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| **Order Decision** |
| Inquiry held on 24 and 25 October 2023 |
| **by Gareth W Thomas BSc(Hons) MSc(Dist) DMS MRTPI** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 08 November 2023** |

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| **Order Ref: ROW/3302174** |
| * This Order dated 25 March 2021 is made under Section 53 (3) (c) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the City of Bradford Metropolitan District Council (Footpath 19 Keighley) Modification Order 2021. |
| * The Order is dated 25 March 2021 and proposes to modify the Definitive Map and Statement for the area by deleting part of the route of Footpath 19 and adding a new section to Footpath 19, as set out in the Order plan and described in the Order Schedule. |
| * There were twenty objections outstanding when the City of Bradford Metropolitan District Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs. |
| **Summary of Decision: The Order is confirmed** |
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Preliminary Matters

1. On 24 and 25 October 2023 I held a public inquiry at the City Hall in Bradford, having visited the site of the existing and claimed routes of the public footpath, unaccompanied, during the afternoon of 23 October 2023. As there were obstructions and locked gates in the central section of the present route, which prevented continuous access, I walked the route, firstly from Black Hill Lane and then, from Braithwaite Road up to the locked gates to the south of the farm complex. After the close of the event, I made a further visit accompanied by representatives of the Council and objectors who were able to point out relevant features with the gates now unlocked but with a silage bale still blocking part of the route. No discussions concerning the merits of the case took place at the accompanied site visit.
2. This was a controversial case fuelled by an underlying assertion that the Council had failed to consider the correct definitive map when creating the Order and had somehow concealed or lost vital documents. The demeanour of supporters and those representing the principal objector created unnecessary tension throughout most of the first day of the inquiry, which only improved as the OMA’s evidence unfolded, which prompted a realisation by the principal objector that his case was based on several misunderstandings. It is often difficult for those parties who are poorly represented to structure their case in a proper and professional manner with emotion occasionally taking over. This was certainly my impression in this case; however, the cross-examination of witnesses called by the principal parties was a telling factor in my overall conclusions.
3. At the outset of the inquiry, the OMA presented a document that clarified matters raised by Mrs Archer acting for the objector, Mr Wright-Thompson at the pre-inquiry conference held on 2 October 2023. Mrs Archer believed she had discovered new evidence that brought into question the status of the definitive map and statement (DMS) held by the OMA. The objector had obtained copies of two maps from the West Yorkshire Archives office at Wakefield, which he claimed (through Mrs Archer) are the true definitive maps. The date of one of these maps is described as 1952 SHARE ‘1952’ MAP ON SCREEN, whilst the other is dated 1985 SHARE ‘1985’ MAP. The statement explains that the date of 1952 is actually the 1973 West Riding Definitive Map. The date of the other map is correct and is the same map as the definitive map. The Modified Definitive Map 1985, which is the subject of the current Order to amend. For clarification, the 1973 Definitive Map was superseded by the 1985 Definitive Map.
4. On 15 May 2014, Mr Wright-Thompson, of Westfield Farm and the principal objector to this Order applied for a Definitive Map Modification Order (DMMO) under the provisions of Section 53(5) of the 1981 Act on the basis that the route of the central section of Footpath 19 in the area of the farm buildings was incorrect. The effect of the 2014 DMMO application would have seen the central section moved slightly to the east of the definitive map alignment. In so doing, it would have moved this section away from land belonging to Mr Wright-Thompson and on to land the majority of which is owned by Mr Harper of Daisy Hill Farm, with a further very small section on to land owned by Mr Raw.
5. Due to the understandable delay in handling Schedule 14 applications, Mr Wright-Thompson subsequently sought a direction under Paragraph 3(2) of Schedule 14 of the 1981 requiring the City of Bradford Metropolitan Council (BMDC) to determine the Order application under Section 53(5) of that Act. That decision was made on 21 January 2020, which prompted consideration of the 2014 DMMO and which led later to the making of this Order.
6. Following investigation into the application and assessment of all available evidence, including documentation submitted by Mr Wright-Thompson, the Order Making Authority (the OMA) concluded that the central section of Footpath 19 had indeed been recorded incorrectly on the definitive map. However, following such investigation and consideration, the OMA determined that the route in the area of the farm buildings had an entirely different alignment, which culminated in the making of the current Order.
7. The effect of the OMA’s consideration meant that Mr Wright-Thompson’s 2014 DMMO had been rejected. During the inquiry, the principal objector supported by witness statements claimed that the OMA had based its decisions on both the failed 2014 DMMO and in the drafting of the current Order on incorrect plans. I return to these assertions later in this decision.
8. The legal record of public rights of way in this instance is the West Yorkshire Metropolitan County Council Modified DMS. Footpath 19 Keighley runs across farmland and is recorded as follows:

“From the north, the footpath commences from Black Hill Lane heading south down an access track to farm buildings, then passes through the area of the buildings and continues southwards down a track to a field; it continues down the field before reaching a stepped path between the gardens of Braithwaite Road where it terminates.”

The Main Issues

1. The Order relies upon the occurrence of events specified in Section 53(3)(c)(i) and (iii) of the 1981 Act. Therefore, consideration needs to be given to whether the discovered evidence shows on the balance of probabilities that the definitive map and statement (the DMS) should be modified on the grounds that:
2. a right of way which is not shown in the map and statement subsists, and
3. that there is no public right of way over land shown in the map and statement as a highway of any description.
4. The leading judgment in relation to deletion of rights from the DMS is that of *Trevelyan v Secretary of State for the Environment, Transport and the Regions (2001)* (“*Trevelyan*”). The 2000 High Court judgment leading to this Court of Appeal decision was also before me. As set out in *Trevelyan* the standard of proof required to justify the removal of rights from the DMS is no more than the balance of probabilities, and this is the basis on which my decision will be taken. However, evidence of some substance must be put in the balance if it is to outweigh the initial presumption that the rights exist.
5. I shall first assess whether any documentary evidence is sufficient to infer the dedication of a highway at some point in the past. Should I find that this is not the case, I will consider whether the user evidence provided is supportive of the Order’s dedication of a footpath between points C-B-A. The DMS records the central area of the footpath in the area of the farm buildings as running between A and C.
6. If it is necessary to consider the user evidence, the relevant statutory provisions for the dedication of a public right of way is found in Section 31 of the Highway Act 1980 (“statutory dedication”). This requires consideration of whether there has been use of the way by the public, as of right, without force, secrecy or permission and, without interruption, for a period of twenty years prior to its status being brought into question and, if so, whether there is evidence that any landowner demonstrated a lack of intention during this period to dedicate a public right of way.
7. Alternatively, an implication of dedication can arise at common law if there is evidence from which it may be inferred that a landowner has dedicated a right of way and that the public has accepted this dedication.

**Reasons**

***Definitive map records***

1. A substantial part of the Mr Wright-Thompson’s evidence, which was supported by a number of people, asserted that he had discovered historic definitive maps that had not been properly considered by the Council. Simply, it was submitted that documents had been found that had not been taken into account by the Council. According to Mr Kosschuk, following a search of records held by the Wakefield Archives, they had discovered the existence of a 1952 definitive map and had brought this to the attention of the Council. However, it is clear from the Council’s evidence that the objectors had misinterpreted the plans that they obtained. Reference to the date of 1952 related to the relevant date for the purposes of Section 27 of the National Parks and Access to the Countryside Act 1949, the legislation under which the definitive map was prepared. Ms Stott for the Council explained very clearly that the date of 1952 was the relevant date for the start of the process of preparing the definitive map, which culminated in the 1973 DMS. The 1973 map still includes reference to the relevant date.
2. The majority of Footpath 19 has been consistently recorded in so far as its routes from Black Hill Lane southwards to the farm complex and from Braithwaite Road northwards as far as the farm complex in the Draft Map of 1953, the original 1973 DMS, as well as in the later 1979/80 Revised Draft Map and in the present West Yorkshire Metropolitan County Council Modified DMS, which was published in 1985.
3. The OMA argued that the central section of the footpath as it passes either through or around the farm complex, itself having seen substantial changes over the years with older buildings being removed and new buildings erected, is not clear on Ordnance Survey (OS) Maps. Layout changes, together with the depiction of the footpath using thick lines that obscure some of the buildings has only served to raise an element of uncertainty as to the correct alignment of the middle section of the footpath as it passes through the farm complex. It appears that that the only clear detail when perusing these documents is the reference in the 1951 parish schedule which describes the footpath as running “forward through farmyard”.
4. The objectors remained stubbornly suspicious that the Council had concealed or lost the definitive map, which resulted in them mistakenly searching through records held by other organisations. There were unfounded claims that the OMA may have altered the DMS to support their conclusions. This was a preposterous position to adopt that created confusion and unnecessary cross-examination. Upon cross-examination, Mr Kosschuk was asked whether he had visited the offices of the OMA to inspect the DMS as would have been his right. His reply was that he did not avail himself of that obvious opportunity and instead relied on documents that were not the DMS and which ultimately set the framework for the principal objector’s case.
5. The DMS remained on the huddle table throughout the inquiry for all to inspect. It was telling that such a vital document was not inspected by the principal objector and his supporters over the two days of the inquiry as far as I could observe. I return later in my decision to consider the basis for Mr Wright-Thompson’s (and those who supported his case) misunderstanding of events that led him to maintain his position in terms of the alignment that was depicted in the 2014 DMMO.
6. There was an inevitable focus throughout the inquiry on the route of the 2014 DMMO given the direction that Mrs Archer took her witnesses through examination-in-chief. In the main though, this was a useful process as it aided a better appreciation of the probable historic route of Footpath 19 where it passes through the farm complex. I now turn to consider both documentary evidence and user evidence that supported the respective cases for the parties.

***Consideration of documentary evidence***

1. Although the depiction of a way on an Ordnance Survey (OS) map is not, in isolation, evidence of the existence of a highway, the inclusion of a route on OS maps can provide useful evidence in helping to determine the status of a route when combined with other evidence. They are though surveys of land and are indicative as what is on the ground at the given time of the survey and as noted by the surveyor. Since the late 1800s, such maps have carried a disclaimer that tracks and paths shown thereon provide no evidence of the existence of a public rights of way. Surveyors often made enquiries locally however, probably to clarify matters relating to correct spellings of names and the status of roads. Therefore, the labelling of a route as ‘F.P.’ could indicate that public footpath rights were considered to exist at the time of survey.
2. The route of Footpath 19 as depicted in the definitive map from Black Hill Lane to the farm complex and from Braithwaite Road to the farm complex is consistently shown in OS maps from 1848. It is the recording of physical features that is important in this case with later maps showing the physical changes to the farm through the removal of some buildings or the addition of new agricultural buildings. Up to the OS map of 1962, the maps are generally of insufficient detail to accurately depict the precise route with some maps indicating an outbuilding attached to the south-western gable of the farmhouse and others showing a small gap at this point that gives the impression of Footpath 19 following its present route. Due to the scale of the earlier maps, it is difficult to be certain that the route followed the definitive map alignment or took a route to the east of the buildings. However, these earlier maps appear to have informed the definitive map process beginning in 1951 through to the West Riding DMS 1973.
3. The 1962 OS 1:1250 series map provides greater detail but would appear to show the farmyard running to the south, east and north of the farmhouse with the outbuilding attached to the south-western gable of the farmhouse. The 1970 and 1979-81 OS maps show a similar arrangement in terms of the positioning of buildings with the later map now showing the addition of a building referred to as the milking parlour and built in 1976, which would have occupied the area of the farmyard to the east of the old stone buildings and farmhouse. This arrangement is shown in Mr Wright-Thompson’s aerial photograph and would have blocked any route in the way shown on the Order map.
4. Relying on OS maps from 1848 to 1981 alone would suggest to me that the line of the definitive map is indeed inaccurate, and this is corroborated to a large extent by aerial photographs, photographs and the plan prepared for the 1985 sale of land at Daisy Hill Farm. The 1992-93 OS map show that substantial physical changes to the farm complex had occurred, including the removal of the outbuilding. By this time, a track corresponding to the route of the definitive map can be seen as depicted in aerial photographs of about 1993 submitted by Mr Wright-Thompson as well as those submitted by Mr Harper.
5. The OMA places considerable weight in its conclusions to the 1951 parish schedule description that the route passed through the farmyard. The Order route is consistent with the layout of the farmyard shown on the various OS plans up until the 1992-93 edition. Despite the scale of these maps, they appear not only to show the physical layout of the farmyard but also the features that existed at various times that would have prevented passage along the central section of the path as depicted in the DMS, including the outbuilding and the orchard. I am therefore satisfied on balance that the above documents, when considered as a whole, lend considerable weight to the OMA’s proposition that a drafting error occurred in the definitive map process. There is clear discrepancy between the description of the claimed route as passing through the farmyard and the alignment marked on the DMS which had long been obstructed.
6. Given my findings above, I conclude that the Order should be confirmed and having reached this conclusion, there is no need for me to address the user evidence or apply the procedures outlined in paragraphs 11 and 12 above. However, given the time and effort devoted in submissions and at the inquiry to this, I shall nonetheless, review the user and landowner evidence in so far as they are relevant and support the documentary evidence.

***User and landowner evidence***

1. This is an unusual Order in so far as it was prepared following the consideration of an earlier application when the evidence suggested that the route of the central section of Footpath 19 as shown in the definitive map was inaccurate although its precise alignment differed. Much of the user evidence prepared in support of the 2014 Order has now become entangled with objections to the 2021 Order. It has been very difficult to disentangle the evidence and whilst officially there were 19 objections to the present Order, a considerable amount of evidence provided in the earlier Order remains relevant to the present Order. Given my conclusions on the documentary evidence, I need not consider the remarks of the OMA relating to the origins of some of the witness statements and whether the contents had been influenced by the objector.
2. Mrs Archer for the principal objector reaffirmed the OMA’s position that the central section of Footpath 19 was not recorded correctly on the DMS but maintained that its alignment was that indicated in the 2014 DMMO. The route of the central section was alleged to follow a similar north-south alignment to that shown in the definitive map but moved over to the east and on to land owned by Mr Harper. Mr Wright-Thompson explained that the outbuilding located on the south-west corner of the farmhouse contained an entrance to a ginnel or passageway that led to the farm track at point A on the Order plan. It was explained that the ginnel was at a lower level than the present ground level and had been filled in.
3. The issue of the ginnel was again raised in the evidence of both Mr Forsythe and Mr Bentham who had recollections of walking Footpath 19 as far back as the early to mid-1960s. Each witness was asked to describe the route of the footpath and both confirmed that the route of the central section involved entering the outbuilding in order to proceed through a ginnel, described as a short tunnel and on to the farm lane as it headed towards Black Hill Lane. The descriptions of the construction differed somewhat.
4. The descriptions given by the two witnesses was in direct contrast to that given by Mrs Hobson who actually lived at Daisy Hill Farm for 23 years from 1950 until leaving the family farm following her marriage although continued to work on the farm. Mrs Hobson walked to school each day by walking the footpath down to Braithwaite Road and was able to describe the outbuilding in some detail, confirming that the outbuilding touched the closest part of the western gable of the farmhouse with the section closest to the farmhouse comprising a washhouse for the family. Although there was a doorway into the washhouse from the farmyard at this point, it did not have any other door leading onto any path heading in a northerly direction and there was no ginnel as described by the objectors.
5. Mrs Hobson recalled that Footpath 19 followed the Order route up until about 1976 when her father built a milking parlour over the line of the footpath, which effectively prevented walkers from accessing the eastern part of the farmyard and linking with the farm lane to the north. She explained that her father provided an alternative route for walkers to the west of the farmyard, which was used for several years as an informal footpath. No formal footpath diversion took place.
6. I found Mrs Hobson’s evidence clear and convincing. That is not to say that the recollections of the two objectors in support of Mr Wright-Thompson were misleading; over time, memories can fade or recollections diminished. Mr Driver’s account for instance also spoke of a ginnel but in the context of walking up through a ginnel; it was clear however that this was through the farmyard to the east of Daisy Hill Farm and between buildings that existed at that time.

*Conclusions on the user and landowner evidence*

1. The user evidence provides strong evidence in support of my conclusions on documentary evidence. It demonstrates the exercise of an existing right to use the Order route on foot and provides support for the deletion of part of Footpath 19 between points A and C. The evidence does not support the route of the 2014 DMMO.
2. Although I am not necessarily obliged to consider the provisions of section 31 of the Highways Act 1980, I would agree with the OMA that former residents living at the farm between 1947 and 1983 corroborated the documentary evidence by stating that members of the public regularly walked unimpeded through the farmyard as shown A-B-C on the order map, and did so until Mr Townend senior built a milking parlour over the route and unofficially diverted the footpath to the west of the farm buildings around 1976. For the purposes of section 31 of the 1980 Act, I conclude that there was implied dedication of a footpath under common law through the farmyard at the original Daisy Hill Farm as far back as the 1920s or earlier until 1976 and that Mrs Hobson confirmed there was acceptance of that route through the farmyard by the public from at least 1943 until around 1976.
3. Having regard to the above, I conclude that all the available evidence shows on the balance of probability, that a footpath dedicated under common law through the old farmyard subsists and should be added to the DMS as shown on the Order map A-B-C; and, that there was no public right of way on the section of the recorded route shown as A-C on the Order map and should be deleted from the DMS.

Other matters

1. Whilst the principal objector has taken steps to safeguard the family horse training business and secure his property by locking gates from time to time and challenging some users, none of these actions were effective given my findings further to the documentary evidence and supported by user evidence, that a public footpath subsists over the Order route.
2. By today and, when passing through the central section, the most obvious route that walkers would take would be along A-C. It is clear that this has been the preferred route for several years until Mr Wright-Thompson blocked this route at and beyond point C. This is a matter for the Council to resolve through applying formal diversion procedures and initiating appropriate enforcement action if deemed appropriate.
3. My decision to confirm the Order leaves an unsatisfactory situation. The Order effectively denies the public access through points A-B-C on the Order plan. It is for the Council to decide how this should now be resolved.

**Conclusion**

1. On the balance of probability, 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.

**Formal Decision**

1. I propose to confirm the Order.

Gareth W Thomas

INSPECTOR

**APPEARANCES**

**For the Council:**

David Kerfoot, Solicitor

who called:

Ms S Stott - Rights of Way Officer City of Bradford Metropolitan District Council

Mrs Hobson

Mr Driver

**For the Objector:**

Mrs B Archer

who called:

Mr F. Wright-Thompson

Mr D. Earnshaw

Mr A. Forsythe

Mr M. Kosschuk

Mr E Bentham

**Interested party objecting to the Order:**

Mr A. Harper

**Documents presented to the inquiry:**

Short statement by the OMA regarding a matter raised by Mrs Archer on behalf of the Objector Mr F. Wright-Thompson at the pre-inquiry case conference.

ORDER MAP - COPY NOT TO SCALE

