

|  |
| --- |
| **Order Decision** |
| Inquiry held on 31 October 2023  Site visit undertaken on 30 October 2023 |
| **by Mark Yates BA(Hons) MIPROW** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 15 December 2023** |

|  |
| --- |
| **Order Ref:** **ROW/3281954** |
| * This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (“the 1981 Act”) and is known as The Wiltshire Council Parish of Ogbourne St Andrew Path No. 38 Definitive Map and Statement Modification Order 2020. |
| * The Order was made by the Wiltshire Council (“the Council”) on 19 November 2020 and proposes to add a bridleway (“the claimed route”) to the definitive map and statement. |
| * There was one objection and one representation outstanding at the commencement of the inquiry. |
| **Summary of Decision:** **The Order is confirmed.** |
|  |

Procedural Matters

1. I outlined when opening the public inquiry that I have a limited share with a third-party organisation in a racehorse which is stabled on neighbouring land. None of the parties present raised any objection to me continuing with the inquiry and determining the Order.
2. The Council confirms that the evidence in relation to this case has been available for people to inspect and it previously offered to provide copies of the statements in support of use of the claimed route to the objector (Mrs O’Brien). Two additional user evidence forms (“UEFs”) submitted after the close of the inquiry were forwarded to the interested parties.

**Main Issues**

1. The Order relies on the occurrence of an event specified in Section 53(3)(c)(i) of the 1981 Act. Therefore, for me to confirm the Order, I must be satisfied that the evidence shows on the balance of probabilities that a public right of way subsists.
2. The relevant statutory provision, in relation to the dedication of a public right of way, is found in Section 31 of the Highways Act 1980. This requires consideration of whether there has been use of a way by the public, as of right 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.
3. If statutory dedication is not applicable, I shall consider whether the evidence is supportive of the dedication of a public right of way under common law.

**Reasons**

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

1. I accept that the application, dated 30 April 2020, to add the claimed route to the definitive map and statement was the event that first served to bring the status of the route into question. Therefore, the relevant period to be considered for the purpose of Section 31 of the 1980 Act is 2000-2020 (“the relevant period”).

***Evidence of use by the public***

1. Use of a way by pedestrians and horse riders can be supportive of the dedication of a bridleway. However, there needs to be sufficient evidence of use by horse riders to enable such a conclusion to be reached. Otherwise, the evidence may point more in favour of the claimed route being a footpath.
2. Over forty people have submitted a UEF in support of use of the claimed route, either on foot, horseback, or both. However, I have discounted the evidence from one person who acknowledges that they received permission to use the route during the relevant period.There is evidence of use from at leastten horse riders during the initial few years of the relevant period with the number steadily increasing during this period. Around nineteen horse riders have provided evidence of use during most of this period. There is also some evidence of cycle use which would add to the reputation of the route as a bridleway. Four of the users gave evidence in relation to their use of the claimed route at the inquiry.
3. In terms of the references at a parish council meeting and in a parish newsletter to there being no objection by the landowners to the claimed route being a public right of way, it is evident that this is not the case. I address later whether any action was taken during the relevant period to demonstrate a lack of intention to dedicate a public right of way. It may be the case that some people are more willing to submit evidence if they believe an application is not opposed, and a couple of the users have withdrawn their support for this proposal. However, the issue to be determined is whether the evidence is sufficient to support the dedication of a public right of way. There is also nothing to suggest that people were coerced into completing a UEF.
4. The references by the landowners to a lack of observed use does not mean that the use did not occur to the extent outlined in the UEFs and confirmed by the witnesses at the inquiry. In this case, Mrs O’Brien acknowledges that she cannot see the route from her property which is located off the connecting byway. I also note that at 440 metres in length it would not have taken long for a person to traverse the claimed route. It is nevertheless evident that the cycling use was much more limited. Additionally, there is nothing to suggest that the use of the route was exercised in secret.
5. It cannot be determined whether the references by some of the users to seeing others using the route on occasions related to people who had some form of permission. Statements in support of observed use of the route by unspecified parties will therefore have limited value. However, there is evidence of people walking or riding the route sometimes alone and on other occasions with others.
6. When assessing the extent of the use made of the route some regard should be given to the rural location of the claimed route and the number of people living in the immediate locality. The route is wholly used for recreational purposes. Having regard to these factors, I find on balance that the extent of the use during the relevant period contained in the evidence is sufficient to raise a presumption of the dedication of a public bridleway. In reaching this conclusion I have had particular regard to the evidence of use by horse riders.

***Whether any landowner demonstrated a lack of intention to dedicate a public bridleway***

1. It is evident that the erection of a gate at the south western entrance to the claimed route and signage to deny the existence of a public right of way were erected in response to the application. Therefore, they sit outside of the relevant period.
2. Reference has been made to verbal challenges being issued by Mr O’Brien from around 2010. It is apparent that on one occasion a companion of Mrs Davis was asked by him to ride on the stone track (the claimed route) rather than the edge of the field. This incident only indicates a desire to keep the public off the adjacent land. Overall, there is a lack of corroborating evidence of challenges being issued and none of the users’ recall being challenged when on the claimed route.
3. I do not find that evidence has been provided of action being taken during the relevant period which was sufficient to demonstrate that there was a lack of intention to dedicate a public bridleway over the claimed route.

**Other Matters**

1. Concerns have been raised in the event that the claimed route is recorded as a bridleway. These include the location of racehorse gallops, problems with criminal activities and vehicular use. Whilst I appreciate these concerns, they are not matters that are relevant to my decision which is concerned with determining whether a public bridleway has been dedicated over the claimed route.

**Conclusion**

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.

Mark Yates

**Inspector**

**APPEARANCES**

|  |  |  |
| --- | --- | --- |
| **For the Council** | | |
| Mr T. Ward  He called:  Mr C. Harlow  **Other Supporters**  Mrs C. Davis  Mrs H. Flippence  Mr A. Woodford  Ms M. Pinfold  **Objectors**  Mrs S. O’Brien  Ms C. Burrell | Counsel  Definitive Map Officer  Applicant  Landowner and statutory objector  Landowner | |
| **DOCUMENTS TENDERED IN CONNECTION WITH THE INQUIRY** | | |
| 1. Statement for the applicant 2. Copy of the application for a Modification Order 3. Two additional UEFs | |  |
|  |  | |

