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| **Order Decision** |
| Inquiry Held on 21 June 2022  Site visit made on 20 June 2022 |
| **by C Beeby BA (Hons) MIPROW** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 20 November 2023** |

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| **Order Ref: ROW/3245044** |
| * This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Cheshire East Borough Council Definitive Map and Statement (Addition of Public Footpath No.29, Parish of Knutsford) Modification Order 2018. |
| * The Order is dated 16 August 2018 and proposes to modify the Definitive Map and Statement (DM&S) for the area by the addition of a public footpath between Nos 95 and 97 King Street to Old Market Place, Knutsford as shown in the Order plan and described in the Order Schedule. |
| * There were two objections outstanding at the commencement of the inquiry. * In accordance with Paragraph 8(2) of Schedule 15 to the 1981 Act I have given notice of my proposal to confirm the Order with modifications. Two objections have been submitted in response. |
| **Summary of Decision: The Order is confirmed with the modifications previously proposed.** |
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Procedural Matters

1. In writing this decision I have found it convenient to refer to points marked on the Order Plan. I therefore attach a copy of this plan.
2. If confirmed with the modifications set out in paragraph 70 of my Interim Order Decision issued on 27 July 2022, the Order would record on the DM&S the public footpath identified in the Order and shown on the Order map as A-B, but not that depicted as B-C.
3. An objection has been submitted on behalf of an adjacent landowner, opposing confirmation of the Order for reasons which were previously stated. As set out in my Interim Decision, health and safety concerns and economic considerations cannot be given weight in my decision as they lie outside the criteria set out within the relevant legislation. The existence of other routes in the vicinity does not attract weight for the same reason.
4. The objection concerned submits minimal new evidence or legal arguments. The objector continues to maintain their position that signage showed that the owners of the Order route did not intend to dedicate it as a public right of way during the relevant period. Whilst I acknowledge the submissions made in this regard, I considered these arguments in reaching the conclusions set out in my Interim Decision. There are therefore no grounds for me to re-examine the matters concerned.

The Main Issues

1. In my Interim Decision I set out that the main issue here is whether the discovery by the Council of evidence (when considered with all other evidence available) is sufficient to show that a public right of way on foot which is not shown in the map and statement subsists over land in the area to which the map relates. The question remains whether, on the balance of probability, a public right of way on foot has been shown to subsist along the route described in the Order.
2. The majority of the evidence in this case comprises User Evidence Forms. As a result, the statutory requirements of Section 31 of the Highways Act 1980 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.
3. If statutory dedication is not applicable I shall consider whether dedication has been shown at common law. Such a dedication requires consideration of three main issues: whether the owner of the land had the capacity to dedicate a highway, whether there was dedication by the landowner and whether there has been acceptance of the dedication by the public. Evidence of the use of a way by the public as of right may support an inference of dedication and may also show acceptance of the dedication by the public.

Reasons

1. Evidence supplied with the remaining objection in response to my Interim Decision clarifies that, whilst Mr Mooney owned land crossed by section A-B of the Order route as part of his sandwich shop business “Prego” during the statutory period 1995-2015, he did not own the land crossed by section B-C. Thus, the “Prego” notice (which expressed permission from the landowner to pedestrians for approximately the latter half of the statutory period) rendered public use of section A-B of the route only “with permission” whilst it was present. That use consequently failed to be “as of right”, and hence it did not qualify for the purposes of establishing a public right of way under the statutory provisions.
2. Nevertheless, the “Prego” notice did not establish that use of section B-C of the Order route was made with permission, as that land was not owned by Mr Mooney. Thus, it is necessary to consider whether dedication of that section occurred in accordance with the statutory provisions.
3. There is still minimal substantive evidence to indicate when the Prego notice was affixed, so that the date is insufficiently clear to form an additional bringing into question of the public’s right to use the Order route, including section B-C. The blocking of the Order route by fencing in September 2015 affected the use of the Order route as a continuous path. It consequently brought the public’s right to use section B-C of the route into question, so that the statutory period for consideration remains 1995-2015.
4. As I have set out in my Interim Decision, the evidence of at least seven people shows reasonably intensive use of the Order route on foot over the statutory period and thus the route B-C has been actually enjoyed by the public.
5. Turning therefore to whether use of the section B-C was as of right, the land crossed by section B-C was owned by the Cheshire East Borough Council over the statutory period, for the purpose of use as a public car park. The Council (or its predecessor) has held the land since at least the early 1970s for this purpose. Should the Council have sought to dispose of the land, it would have been necessary to advertise that disposal as a loss of public open space under section 123 of the Local Government Act 1972.
6. The evidence before me consequently indicates that a public entitlement to use the land crossed by the section B-C, amounting to an implied licence, is most likely to have existed over the statutory period. There is minimal contradictory evidence in this regard. As a result of these considerations, use by the public of that section over the period was permitted by the Council and hence was “by right”. This use consequently failed to be use “as of right” over the whole of the statutory period.
7. In light of the above considerations, the evidence does not support a statutory inference of dedication and there is no need for me to consider this matter further.

*Common Law dedication*

1. As set out in my Interim Decision, the evidence of six people cannot count towards a consideration of whether public use has been sufficient to suggest that a right of way subsists over the full Order route, according to the statutory provisions. This applies equally when assessing whether this evidence contributes to a potential period of common law dedication of the route B-C. This is because their evidence shows use of a route which is unclear, was not the full Order route, or shows use of an alternative route shown in the DMMO application form.
2. It is not possible to determine the frequency of use of section B-C by one further person. Furthermore, their use was partially made to access the Prego coffee shop (open 2001-2007) via its rear entrance, which is unlikely to form public use of the route or to comprise use of section B-C. Their use consequently does not attract full weight in contributing to a period of public use of section B-C, and in the absence of having heard and examined their evidence further at the inquiry.
3. The most intensive period over which the section B-C was used by the remaining witnesses was 1986-2015. Seven people used the section over this twenty nine-year period. One of these people used it daily, four people used it weekly and two people fortnightly. This is a sufficiently intensive period of open use, in this case, to indicate acceptance of the route by the public. It therefore forms the “common law period”.
4. It is equally necessary for use to have been as of right if it is to support an inference of dedication at common law. In this case use of the section B-C by the public has not been as of right over the common law period, as a public entitlement to use that land is most likely to have existed over the whole of that period, as set out above. Furthermore, the land crossed by that section has been held by the Council as a public car park over all other periods of potential common law use. Thus, any such alternative periods do not arise for consideration, for the same reason. Accordingly, it cannot be inferred that the section B-C has been dedicated as a public right of way at common law.

Conclusion

1. The discovery of evidence (when considered with all other evidence available) is insufficient to show that a public right of way on foot which is not shown in the map and statement subsists over section B-C of the Order route. The available evidence remains sufficient to show that a public right of way on foot subsists over section A-B of the Order route only.
2. Thus, having regard to the above and all other matters raised at the inquiry and in the written representations, I conclude that the Order should be confirmed with the modifications previously proposed.

**Formal Decision**

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

* In Part I of the Order Schedule (Modification of the Definitive Map): delete the text “then continuing in a generally north easterly and north north easterly direction for approximately 16 metres to O.S. grid reference SJ 7521 7874 (Point C on Plan No. WCA/013A) and its junction with Old Market Place (UW 1764/C)”.
* In Part I of the Order Schedule: amend “A total distance of approximately 27 metres” to “A total distance of approximately 11 metres”.
* In Part II of the Order Schedule (Modification of Definitive Statement): In “Grid Reference”, amend “SJ 7521 7874” to “SJ 7521 7872”. In “Description”, delete the text “then continuing in a generally north easterly and north north easterly direction for approximately 16 metres to O.S. grid reference SJ 7521 7874 and its junction with Old Market Place (UW 1764/C)”. In “Approximate Length”, amend “27 metres” to “11 metres”. In “Widths”, delete the text “At SJ 7521 7874 3 metres”. In “Nature of Surface”, delete the text “then paved”.
* On Order Plan No. WCA/013A: Delete section B-C of the footpath to be added.

*C Beeby*

INSPECTOR

