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| **Order Decision** |
| Inquiry opened on 28 November 2023Site visit undertaken on 28 November 2023 |
| **by Mark Yates BA(Hons) MIPROW** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 15 January 2024** |

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| **Order Ref:** **ROW/3297423** |
| * This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (‘the 1981 Act’) and is known as the Cambridgeshire County Council (Public Footpath No. 19, Yaxley) Definitive Map Modification Order 2021.
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| * The Order was made by Cambridgeshire County Council (‘the Council’) on 20 October 2021 and proposes to add a footpath (‘the claimed route’) to the definitive map and statement.
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| * There were five objections outstanding at the commencement of the inquiry.
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| **Summary of Decision:** **The Order is confirmed subject to modifications set out below in the Formal Decision.**  |
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Procedural Matters

1. All of the points referred to below correspond to those delineated on the Order Map. The claimed route commences at the north-eastern end of Hawthorn Road (point A) and continues past the Olivemede Care Home (‘the care home’) and between Nos 41 and 43 Windsor Road to point E on Windsor Road.

**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. In considering the Order, I shall have regard to the submissions made on the issue of estoppel and the width of the claimed route.
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 (‘the 1980 Act’). 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 dedication under common law.

**Reasons**

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

1. It is accepted that the claimed route was obstructed by the erection of a fence on 30 September 2019. This fence was erected in connection with a development comprising of four dwellings on land within the care home site. The details provided at the inquiry reveal that an initial fence was damaged after around a week, and it was replaced by more substantial fencing. It is apparent that fencing has remained in place and the route is now obstructed by fences at points D and E.
2. The objectors maintain that the owner of the land at the time was not bringing the status of the claimed route into question by the erection of the fence as they had been informed by the Council that it was not a public right of way (see paragraph 19 below). It is alleged that the route was only brought into question when interested parties were informed by the Council on 12 June 2020 that an unrecorded right of way may have come into existence over the claimed route. In response to this letter, the landowner refused to remove the fencing.
3. The issue to be determined is what the users of the way would have understood the actions of the landowner to be. The physical obstruction of the route was an overt act that a reasonable user would have interpreted as bringing the status of the claimed route into question. In this case, once the public became aware that the fencing was not a temporary measure concerns were expressed about the obstruction of the route. This action triggered the later application to add the route to the definitive map.
4. Having regard to the above, I find that the status of the claimed route was brought into question by the erection of the fence in September 2019. This finding means the relevant period for the purpose of Section 31 of the 1980 Act should be taken to be 1999-2019 (‘the relevant period’). Once a way has been brought into question it is not necessary to consider any subsequent action taken to challenge use or question the status of the route.

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

1. Twenty-four user evidence forms (‘UEFs’) were submitted in support of use of the claimed route on foot and eight of the users have also cycled along the route. It is not asserted that the evidence of use has given rise to the dedication of anything more than a footpath and there has been a ‘*no cycling*’ sign in place at point A throughout the relevant period. Eight people gave evidence at the inquiry in support of use of the claimed route, including one person who had not previously supplied a UEF or written statement. The objectors accept that the route has been used by the public prior to the erection of the fence.
2. Despite the claimed route not being a recorded public right of way, it is clear from the user evidence and photographs provided that a public footpath sign was in place at around point E during the relevant period. However, it cannot be determined when and by whom this sign was first erected. Irrespective of the validity of this sign, it is likely that it would have served to encourage members of the public to use the route. There were additionally stickers on a lamppost which stated, ‘*no fouling*’ and ‘*keep dogs on a lead*’ which may have led people to believe the route was public in nature.
3. The objectors have pointed to the number of people who have completed a UEF, and the numbers in attendance at the inquiry in comparison to the population of the village of Yaxley. Reference is also made to six of the users being members of two families. However, there is evidence of fairly widespread use of the claimed route by local residents in order to walk to or from various locations in the village as well as visitors to properties in the area. The evidence is supportive of the route being used on a regular basis throughout the relevant period. This use is acknowledged by the owner of the care home and other objectors. There is no suggestion that the use was interrupted or was not undertaken as of right.
4. Having regard to the written submissions and oral evidence presented at the inquiry, I find on balance that the evidence is sufficient to raise a presumption of the dedication of a public footpath over the claimed route.

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

1. In order for this to be demonstrated there needs to have been some form of overt action taken during the relevant period which was sufficient to make the public aware that the landowner had no intention of dedicating a public right of way.
2. The land crossed by the claimed route was owned during the relevant period by Mr and Mrs Skoyles and then Oak House Homecare Ltd. Mr Skoyles is a director of this company. The site was previously owned by the Council and the land crossed by the D-E section was sold to Mr and Mrs Terrell following the end of the relevant period. Internal correspondence from 1980 indicates that the Council proposed to take action to prevent the claimed routefrom being dedicated as a public right of way. However, this correspondence was not publicly disclosed and sits well outside of the relevant period. It is also apparent that no such action was taken by the Council.
3. In terms of the more recent correspondence in which the Council informed Mr Skoyles that the route is not a recorded public right of way, this was not communicated at the time to users of the route. In contrast, the approved plans in relation to planning permission granted on 23 February 2018 for four dwellings on the care home site label a section of the route as a ‘*public footpath*’. Although, this plan predates the emails from the Council stating that the route was not a recorded public right of way.
4. Overall, there is no evidence of any action being taken during the relevant period which was sufficient to demonstrate to the public that there was a lack of intention to dedicate a footpath.

***Estoppel***

1. As outlined by the Council, in general terms estoppel is where a party (A) has caused another party (B)to act on the basis of assurances or actions, A isprevented from going back on the words or conductwhich led B to act.This matter relates to previous correspondence from the Council regarding the status of the claimed route. In terms of the allegation that the Council’s conduct amounts to maladministration, this is not a matter for me to determine.
2. A search made on behalf of Mr Skoyles elicited a response from the Council on 9 April 1999 that there were no public rights of way recorded on the definitive map across the land in question. This position meant that there was no need to include any reference to a right of way when the land was sold. The objectors also draw attention to the internal correspondence from 1980 not being disclosed at the time of the sale of the land.
3. Further enquiries were made by Mr Skoyles in July 2018. In response, an email was sent on the morning of 31 July 2018 by the Council’s Highway Development Manager which outlined that, based on comments from the rights of way team, the path crossing the site is not recorded as a highway or public right of way. It was therefore assumed that it was private property and there were no public rights of access for which a closure would be needed. A second email sent later on the same day from a public rights of way officer again outlined that the path was not a public footpath or highway and there was no need for a closure.
4. In essence, the land was described as private land with no public rights of access across it. Irrespective of the general disclaimer that appears at the end of the emails, it is clear that reliance was placed on the correspondence both in terms of the subsequent action undertaken by Mr Skoyles and the purchase of the land crossed by the D-E section by Mr and Mrs Terrell.
5. The Council acknowledges that the statements made in the emails could have been clearer given the potential for unrecorded public rights to have existed. However, the Council considers that it cannot be estopped from carrying out its statutory duties. In support, reference is made to paragraph 49 of the judgment in the case of *Hampshire County Council v Gillingham 2000* which states ‘*where a statute, like section 130 of the Highways Act 1980, enacted for the benefit of a section of the public imposes a duty of a positive kind, the person charged with the performance of that duty cannot be estopped from exercising his statutory powers’*…
6. Although the responses could have been clarified further in some way, any statement that there is no recorded public right of way across the land can be viewed as being technically correct as the route is not presently shown on the definitive map. In terms of the statutory duties highlighted by the Council, I consider the provisions of the 1981 Act to be more relevant. The submission of an application and evidence triggered the requirement for the Council to consider the status of the route in accordance with paragraph 3 of Schedule 14 of the 1981 Act.
7. The Order is made under Section 53(2)(b) of the 1981 Act which imposes a duty on surveying authorities, such as the Council, to keep the definitive map and statement under continuous review and make modifications to the map and statement in light of the occurrence of particular events. One such event is the discovery of evidence that a right of way subsists (Section 53(3)(c)(i) of the Act). The submission of objections means the determination of the Order now passes to the Secretary of State in accordance with Schedule 15 of the 1981 Act. In light of these statutory duties, I do not find that I am estopped from confirming the Order.

***Width***

1. No issue is raised in respect of the 1.8 metres width specified for the A-D section of the claimed route. However, the objectors question the 3.5 metres width included in the Order for the remainder of the route (D-E). The D-E section is enclosed by property boundaries and comprised of a 1.8 metres wide tarmac path with 0.3 metre of verge adjacent to the hedge of 41 Windsor Road and a 1.4 metre verge next to the fence of 43 Windsor Road.
2. The D-E section was originally a private track that only led to garages. It is evident that it started to be used by the public as a through route following the construction of the care home. Therefore, the boundaries of this track were set out by reference to a private track rather than a public right of way. In such circumstances, it is necessary to have regard to the evidence of use to determine the width dedicated to the public. However, I am not satisfied that the cutting of the grass verges by Yaxley Parish Council has any significant relevance to the determination of the width of the route.
3. There are some variations in the details specified in the UEFs for the width of the claimed route. Nonetheless, a number of the forms refer to use of the tarmac path. This was endorsed by witnesses who spoke at the inquiry who stated that they and their companions walked on the tarmac path. In my view, the evidence points more to the dedicated width of the D-E section corresponding to the 1.8 metres wide tarmac path and the Order should be modified accordingly.

**Other Matters**

1. The objectors have referred to a number of other issues in the event that the Order is confirmed, these include safety and privacy concerns, anti-social behaviour, theimpact on the use of the land, the existence of alternative routes and the future maintenance of the route. However, as outlined at the inquiry, these matters are not relevant to my decision which is concerned with determining whether a public footpath has been shown to subsist. The subsequent change in the nature of the claimed route following the end of the relevant period does not extinguish any public rights that have been dedicated over the 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 with modifications.

**Formal Decision**

1. I confirm the Order subject to the following modifications:
* Delete all references in Parts I and II of the Order Schedule to ‘*3.5 metres*’ and insert ‘*1.8 metres’*.

Mark Yates

**Inspector**

**APPEARANCES**

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| **For the Council**  |
| Mrs S. RumfittShe called:Mr T. Ruszala Mrs J. TebbMrs P. HounshamMr S. WoodsMr R. AllenMr J. RowellMr A. Burgess**Other Supporters** Mr P. RobertsonMs F. PresgraveMr P. North**Objectors** Mr R. TerrellHe called:Mr E. Terrell Mrs C. TerrellMr M. Skoyles  | Consultant representing the Council Definitive Map Officer Solicitor for the Objectors LandownerLandowner  |
| **DOCUMENTS TENDERED AT THE INQUIRY** |
| 1. Opening statement on behalf of the Council
2. Closing submissions for the Council

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