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| **Order Decision** |
| On papers on file |
| **by Nigel Farthing LLB** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 24 July 2023** |

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| **Order Ref: ROW/3304118** |
| * This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Derbyshire County Council (Footpath from Church Street to Public Footpath No. 1 – Parish of Horsley) Modification Order 2022. |
| * The Order is dated 23 March 2022 and proposes to modify the Definitive Map and Statement for the area by adding a public Footpath from the currently recorded eastern terminus of Footpath No. 1 Horsley to Church Street, as shown on the Order Map and described in the Order Schedule. |
| * There were 2 objections outstanding when Derbyshire County Council (DCC) submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation. |
| **Summary of Decision: The Order is confirmed subject to the modifications set out in the Formal Decision.** |
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Procedural Matters

1. The objections to confirmation of the Order relate to the proposed width and not to the existence of a public footpath along the Order route. In response to the objections DCC has considered the further evidence provided and concluded that the width should be reduced to that proposed by the Objectors. On this basis the Objectors have indicated that they do not wish to pursue an objection to confirmation of the Order; consequently, I have not visited the site. I am satisfied that I can make an assessment of the issues and reach satisfactory conclusions on the basis of the evidence supplied without the need to undertake a site visit.
2. Having made the Order DCC 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 in relation to the width of the route.
3. In writing this decision I have found it convenient to refer to points marked on the Order Map. I therefore attach a copy of this map.

The Main Issues

1. The Order is made in consequence of the occurrence of an event specified in Section 53(3)(c)(i) and (ii) of the Wildlife and Countryside Act 1981 (the 1981 Act) which requires the discovery of evidence by the surveying authority which, when considered with all other relevant evidence available, shows that a right of way that is not shown on the definitive map and statement subsists, or is reasonably alleged to subsist. At this confirmation stage the evidence must demonstrate, on a balance of probabilities, that the right of way subsists; a reasonable allegation is not sufficient.
2. It is not disputed that the evidence demonstrates that the Order route is a public footpath, and the single issue is whether the Order should be modified in relation to the width of the route to be recorded in the Definitive Statement and depicted on the Map.

Reasons

*Documentary evidence*

1. The historical documentary evidence adduced by the Applicants and DCC demonstrates that the Order route has historical status as a public footpath and I accept that this is sufficient to satisfy the requirement of section 53(3)(c)i of the 1981 Act for the discovery of evidence.
2. In the 1951 survey of public rights of way Horsley Parish Council considered the Order route to be part of Footpath No. 1. The survey described the route in terms that are consistent with its current physical characteristics.
3. The Definitive Statement for the Parish of Horsley describes a route consistent with the Order route, but it is not shown on the Definitive Map.
4. As currently recorded Footpath No. 1 is a cul-de-sac route terminating at point B on the Order plan. If confirmed the Order will provide a link from point B to the public highway at point A.

*Physical Evidence*

1. The order route lies within a rectangular parcel of land known locally as ‘the Strip’. There are locked gates at each end of the Strip but there is a squeezer stile alongside the gate at point B and the remnants of a stile alongside the gate at point A. The Order route runs between the two stiles. It has a tarmacadam surface and a width of approximately 0.6m.

*Objections*

1. The two objectors provided evidence confirming that the Order route has, throughout their period of memory, been a narrow, surfaced path and that the land on either side of the surfaced path has been uneven and supported undergrowth such that it is unsuitable for walking and has not been used by the public.
2. There is no dispute that public footpath rights exist over the Order route, and I accept that the documentary evidence supports this.
3. The only issue to be determined is the width of the public right of way. The Order was made on the basis that the public’s right of way extended over the full width of the Strip. The evidence provided by the Objectors, and accepted by DCC, is sufficient to satisfy me that the public right of way is confined to the narrow, surfaced path with a width of about 2 feet (0.6 metres).

**Conclusions**

1. Having regard to the above,, I am satisfied that the Order should be confirmed subject to the modification to amend the width of the Order route.

Formal Decision

1. I confirm the Order the Order subject to the following modifications;-

* In Schedule Part I delete the words ‘varying between 5.4 metres and 7.7 metres as shown shaded grey on the plan attached to this order’ and insert ‘of 0.6 metres’.
* In Schedule Part II under the column ‘width’ delete ‘Varying between 5.4 and 7.7 metres between GR SK 3759 4449 and GR SK 3752 4452. 2 metres after GR SK 3752 4452’ and insert ‘0.6 metres‘.
* On the Order plan delete the grey shading and the figures ‘5.4m, 5.8m, 6.9m, 6.1m 5.7m, 7.7m and 6.7m’

Nigel Farthing

Inspector

ORDER MAP - NOT TO SCALE

