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| **Order Decision** |
| Site visit made on 8 July 2024 |
| **by J Ingram LLB (Hons) MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 17 July 2024** |

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| **Order Ref: ROW/3322109** |
| * This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Oxfordshire County Council Wheatley Footpath No.23 Modification Order 2022.
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| * The Order is dated 14 November 2022 and proposes to modify the Definitive Map and Statement for the area by adding a footpath as shown in the Order plan and described in the Order Schedule.
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| * There was one objection outstanding when Oxfordshire County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.
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| **Summary of Decision: The Order is confirmed.** |
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Preliminary Matters

1. This case concerns the proposed addition of a footpath to the Definitive Map and Statement (DMS). The route commences from its junction with footpath no.1 and follows a south easterly direction, it then continues in a southerly direction to join Windmill Lane. Oxfordshire County Council are the Order making authority (OMA) and are supporting the Order.
2. I made an unaccompanied site visit on 8 July 2024, when I was able to view the full length of the Order route.
3. 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.
4. The objection submitted does raise matters that I cannot consider in reaching my decision, I refer to them below. The objector has not made any further submissions since the statutory objection to the OMA.

The Main Issues

1. The OMA made the Order under Section 53(2) of the 1981 Act on the basis of an event specified in sub-section 53(3)(b). This relates to the situation where there has been the expiration, in relation to any way in the area to which the map relates, of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path.
2. The evidence is composed of claimed use by the public as a footpath. Accordingly, I need to determine whether presumed dedication has arisen under the tests set out in section 31 of the Highways Act 1980 (the 1980 Act). 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. Some documentary evidence is also available to me. Section 32 of the 1980 Act requires that I take into consideration any map, plan or history of the locality, or other relevant document, which is tendered in evidence, giving it such weight as is appropriate, before determining whether or not a way has been dedicated as a highway. My conclusion on the evidence as regards the existence or otherwise of the rights claimed is reached on the balance of probability.

Reasons

***Documentary evidence***

1. A route is shown on the Finance Act 1910 map, this is on an Ordnance Survey base map which was revised in 1897. The route corresponds to the Order route between points A and B; and also for a short section to the north of point C, where it is shown between a solid line and a dashed line. The remainder of the route between points B and C is shown on a different alignment to the Order route. The route is within hereditament number 645. The valuation ledger does not record any deduction for public rights of way. The form 37 does however record a £5 deduction for public rights of way or user, although part of the recorded footpath no.1 is also within this hereditament and is marked as FP on the base map. I consider that it is most likely that the deduction on the form 37 relates to this footpath rather than the Order route.
2. Three Ordnance Survey map extracts dated 1897, 1937 and 1974 have been provided. The 1897 map referred to above and the 1937 map both show a route, however, the alignment between points B and C differs from the claimed path. The 1974 map shows the physical existence of the full length of the Order route. It is shown as a defined through route by double dashed lines. For part of the route the dashed lines have solid lines either side, indicating a track between boundaries.
3. The documentary evidence in this case is limited. However, it does show that part of the Order route has been in existence since at least 1897, and the full length since 1974. I consider the Ordnance Survey maps are good evidence of the physical existence of a route on the ground, although limited weight can be given with regard to the status of the route, particularly as no annotation is given on any of the maps.

***User evidence***

*Date of bringing into question*

1. A bringing into question arises when at least some of the users are made aware that their right to use a way is being questioned. In June 2020 a letter was sent to the OMA stating that the path had been blocked by an adjacent landowner, a number of large leylandii trunks were put across the path. I consider the ‘bringing into question’ to be the date of this blockage, at least some of the users would have been made aware that their use was being inhibited. In addition, it was this action that prompted the application for the Order route to be recorded in August 2020. It follows that I will examine use during the 20-year period prior to this, that is 2000 - 2020.

*Whether use was as of right and without interruption*

1. Evidence is provided in 51 user evidence forms claiming use over a period from 1936 to 2020. All the individuals claim use on foot, one person also claims use on a pedal cycle. Two users mention that the route was previously passable by agricultural vehicles. The evidence of 6 users is discounted, 2 as their use ceased prior to the relevant period, and 4 as their use is considered to be in a private capacity.
2. Of the remaining 45 users the vast majority indicated they were not challenged or interrupted in their use of the Order route. A few users mention the blockage referred to above. In addition, a few users refer to loose dogs on the southern end of the route in around 2013 - 2014. I consider that this may have hindered some people in their use of the route, it would not however amount to an interruption in their use.
3. Only one individual stated that their use was with permission, this was given by a previous adjacent owner. However, as this individual did not own the land or have a private right over it, it is questionable whether they had the authority to give permission. The remaining 44 users all state they did not have permission to use the Order route.
4. Of the 45 users, there are 28 individuals who have used the route on foot for the full 20-year period. When the combined periods of use of several individuals are taken into account, this amounts to an additional 5 users with 20 years use during the relevant period. Therefore, in total there are 33 users overall. Frequency of use varied from daily, to weekly or monthly. However, the majority used it regularly and at least monthly. Use of the route was for recreation, dog walking or visiting friends.
5. The claimed use has not been disputed. In my view the evidence of use is sufficient to raise a presumption of dedication. However, this presumption can be rebutted if there is sufficient evidence on behalf of the landowners to demonstrate they had no intention to dedicate the way as a footpath.

*Whether there is sufficient evidence of a lack of intention to dedicate by the landowners*

1. The majority of the Order route is registered to one landowner. There is one section at the northern end, from point A to approximately halfway to point B, that is unregistered at HM Land Registry. The adjoining landowners may have some ownership rights to the middle of the route for this section.
2. No rebuttal evidence has been submitted demonstrating that the landowner or adjacent landowners have made any overt actions at any time to deter or prevent the public from using the Order route as a public footpath.
3. One user mentions that an adjacent landowner, near to point A, shouted ‘this is not a public right of way’. However, this would have been around the time the route was brought into question.
4. Additionally, some users refer to notices that were put up on a fence near to point A. One stated ‘private property keep out’, another referred to CCTV, and one stated ‘dogs to be kept on a lead’. I consider that these notices most likely relate to the adjacent landowner’s land and do not concern the Order route, they would not therefore amount to evidence of a lack of intention to dedicate.
5. One user mentions a locked gate at the Windmill Lane end of the route, near to point C, in 2007. I did see an old metal gate at this location on my site visit, this was left in an open position and was overgrown with foliage. However, it did not appear wide enough to be able to block the full width of the track. No other user has mentioned a locked gate. As the frequency of use was high during the relevant period, if this was an attempt to deter use, I would expect more users would have mentioned it. Therefore, I consider the balance of evidence to be that this would not amount to a lack of intention to dedicate.
6. The registered landowner for the majority of the Order route has not provided any evidence despite being in correspondence with the OMA. The evidence of one other adjacent landowner, who has owned the land throughout the relevant 20-year period, states that they believe the route has been used as a public right of way. Therefore, I consider that the evidence shows that the use of the route on foot has not been challenged.

*The character of the way*

1. It is clear that the route has some history, the full length appearing as a through route on the 1974 Ordnance Survey map. It has been in regular use by the public, which has not been challenged. I conclude that in this case the Order route is a way the character and use of which can give rise to a presumption of dedication.

**Other Matters**

1. The objector raises a number of matters, these all appear to relate to the section of the route near to point A on the Order plan. The concerns include the effect on the objector’s privacy, previous incidents of dog attacks, damage caused to the objector’s property and livestock, obstructions and inadequate signage on the current public footpath, issues of litter and dog waste. Due to walkers not having control of their dogs on a lead, and the high risk of further dog attacks, the objector states this causes them distress and affects their health.
2. Whilst I understand and sympathise with the points raised by the objector, I am unable to take such matters into account under the 1981 Act. I must restrict my findings to whether the tests set out at paragraphs 5 and 6 have been met. Accordingly, whether or not the claimed route exists as a public right of way and should be shown in the DMS and the records amended as necessary.

Conclusions

1. For the reasons given above, I conclude on the balance of probabilities, that the evidence is sufficient to show that the route between footpath no.1 and Windmill Lane is a public footpath.
2. Having regard to these and all other matters raised I conclude that the Order should be confirmed.

Formal Decision

1. I confirm the Order.

J Ingram

INSPECTOR

