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| **Interim Order Decision** |
| Papers on file |
| **by Claire Tregembo BA(Hons) MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 13 July 2023** |

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| **Order Ref: ROW/3302254** |
| * This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as the Definitive Map of Public Rights of Way for Gloucestershire (Additional Lengths of Public Footpath at Box Woods) (Parish of Minchinhampton) Modification Order 2014.
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| * The Order is dated 12 December 2014 and proposes to modify the Definitive Map and Statement for the area by adding two public footpaths as shown in the Order plan and described in the Order Schedule.
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| * There were no objections outstanding when Gloucestershire County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.
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| **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. Following the making of the Order, an objection was received on the grounds that the 1 metre wide sections of the proposed footpath are too narrow. In 2017 the land was sold to Box Community Wood, a newly formed charity which supports public access to the woodland. They were asked if they would support a width of 2 metres for the whole of the Order routes and the Trustees unanimously agreed in 2017 and again in 2022. The objector agreed to withdraw his objection if Gloucestershire County Council (the Council) submitted the Order to the Secretary of State with a request to modify the 1 metre wide sections to 2 metres.
2. As there are no outstanding objections, the Order is being determined based on the papers on file and I have not undertaken a site visit. I am satisfied I can make my decision without undertaking one. I still need to consider the merits of the Order and make a decision based on the papers before me.
3. I will refer to path numbers and various points shown on the Order plan. I have appended a copy to the end of my decision for ease of reference.

The Main Issues

1. The Order has been made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) in consequence of the occurrence of an event specified in Section 53(3)(c)(i). This requires me to consider if, on the balance of probabilities, the evidence shows 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. 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 public’s right 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. Public highways normally run between other public highways. One of the Order routes ends at Iron Mills Common rather than on a public highway. There is nothing in law to prevent the establishment of a cul-de-sac highway. If there is an attraction or place of public resort at the end which might cause the public to use a route this could be sufficient to justify the conclusion that a highway has been created.
4. Under Section 2 of the Countryside and Rights of Way Act 2000, the public has a right of access over registered common for the purposes of open-air recreation.

Reasons

*Documentary evidence*

1. The southern half of FP MMH 182 between MMH 97 and point B is shown on various Ordnance Survey maps between 1885 and 1980. Other sections of the Order routes are not shown. They show that one section of the footpaths physically existed but do not provide evidence of public rights or status.
2. The Registered Commons map extract shows FP MMH 182 ends at Iron Mills Common. As this is a registered common, the public would have a right to continue over it for open-air recreation.

*Bringing into question*

1. For the public’s right to use the Order routes to have been brought into question 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 have been sufficiently overt to bring the challenge to the attention of the public using the routes.
2. Following the sale of Box Woods in 2010, the new owner erected signs at the entrances telling people to access the woods from the signposted public footpaths. Access to the woods at the southern end of both Order routes was blocked by the rebuilding of walls and barbed wire. Notices were erected stating the Order routes were not public rights of way. Brushwood was also placed at various points along FP MMH 182. No earlier notices, challenges or obstructions were seen by any of the path users.
3. The landowner stated they had rebuilt existing walls 2 feet higher and claimed these had always meant it was not possible to enter the woods here. However, it is clear from the user evidence and photographs the walls had been derelict for many years and had not prevented access. The Council undertook site visits in early April 2010 and found MMH 181 was unobstructed at the southern end, although there was stone piled up suggesting a wall was to be erected. On MMH 182 the boundary wall at point F appeared to have been recently rebuilt, but it was still possible to walk onto the common through the dilapidated wall on either side. The landowner also referred to a locked gate, but this is not on the line of the Order routes.
4. I consider the date of challenge to be 2010 with the relevant twenty-year period being 1990 to 2010.

*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, any 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 there was sufficient use by the public to raise a presumption of dedication.
2. Over seventy people used the Order routes with use dating back to 1954. Twenty-three people used the Order routes for the whole of the relevant twenty-year period with forty-nine other people using them for shorter periods between 1990 and 2010. Use appears to have been by the public for recreation, leisure, and dog walking. None of the path users recalled any obstructions or challenges before 2010 and there is nothing to indicate use was with permission.
3. The 2010 landowner stated there was little evidence of use of the Order routes by the public during the statutory period and the evidence was contradictory and inadequate. Over seventy people used the Order routes during the relevant period which I consider to be substantial. The paths described on the user evidence forms are clear and consistent. The routes shown on the maps are consistent, although there are some variations in the lines marked. In my experience variations do occur, particularly when the routes used are not shown on the base map or run through woodland. Photographs taken in 1986 and 2010 show clear worn lines and the Council used GPS to accurately record the walked paths on the Order map.
4. I consider there is sufficient use of the Order routes by the public during the relevant twenty-year period to demonstrate a presumption of dedication of public footpaths. Although one of the Order routes is a cul-de-sac route, it ends at Iron Mills Common over which the public has a right of access and I consider this to be a place of public resort.

*Lack of intention to dedicate*

1. To demonstrate a lack of intention to dedicate, a landowner must take action to make the public aware 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 2010 there is no evidence of challenges, interruptions, obstructions, or permission. No landowners have provided evidence of any actions taken to prevent use of the Order route during the relevant period. Therefore, 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 1990 and 2010. I have not seen any evidence of challenges, permission, or other actions by any landowner to demonstrate they had no intention of dedicating public rights on foot during the relevant period. Therefore, 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. Sections C-D and E-F of MMH 182 are included in the Order with a width of 1 metre. The other sections have a width of 2 metres. Following the making of the Order, an objection was made on the grounds that 1 metre is not wide enough for walkers to be able to pass each other easily, is unlikely to be the width dedicated and is contrary to the Planning Inspectorate’s Advice Note 16.
2. Rights of Way Advice Note No. 16- Widths in Orders advises widths should be determined according to the evidence available. This can be indicated by historic documents, maps, or user evidence. 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.
3. Path users considered the footpath to vary in width. Many gave approximate widths between 50 cm and 3 metres with the majority indicating a width of 1 metre. The Council also found the worn width to be 1 metre over these sections of the Order route.
4. Worn lines on the ground are caused by walkers trampling vegetation and compacting the soil. They tend to be more visible at their centre where the surface becomes more compacted preventing vegetation from growing. At the edges, vegetation is still able to grow but often at a lower level than the surrounding area. The worn width will vary according to levels of use, ground conditions and vegetation type. A person walking will also be wider at their shoulders than their feet.
5. A width of 2 metres is sufficient for two walkers to comfortably pass each other. Some sections of the Order routes were measured 2 metres wide by the Council and recorded as such in the Order. I consider it unlikely the public walking a continuous path through woodland would use a narrower width along some sections when there is nothing to constrain them. The worn lines in the photographs vary in appearance depending on ground conditions and vegetation type. They are more pronounced in the centre than at the edges. Where the photographs show a narrower route, there still appears to be shorter vegetation to the sides of the earth sections, although it is difficult to judge the actual width from them. I consider the Order should be modified to record a width of 2 metres along sections C-D and E-F.

Conclusions

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

Formal Decision

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

In Part 1, paragraph 2 which describes the second footpath

* Delete ‘and having a width of 1 metre’ in line 6 and ‘and having a width of 2 metres’ in line 8.
* Replace ‘1 metre’ in line 11 with ‘2 metres throughout’.

In Part III for FP MMH 182

* After ‘Width:’ delete ‘Points C-D: 1 metre; points D-E:’ and ‘; point E-F: 1 metre’.
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

**Order Map**

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