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| **Order Decision** |
| Inquiry held on 3 October 2023 |
| **by A Behn Dip MS MIPROW** |
| **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/3262322** |
| * This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Leicestershire County Council (Addition of Public Footpath P114 at Willesley Lane in the parish of Ashby de la Zouch) Definitive Map Modification Order 2019. |
| * The Order is dated 24 May 2019 and proposes to modify the Definitive Map and Statement for the area by adding a public footpath at Willesley Lane as shown on the Order Plan and described in the Order Schedule. |
| * There was 1 objection outstanding at the commencement of the Inquiry. |
| **Summary of Decision: The Order is confirmed.** |
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Procedural Matters

1. I held a public Inquiry into the above Order on 3 October 2023 at The Council Chamber, County Hall, Glenfield. I made an unaccompanied site visit on Monday 2 October 2023 when I was able to walk the entire length of the Order route and familiarise myself with the area. It was agreed at the Inquiry that a further accompanied visit was not necessary. 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.
2. Two objections were received following the making of the Order and its subsequent submission to the Planning Inspectorate. One of the objections, from Forestry England, was withdrawn before the Inquiry. The land agent, Fox Bennett, on behalf of the JC Wheatley Trust, the remaining objector, who also own land across which the claimed route runs, advised on 29 September 2023 that they would not be attending the Inquiry. As the evidence submitted predominantly comprised of User Evidence Forms (UEF’s), the Inquiry went ahead in the absence of the objector, in order that this evidence could be tested, which I found helpful. At the Inquiry I emphasised that my questions might appear biased in favour of the objector, but that this was to ensure that the user evidence was fully tested to ensure impartiality in the absence of the objector, and that no prejudice arose.
3. Fox Bennett stated in their objection, that they were unaware of any discussions having taken place with the JC Wheatley Trust regarding the implications of the Order, however the solicitors of the Trust (Fishers) acknowledged that notice had been served on them, via an email on 12 May 2014. Leicestershire County Council (the Council) also confirmed that the solicitors representing JC Wheatley Trust were then consulted in 2016 and given the opportunity to provide evidence to challenge the claim, as well as being given a further opportunity to object to the Order in 2020, along with everyone affected by the Order.
4. Fox Bennett also questioned the purpose of the Order route given that it is a circular route and provides no benefit of access to specific locations. Although rights of way often travel to a place of resort, it is not a requirement of the legislation that they need to do so and there are many rights of way that comprise circular routes.

The Main Issues

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, 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 which is not shown on the Definitive Map and Statement (DMS) 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 in order to make a DMMO, the standard of proof is higher for it to be confirmed. At this stage, evidence is required to show, on the balance of probabilities that a right of way subsists.
3. The Council researched their records and archives but were unable to find any evidence of a route of any antiquity. They also studied aerial photographs but other than a vehicle track between points A-B on a 1969 photograph and some visible lines along part of the claimed route in a photograph from 2000, there was no significant evidence discovered for the relevant period.
4. Consequently the evidence in support of the application is centred on 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.
5. 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.

**Reasoning**

***Statutory dedication***

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

1. An application to add the Order route to the DMS was made on 15 April 2014 by Mr Frank Bedford (the applicant), in anticipation of a planning application that was made to North West Leicestershire District Council in May of that year, for land across which part of the claimed route runs.
2. Although the question of the status of the claimed route was first brought to the attention of the public by the planning application of 2014, Mr Musson and Mr Gillions, trustees of the JC Wheatley Trust, had deposited a Map, Statement and Declaration under the provisions of Section 31(6) of the 1980 Act, in December 2002. Accordingly, any evidence relating to the time period after December 2002 is unable to be considered for the purposes of statutory declaration. The earliest relevant twenty-year period that can be evaluated for the purpose of statutory dedication is therefore 1982-2002 (the relevant period).

*Evidence of use by the public*

1. Twenty UEF’s and a letter were provided in support of use of the claimed route, with earliest use dating back to 1969. Fourteen UEF’s evidenced use in excess of forty years, covering the years prior to, during and post the relevant period, three more showed use for most of the relevant period, two showed partial use and one form and a letter stated use either prior to or post the relevant period. Many of the users were residents of Willesley Gardens, which adjoins the Order route between points A-D, but there were also four users who lived elsewhere within the village and a further two who resided in neighbouring villages.
2. At Inquiry a form was submitted from 2014, that was signed by 268 people, detailing their use of the claimed route, or parts of it. Although many signatories recorded use that fell after the relevant period, and others where the period of use was not specified, there were a number that stated use that would have spanned the relevant period. Ultimately this evidence offers reputation of use but does not hold the same weight as the UEF’s submitted or the evidence given at Inquiry.
3. Evidence presented shows that usage was predominantly recreational and generally on foot, with almost all users singularly utilising the circular route shown on the Order map. Most forms stated weekly use, although some walked the claimed route daily and others monthly or less frequently. The majority of users frequently saw other people when using the route, mostly walkers and dog walkers, but some cycle use was also observed.
4. There was some evidence where part of the claimed route was also incorporated as an onward route to Blackfordby and following the relevant period, some users had also used the Order route to access Hicks Lodge National Forest Cycle Centre, which opened in 2011.
5. Only one evidence form noted a gate on the Order route, detailing a dilapidated, broken wooden five bar gate which had been in existence at point A, circa 1970. No other UEF’s recalled any gates, structures, or obstructions to the claimed path, other than the occasional tree or branch that sometimes fell across the route and would have to be stepped over or side stepped. None of the UEF’s recorded any interruption of use.
6. The evidence forms indicated that both during and after the relevant period users neither sought or were given permission to walk the route, nor were they ever challenged. Use appeared to be open and persistent and there was no recollection of any signs being erected disabusing users of a right to use the claimed route.
7. The applicant advised that he had lived at Willesley Gardens since 1982 and had walked the claimed path frequently, usually with his family, as a means of recreation, on a daily or weekly basis over the relevant period and beyond. He generally accessed the path from point A, although on the odd occasion he would jump over his fence which backs onto the Order route. He often saw others whilst using the route, and when at home, he often observed people on the route from his garden or the kitchen window. The applicant considered that the claimed path had always been visible on the ground, sometimes overgrown between points C-D, but never to a degree where it was impassable or a hindrance. He recalled occasions where trees or their branches had fallen across the path and needed to be stepped over or side stepped, albeit he did not consider that these occasions fell within the relevant period, nor did he consider that they impeded his use.
8. Mr Poole who was unable to attend the Inquiry but submitted a Proof of Evidence, wrote that he had used the route on a weekly basis since at least 1982 until the present day without permission or challenge, observing no obstructions to use and no signs stating there was no public right of way. The only contact he had when walking the path were greetings from other walkers and cyclists. Mr Poole recalled that the original owner of the land back in 1969 discouraged walkers but then moved away from the area, after which everyone assumed the claimed route was public. At the Inquiry the applicant clarified that the owner who ‘discouraged walkers’ back in 1969 did not actually own the field across which that part of the claimed route is situated. Irrespective of this, any challenges made in 1969 do not form part of the relevant period and the evidence is also insufficient when considering if this event could have brought the right of the public to use the route into question.
9. Mrs Thomas who also spoke at the Inquiry, had walked the claimed path twice daily over the relevant period for the purpose of exercising her dogs. When walking alone Mrs Thomas would use the Order route between points A-C and when accompanied by her husband, they would walk the entire route. She saw other people using the route every day, either passing them on the path or sighting them from her back garden or the rear windows of her property, which backs onto the Order route. When purchasing the house in 1978, Mrs Thomas recalled being told about the Order route by the previous owners who felt it would be of interest to them as dog owners. Mrs Thomas stated that she had never been challenged or told the route was not public and had never encountered any signs or obstructions to use. She also recalled that the local pre-school used part of the Order route to access forestry school lessons at Hicks Lodge, albeit their use falls outside of the relevant period.
10. Another resident of Willesley Gardens, Mr Trunkfield, who had been resident for 38 years walked his dog along the claimed route on a daily basis, albeit he did not use the section between A-B as he accessed the route via a stile in his back garden. As well as using the claimed route, Mr Trunkfield advised that he sometimes used additional informal paths within the wooded area between points C-D. On occasion Mr Trunkfield would chat to the tenant farmer who never advised that the route was not public or that it should not be used.
11. Valerie Smith, who lives locally in Packington, recalled walking the claimed route occasionally, both over the relevant period and before it, with friends. She considered that the route had always been visible on the ground within the woodland and recollected a gate that was lying on its side at point A of the Order route a very long time ago.
12. This recollection was also shared by Mr Ward the chairman of the Ashby Civic Society, who expressed support for the claimed footpath at the Inquiry. Mr Ward stated that he very occasionally walked parts of the Order route, either between points A-C, or points C-D and often saw others when doing so. He recalled seeing an old wooden gate at Point A approximately 50 years ago, which was lying on the ground to the side of the claimed path.
13. Having regard to the above and taking into account the untested evidence which supports the tested evidence, I find that there is compelling user evidence, sufficient to raise a presumption of the dedication of a public footpath. Therefore, the first part of the statutory test is satisfied.

*Evidence of the landowners and whether the landowners demonstrated a lack of intention to dedicate a public footpath*

1. Forestry England who own land between points C-D of the Order route, originally objected to the Order. In 2021, to prevent access from the Order route onto their cycle trails, they blocked off the entrance to the woodland at point C, redirecting users back into the wood slightly further north. This obstruction to the Order route, however, falls well outside the relevant period of 1982-2002. Forestry England later formally withdrew their objection stating that they had no objection in principle to the Order but felt there were matters of health, safety, and maintenance that would require discussion with the Council, dependent on the Order decision.
2. Fox Bennett (the objector) considered that any use of the route shown on the Order map was unauthorised and stated that steps had been taken in the past to prevent such trespass across this private agricultural land, however no further information was supplied to clarify or evidence any actions that had been taken to prevent such use.
3. In their correspondence the objector did state that the entrance to the field, at point A on the Order map, used to be barred by a gate which was vandalised and then removed. No details or further evidence was provided as to when this gate was in situ, and the only recollections of a gate at point A from the user evidence and those that spoke at the Inquiry, was circa 1970, which was 12 years before the relevant period. There is no supporting evidence that this gate was blocking the route in 1969 /1970 and those users who recalled the gate stated it was lying to the side of the claimed route. There is also nothing before me evidencing that a gate was in situ on the Order route during the relevant period.
4. The objector also considered that section C-D of the claimed route ran through overgrown, unmanaged woodland where there was no evidence that a footpath had been created, and that there were significant obstacles including fallen trees. This is at odds with the user evidence and those witnesses who spoke at the Inquiry, who considered that even when overgrown, the route was always discernible on the ground.
5. On my site visit, the claimed route presented as a clearly trodden path through the wooded area, correlating with the photographs taken by the Council as part of their submission. Although I noted the presence of some fallen trees and branches, which corroborates the testimony of the objector as well as the photographs supplied by the Council, I was able to traverse these with no trouble, which was also the experience expressed by the applicant at the Inquiry.
6. Albeit they considered there was no evidence of public use of the Order route, the objector did accede that section B-D of the Order route could possibly have been used ‘privately’ by the adjoining houseowners. However, all of the residents of Willesley Gardens who spoke at the Inquiry confirmed that they had no ‘private rights’ to exercise use over the claimed route, nor had they been given permission to use the route by any landowner or tenant.
7. Ultimately, I find no evidence of any action taken by any landowner during the relevant period of 1982-2002 that demonstrates there was a lack of intention to dedicate a footpath.

*Conclusions on statutory dedication*

1. 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 no 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.

**Other matters**

1. There was also concern from the objector that the boundary at point C1 on the Order route had been broken down by cyclists or other users. While I recognise this as a genuine concern, the short cut to Hicks Lodge created by this boundary removal is not part of the Order route and therefore not before me for consideration.

Conclusions

1. 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 confirm the Order.

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**INSPECTOR**

**APPEARANCES**

**For the Council:**

N Varia Solicitor, Leicestershire County Council

who called:

P Lindley Senior Access Development Officer, Leicestershire County Council

F Bedford

M Thomas

**Supporters:**

K Ward Chairman of Ashby Civic Society

D Trunkfield

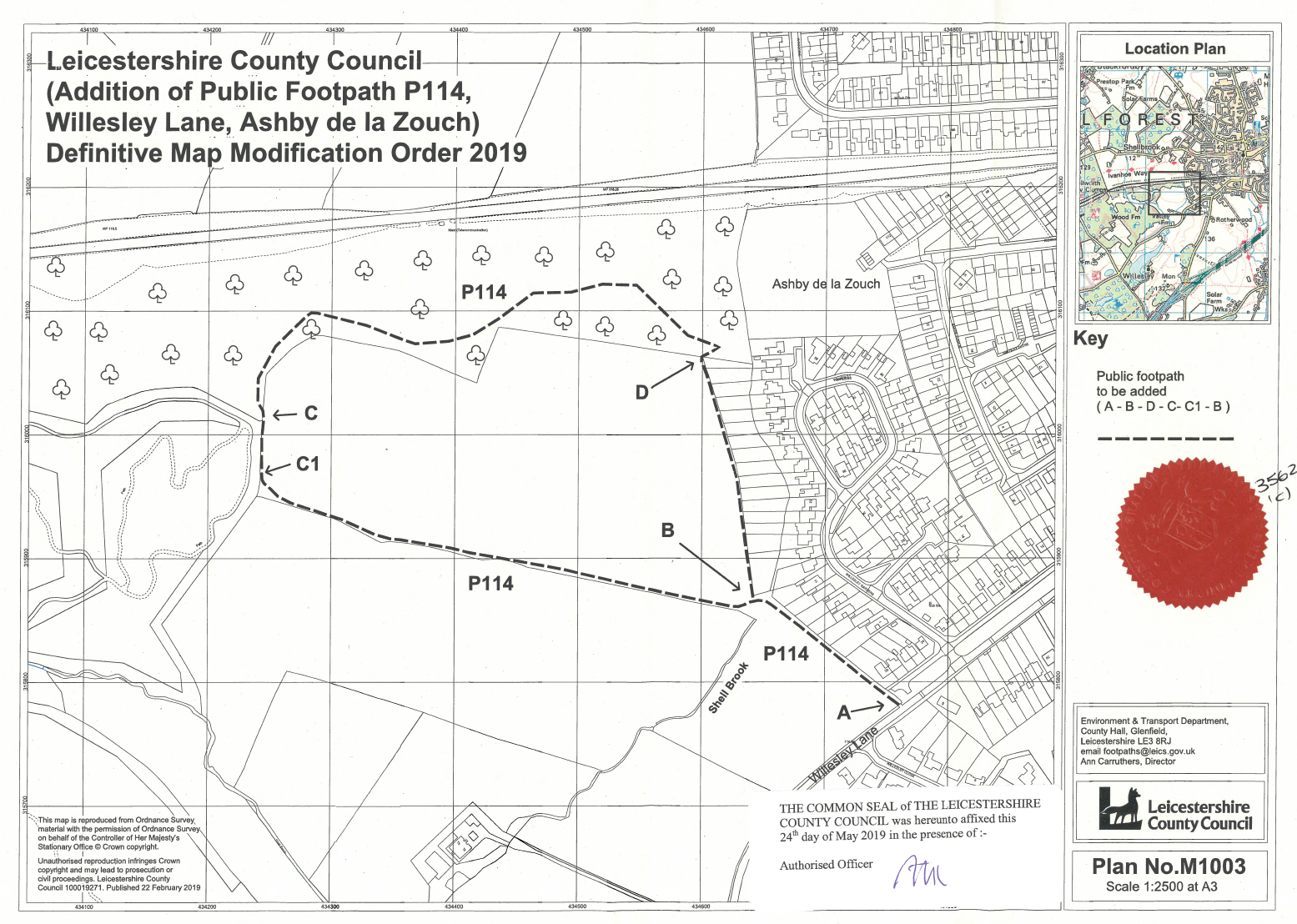
V Smith

**Objector:**

Not in attendance

**DOCUMENTS HANDED IN AT THE INQUIRY**

1. Opening and closing statements of Leicestershire County Council.
2. Form containing details of 268 people who had used the Order route, or part thereof.
3. Copies of letters sent to all affected landowners in March 2020.

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