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| **Order Decision** |
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| **by Charlotte Ditchburn BSc (Honours) MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 08 February 2024** |

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| **Order Ref: ROW/3319112** |
| * This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as Staffordshire County Council (Public Footpath in Horninglow and Eton Parish from Footpath no.11 Outwoods Parish to Footpath no.3 Shobnall Parish) Modification Order 2022. |
| * The Order is dated 20 September 2022 and proposes to modify the Definitive Map and Statement for the area by adding the public footpath as shown in the Order plan and described in the Order Schedule. |
| * There was one objection outstanding when Staffordshire County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation. |
| **Summary of Decision: The Order is not confirmed.** |
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Procedural Matters

1. This case concerns the addition of a Footpath from Outwoods Footpath no.11 to Shobnall Footpath no.3 in Horninglow and Eaton Parish.
2. There was one objection outstanding when Staffordshire County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation. This objection was irrelevant as it was solely based on concerns regarding health and safety.
3. The Order has been determined on the papers submitted. I have not visited the site, but I am satisfied I can make my decision without the need to do so.
4. Whilst Staffordshire County Council (the Council) was satisfied that the evidence was sufficient to justify an order being made, it is taking a neutral stance as regards its confirmation.

The Main Issues

1. The Order has been made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 in consequence of the occurrence of an event specified in Section 53(3)(c)(i).
2. Whilst it suffices under section 53(3)(c)(i) for a public right of way to be *reasonably alleged* to subsist, the standard of proof is higher for the Order to be confirmed. At this stage, evidence is required on the balance of probabilities that a right of way subsists.

Reasons

1. No documentary evidence supporting the confirmation of the Order was submitted.
2. Accordingly, the determination of the Order depends entirely on the evidence of public use of the claimed route that is available and whether this indicates that a public footpath can be presumed to have been dedicated in accordance with the provisions of the Highways Act 1980 Act (statutory dedication) or inferred to have been dedicated at common law.
3. The Order is based on user evidence which, in the applicant’s view, indicates that there has been public enjoyment of the route, as of right, without interruption for a full period of 20 years under Section 31 of the Highways Act 1980.

***Statutory Dedication***

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

1. The Council considers 27 February 1996 to be the date of challenge for pedestrian rights along the Order route. The Council states that the basis for this is that in the absence of any other major or identifiable challenge to the public’s use of the claimed route the date of the application will be used as the challenge date, accordingly, the requisite 20 year period of use was calculated retrospectively from this date. Consequently, the years 1976 to 1996 are the relevant 20 year period where the majority of users provide evidence of use. I have found no good reason to disagree in this regard.

*Evidence of use by the public*

1. Five user evidence forms (UEFs) were submitted in support of the application. Although not a substantial quantity, they show use of the Order route on foot until 1995, dating as far back as 1929. Two of the UEFs fail to state the exact years of use only attesting to 8 years and 24 years use, without stated dates of use, these UEFs show potential use within the relevant period but there must be doubt regarding when they used the route.
2. Of these remaining three users they do not show evidence of use of the route for the full 20 year relevant period, they show use of varying degrees until 1995, therefore only covering 19 years of the relevant period. Claimed use has not been disputed but, the evidence of use is not sufficient to raise a presumption of dedication for the full relevant period.

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

1. The remaining part of the Section 31 test considers where the landowner has taken any action to rebut the statutory presumption of dedication. Often this is evidenced by way of notices or obstructions to prevent people accessing or using the path. In this case there is nothing to suggest any owner has taken such steps.
2. Overall, I find no evidence of any action, taken by the landowner, to demonstrate that there was a lack of intention to dedicate the Order route.

*Conclusions on the Section 31 tests*

1. I have concluded that there were no actions taken by the landowner during that relevant period of 1976 to 1996 which could be considered sufficient to convey to the public that there was intention to dedicate a public right of way over the Order route. I have further concluded that there is not sufficient evidence of use as of right and without interruption to give rise to a presumption of dedication.

***Common Law***

1. An inference that a way has been dedicated for public use may be drawn at common law where the actions of landowners (or lack of action) indicate that they intended a way to be dedicated as a highway and where the public have accepted it.
2. In this case, there is some evidence of public use from 1929 onwards and no substantive actions by landowners that would indicate a lack of intention to dedicate it as a public right of way before 1995. However, given my findings that the use was insufficient during the relevant 20 year period and that use was limited outside of this period, this does not necessarily imply dedication as the landowner may not have known about its use.
3. In early 1996 the landowner stated that they believed the route to be public and they took no steps to prevent use over the land which had been in their possession for 19 years. The admission or belief that the path was public could be said to acknowledge the dedication of the route as a public footpath.
4. In 2022 the landowner stated with regards to the Order ‘this is the third time in forty odd years we have owned the land, that this has been proposed’ and that they had ‘no problems with this happening’ which could be said to be showing evidence of an intention to dedicate. They go on to say ‘providing the County Council takes on all the Health and Safety issues this involves’. I understand the point made but, the law is quite clear that matters such as health and safety of routes, are not considerations before me in terms of a Definitive Map Modification.
5. Although, the landowner’s indifference could be seen as intention to dedicate the route as a highway, the public cannot be said to have accepted it as the quantity of users and frequency of that use is not sufficient.
6. I do not therefore believe that dedication of the Order route can be inferred at common law.

Conclusions

1. Having regard to these and all other matters raised in the written representations I conclude that the Order should not be confirmed.

Formal Decision

1. I do not confirm the Order.

Charlotte Ditchburn

INSPECTOR