to Point A on the claimed route.
3. In a letter from SPC from May 1990, the claimed route was suggested as one of a number of new right of ways that could be added to the DMS. The letter did not detail if the claimed route was used by the public at that time.
4. In 1991 a letter on behalf of the current landowner was sent to WSCC as a result of a complaint concerning the nearby Public Footpath 2713. The correspondence mentioned the claimed route saying, ‘Up to now I understand the farmer has allowed local people to walk through the farmyard itself.’ The letter went on to say that it was likely this privilege would be withdrawn. This letter suggests that the public used the route at this time and that maybe use was ‘permissive,’ although it was unclear whether it was acquiescence on the part of the landowner rather than express permission being granted.
5. A further letter was found from 1994, wherein the correspondent was complaining to WSCC about the condition of Bridleway 2714. The correspondent asked if it were possible to upgrade the footpath that ran from the Steyning Comprehensive School in Steyning to Mouse Lane via Charlton Court, to a bridleway as it would allow safe passage for equestrians. It appears from this letter that the correspondent thought the claimed route was a public footpath.
6. The letters from the archive suggest that the claimed route was being used by the public from as early as 1974, albeit it is unclear as to the frequency of use and whether it was as of right. Correspondingly although the letters offer some reputation of the claimed route being used by the public, they hold little weight, and the claim relies principally on whether statutory dedication has occurred under Section 31 of the 1980 Act.

***Statutory dedication***

*When the status of the claimed route was brought into question.*

1. The claimed route was used by permission from 2009, as part of a Higher-Level Stewardship Scheme (HLSS), which expired in May 2019. It was following this expiration that the application was made by SPC to add the claimed route to the DMS for the area.
2. Albeit the claim was made in 2019, use was permissive for the previous 10 years. Accordingly the earliest date of bringing into question the public’s right to use the claimed route, would be from the establishment of the permissive path in 2009. Therefore, the twenty-year period to be considered for the purpose of statutory dedication is 1989-2009 (the relevant period).

*Evidence of use by the public.*

1. Thirteen UEF’s were initially provided in support of use of the claimed route, all stating use in excess of twenty years. Nine of the users encompassed the entire relevant period, with the rest evidencing use for the majority of the relevant period. However two users sought the permission of the occupier of Charlton Court, whom they were visiting and one was a tenant of one of the properties on the claimed route.
2. Nine further UEF’s were submitted by SPC following submission of the Order to the Secretary of State. Of these, one user had sought permission from a Mrs Bines with the remaining eight having not sought or been given permission. Five users had walked the Order route for the entire relevant period and three for the latter part of the relevant period.
3. Earliest use of the claimed route appears to be from 1954, with travel being mostly on foot. Frequency of use ranged from daily to 3 times per annum and none of the users were told the route was not public, were turned back or were challenged. Other people were often seen when using the route, mostly walkers, but some cycle and equestrian use was also observed.
4. Evidence submitted shows that usage was predominantly recreational with many users incorporating the claimed route as part of longer circular walks, due to the application route linking up at both termini with public rights of way. Journeys were made for exercise, for walking dogs or as part of an onward journey to other destinations.
5. Many users recall seeing gates on the Order route, some stating that they were closed but not locked, another saying they were locked at times. However use of the claimed route did not appear to be by force as most stated there was a well-trodden path to the side of the gates, which was evident on the photographs submitted as well as on my site visit.
6. Two users noted a sign on one of the gates which stated: ‘No bikes, or horses, dogs must be kept on a lead.’ The same users also provided images of the permissive footpath signs provided under the HLSS with Natural England. No users reported seeing any signs that the route could not be used on foot.
7. Two statements of support were received following the submission of the Order to the Secretary of State. These representations were made by serving members of SPC but were written in a personal capacity. Mr Goldsmith stated he had used the claimed route from 1963 until 2007 for dog walking. He recalled that there were no signs to indicate that access was forbidden and as he saw other walkers, many of whom were local residents, he assumed that the route was a public right of way.
8. Mr Campbell began walking the path with his wife in 1987 and used the route as a circular walk or to buy eggs from the occupier of a premises near Point A of the claimed route. They used the track about 6 times per annum and saw other people using the route, so assumed it was a public right of way and that their use was as of right. Their use decreased from 1997 but they stated they still use the track to this current day. Mr Campbell recalled that a locked gate was in situ for as long as he could remember, but that there had always been a well-worn track to the side of it. He also recalled a sign that advised that dogs should be kept on a lead and that horses and vehicles were not permitted.
9. Mr Barling, former chairman of SPC and County Councillor also supported the Order, advising that he had also used the claimed route in a personal capacity.

*Conclusions on evidence of use by the public*

1. Discounting the permissive use there is substantial evidence from 18 users claiming use of the Order route, as of right, both during the relevant period and in the case of several users, before that time period also. Their use appears to be open, without secrecy and without use of force.
2. Having regard to the above, I find that there is sufficient user evidence to raise a presumption of the dedication of a public footpath. Therefore, the first part of the statutory test is satisfied.

*Evidence of the landowner*

1. The landowner had grown up on the estate and considered the footpath permissive since 2009. He recalled a gate which he stated was locked for as long as he could remember and that permission to use the route had only been granted for tenants and the owners of Charlton Court. The user evidence forms correlate with the recollection of the landowner regarding the existence of the gate, although as was quite evident from the photographs submitted, there was a clear trodden path to the sides of both gates located on the Order route, and this was stated to be the path always travelled by the users.
2. A letter was written to the landowner’s father in 1999 asking whether a permissive bridleway could be permitted on the claimed route. The content concerned horses from a local livery stable and the danger that egress onto local roads posed to them. The letter acknowledged that access to the route had been withdrawn due to abuse of use of the route by a local resident, however it is unclear from the letter whether the access that was withdrawn, was for people on horseback, or for all users. The user evidence indicates that access had never obstructed, and so I am inclined to believe that this particular letter may have been referring to equestrian use of the claimed route.
3. The landowner also stated that the previous tenant Mrs How had been ardent in her efforts to stop the public trespassing on the land. This correlates with the letters found in the Council archives, however these efforts appear to be general in relation to the land, rather than being specific to the claimed route and were outside of the relevant period.
4. The landowner advised that a Section 31(6) Deposit and Statement had been made in 2013 in which the claimed route was not acknowledged as a right of way. Documents are before me that confirm that this deposit and declaration were made, however 2013 falls outside of the relevant period of 1989-2009.

*Other evidence*

1. The current tenant farmer advised that he had rented the land over which the claimed route runs for 36 years and that prior to this he had been the Farm Manager. He acknowledged the permissive use but did not consider that the path was a public right of way and had been advised by the property owner that this was the case. The tenant farmer advised that he had never given anyone permission to use the route and had turned back users many times prior to 2009, albeit he also said it was not used regularly prior to 2009.
2. An adjoining landowner James Fottit also submitted that the claimed route was not a public right of way but was permissive only, stating he was advised as such by his solicitor when purchasing the property. However he was not a landowner during the relevant period and consequently his evidence falls outside of the relevant period.
3. Mrs Cooper was a tenant of land adjoining the claimed route for 22 years and thought that the path had always been permissive. She frequently saw people using the route on foot, often with dogs and stated there was a padlocked gate with a gap by the side. She had turned back cyclists on occasion although dates were not given, and she recalls a notice that stated ‘No vehicles, cyclists, or horse riders. Dogs to be kept on lead.’

*Conclusions on landowner and other evidence*

1. It is apparent from the written testimony of the landowner, that he did not intend to dedicate the claimed route as a public footpath, and in later years following the relevant period, coherent actions were taken, such as permissive signs being erected and a Section 31(6) Deposit and Statement being made.
2. However during the relevant period of 1989-2009, there is little contemporaneous evidence that this lack of intention to dedicate was made clear to users of the path. There is no evidence of signs being erected and although two locked gates were in situ, the gaps to the side were evidently used. The fact that during the period the path was permissive, the gates remained locked with users walking to the side indicates that the gates were never considered an obstruction to walkers, by any of the parties.
3. Although the tenant farmer stated that he turned people away during the relevant period, this conflicts with all of the users, who state they were never challenged.
4. There is suggestion from a letter in 1991 that use of the route was possibly going to be revoked in 1991, however the letter indicated a possible intention and there is no evidence that this then actually occurred. There is also suggestion that use may have been interrupted in 1999, but the letter in question is not clear on what type of use had been withdrawn and it may have been relating to equestrian use, as this was the subject of the letter.
5. On balance, I find there is insufficient evidence of positive action taken by the landowner during the relevant period to demonstrate to the public at large that there was a lack of intention to dedicate a footpath.

*Conclusions on statutory dedication.*

1. The Council when resolving to make the Order, although understanding the objections to the making of the Order from the landowners to the claimed route, felt that it was impossible not to find that public use ‘as of right’ had been demonstrated. However they were unsure whether the conflicting evidence of the landowner and occupiers would enable the Order to pass the ‘balance of probabilities test.’ I equally find the user evidence both consistent in content and sufficient in quantity, to raise a presumption of dedication.
2. Turning to the landowner evidence, whilst there appears to be a lack of intention of the landowner to dedicate, it was not overtly communicated to the public during the relevant period. Although there are letters that suggested use was possibly going to be revoked in 1991 there is no evidence this actually happened and the letter mentioning a revocation of use in 1999 is notable, but the type of use actually revoked was unclear. It is evident that a considerable number of users stated they walked the Order route unimpeded and unchallenged during 1999, which suggests that any revocation was likely to have been for equestrian users as this was the subject that the 1999 letter was pertaining to.
3. I have concluded that the user evidence is sufficient to raise a presumption that the claimed route has been dedicated as a public footpath. In addition, there is insufficient evidence that the landowner demonstrated to the public, a lack of intention to dedicate a footpath during the relevant period. Therefore, I conclude on the balance of probabilities that a public footpath subsists. In light of this conclusion, there is no need for me to address the evidence in the context of common law dedication.
4. There are two locked gates on the Order route, whereby access runs via a gap to the side. I regard these as limitations and accordingly will modify the Order to record them as such.

**Other matters**

1. Following the making of the Order, an objection was received from James and Emma Arnold, who are owners of a property adjacent to the claimed route. They made various representations to the Order.
2. They submitted that as there was already a nearby public footpath giving access to the Downs, there was no need to create another one. They also felt that as there was already permissive access along the claimed route, there was no reason to ‘upgrade’ it as they were not aware that the landowner had ever closed the path historically or was likely to do so in the future.
3. The objectors were understandably troubled that their property had suffered damage and vandalism and they felt that if the Order route remained a permissive path, they would be able to ask the landowner to ban the perpetrators from using the route. The objectors were concerned that this would not be possible should the claimed route become a public right of way.
4. They also felt that the permissive path status allowed flexibility for all parties with regard to any future necessity to temporarily close the path whilst works were undertaken on buildings adjacent to the claimed route. To apply for temporary closure would they felt, cause a financial burden for them and an administrative burden for the Council.
5. On a more general note the objectors were concerned that up-grading permissive paths against the will of the landowner would discourage landowners from granting permissive paths in the future, thereby reducing access to the countryside.
6. I recognise all of the above as very real and genuine concerns, however, the legal tests on which this case must be determined do not allow for consideration of such matters as necessity, desirability, security, safety and financial or administrative burden.

Conclusion

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

**Formal Decision**

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

* On the Schedule, add:

PART III

Limitations

There are two gates located on the public footpath with the route running by way of a gap to the side of the gates.

A Behn

INSPECTOR

