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| **Order Decision** |
| Site visit made on 16 July 2024 |
| **by Charlotte Ditchburn BSc (Hons) MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 15 August 2024** |

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| **Order Ref: ROW/3318181** |
| * This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as Footpath No 35.5/23 South Duffield Road to Sand Lane, Barlby with Osgodby, Selby Modification Order 2012. |
| * The Order is dated 30 April 2012 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 1 objection outstanding when North Yorkshire County Council (now North Yorkshire Council) submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation. |
| **Summary of Decision: The Order is confirmed subject to the modifications set out below in the Formal Decision.** |
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Procedural Matters

1. I made an unaccompanied site visit on 16 July 2024 when I was able to view the whole of the Order route. The Order route itself was not passable on this day due to overgrown vegetation.
2. There was one objection outstanding when North Yorkshire Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation. The Order Making Authority (OMA) is supporting the Order.
3. The OMA has requested a minor modification to the wording of the Order, to reflect the correct Section of legislation. There would be no need for this modification to be advertised further.
4. There was one letter of support for the application from the Ramblers Association dated 16 March 2011.

The Main Issues

1. The Order has been made under Section 53(3)(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

***Background***

1. The Order relates to an alleged Public Footpath with a length of approximately 382 metres that runs south from South Duffield Road to Sand Lane.
2. At the time of my visit, the route was clearly visible on the ground from Point C to D. At Points A and B there were hedges and between Points B and C there was a lot of surface vegetation.

***Documentary evidence***

*Ordnance Survey (OS) Maps*

1. OS maps of various scales between 1889 and 1952 show a route approximating to the alignment of the order route, showing the physical existence of a route from Point A to Point D.
2. OS maps have long carried a disclaimer as regards to the routes they show, so do not provide evidence of status but are useful evidence of the physical existence and alignment of the routes recorded at the time. Nevertheless, the inclusion of the route on a series of OS maps, as here, can be useful evidence in helping to determine status when considered together with other evidence. I conclude that alone, the OS maps are of limited value as regards status but show a route capable of use on foot.

*Aerial photographs*

1. An aerial photograph from 1948 shows a worn path from D-C and shows evidence of gaps corresponding to Points A and B but does not provide a clear picture of the boundary at Point C. The aerial photograph helps to demonstrate the existence of a path, but not its status. Little weight can therefore be attached to the aerial photograph beyond it verifying that the line of the order route existed at that time.

***Statutory Dedication***

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

1. The OMA considered 2004 to be the date of challenge for pedestrian rights along the order route. The OMA states that the basis for this is that in the absence of any other major identifiable challenge to the public’s use of the claimed route, the route was obstructed by barbed wire around a stile in 2004. Accordingly, the requisite 20 year period of use was calculated retrospectively from this date. Consequently, the years 1984 to 2004 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.

*Whether the claimed footpath was used by the public as of right and without interruption for a period of not less than 20 years ending on the date the public’s right to do so was brought into question*

1. Nineteen individuals completed user evidence forms (UEFs) as part of applications made in 1977 and 2007. The evidence within the 1977 UEFs does not relate to use during the relevant period. The evidence provided within the 2007 UEFs is of recreational use of the route on foot. One UEF mentions horse riders using the route but does not provide any further details regarding numbers or frequency. The earliest claimed use was from 1922, but several users claim to have used the route from the 1950s. Most claimed to have used the route up to the date of the application. The frequency of use varied but a significant number of users claimed regular use being 10 times a year or more during the relevant period.
2. One UEF mentions the route being marked with a public footpath sign at the A63 end of the route, this may have served to encourage people to use the route. None of the UEFs mention any signage deterring use but four users describe barbed wire as an obstruction.
3. One UEF was completed by one of the farmers who used the route to access their fields to the east of the path in addition to using the whole route recreationally, therefore this use was not ‘as of right’ therefore this evidence carries little evidential weight.
4. Two of the UEFs fail to state the exact years of use only attesting to 30 years and 10 years, without stated dates of use, these UEFs show potential use within the relevant period but there must be some doubt regarding when they used the route.
5. Eight of the UEFs state to have used a route to the east side of the boundary between Points B and C as an alternative route due to natural standing water. Whilst this shows users deviating from the claimed route, taking the evidence as a whole, I am satisfied that the users were using broadly the same alignment and not wandering at will.
6. A number of the UEFs refer to kissing gates at Point A and/or Point B, described as being overgrown with thorns in 1977. There is no sign of the kissing gates on the route at present but remnants of the structure at Point A is shown on Google Street View images dated February 2009, April 2009 and June 2011. In a letter dated 11 November 2009 an Osgodby resident described the history of Osgodby Hall, speculating that the kissing gates were installed under the ownership of Riley Briggs, who owned the Estate from 1861-1913. Parkland was often enclosed with iron fencing in this period and iron kissing gates were a typical method of providing stock-proof pedestrian access where required and the ornate post and pedestrian gate seen in the 2009 and 2011 images are typical of such structures seen on other estates.
7. One UEF describes the iron kissing gate being replaced by a stile, with seven of the UEFs mentioning barbed wire. A number of users refer to barbed wire in the vicinity of the kissing gates and stiles, but the fences do not appear to have prevented use, although one witness states that they stopped using the route in 2004 when the stile was wrapped with barbed wire.

*The evidence and actions of landowners*

1. The remaining part of the Section 31 test considers whether 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.
2. The landowner states to have routinely challenged anyone using the order route but does not provide any specific dates of this. None of the UEFs mention any challenge being made by the landowner.
3. The landowner provided a cropping history for Chapel Field, commencing in 1994 and the field was in arable production during 1994, set-aside in 1995, when an old, barbed wire fence was renewed, it was then used for grazing between 1996 and 2002. The landowner described “Keep Out/Cattle Danger” signs erected when cattle were grazing on the route. None of the UEFs mention any reference to signs.
4. The landowner submits they provided a makeshift stile for their stockman to access the field, this is corroborated by the UEFs mentioning a stile in the same location. If this structure was not suitably signed to advise the public that they had no right to use it, I find it to be quite probable that they did so.
5. In this case, although there is conflicting evidence there is sufficient user evidence during the relevant 20 year period, the evidence of public use goes back to 1922, and there is not sufficient evidence of actions by landowners that would indicate a lack of intention to dedicate it as a public right of way before 2004.

***Conclusions regarding Statutory Dedication***

1. Overall, it is my view that there is not sufficient evidence of actions by landowners indicating their lack of intention to dedicate the Order route as a public footpath in the period 1984 to 2004 to rebut the presumption that it had been dedicated.

***Common Law***

1. As a claim under statute succeeds, I do not need to give consideration to the evidence of common law i.e. where an inference that a way has been dedicated for public use where the actions of the landowners (or lack of action) indicate that they intended a way to be dedicated as a highway and where the public have accepted it.

Conclusions

1. Having regard to these and all other matters raised in the written representations I conclude that the Order should be confirmed.

Formal Decision

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

* Replace the “a” in line one of the description of the Order with “b”.

Charlotte Ditchburn

INSPECTOR

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