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

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| **Order Ref: ROW/3327826** |
| * This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as The Essex County Council Definitive Map Modification No. 695 (Footpath 32 Moreton, Epping Forest District) Order 2022. |
| * The Order is dated 18 August 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 Essex County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation. |
| **Summary of Decision: The Order is confirmed.** |
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Procedural Matters

1. This case concerns the addition of a Footpath from Church Road to Moreton Footpath 3 in Moreton Parish.
2. The objection was solely based on concerns regarding safeguarding and health and safety. Whilst I understand these concerns, the legal basis on which I must determine this case, which is set out below, does not encompass consideration of such matters. It follows that I have not taken these into account in reaching my decision.

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

***Documentary evidence***

1. Aerial photographs of the area from 1960 to 2010 were held by the Council along with aerial photographs submitted by the applicant from 1999 to 2018, some of which pertain to the relevant 20 year period. The images from 1960 to 1999 do not show the existence of the order route. The images between 2004 and 2018 provide the strongest support for the existence of a walked path over the application route, although at times the route is not fully clear due to vegetation. Whilst the aerial photographs help to demonstrate the existence of a path from 2004 onwards they do not give evidence about its status. Little weight can therefore be attached to the aerial photographs beyond them verifying that the line of the order route existed at that time.
2. Other than aerial photographs there was no other documentary evidence submitted with the original application. The Council carried out a thorough review of the documentary evidence and it is not necessary to repeat all of that information again here. What is germane is that the order route is not shown on any map including: Champan and Andre Map 1777, OS maps of various scales between 1870 and 1923, Moreton Tithe Map 1839, Finance Act Map 1910, County Surveyors Book of Maps 1932, Parish Survey Map 1951-2. The order route is not shown on the 1953 Definitive Map nor on the subsequent reviews in 1963, 1971 and 2002. There is also no record of any objections being received to the route’s omission from these maps.
3. The documentary evidence does not therefore provide any material support for the existence of a public footpath along the entirety of the claimed route before nor during the relevant 20 year period.

***Statutory Dedication***

*When the right to use the way was brought into question*

1. The Council considered 2019 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 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 1999 to 2019 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. Some 32 user evidence forms (UEFs) were submitted, covering evidence from 35 witnesses as three married couples completed a single form between them. The UEFs cover additional routes to the order route, a total of ten witnesses state that they have used this variation of the application route over the whole of the twenty year period with a total of twenty seven witnesses using it for part of the period. The evidence provided is of recreational use of the route. The earliest claimed use was from 1979, but the evidence of use is predominantly from the mid 1990’s.
2. Whilst most use described is on foot, there is also claimed use by one user on bicycle. Whilst the rider was not challenged, with only one UEF attesting to use of higher rights, I would not regard this as sufficient to reasonably allege the existence of public rights higher than on foot.
3. I am satisfied that there is sufficient evidence of uninterrupted use by the public as of right to give rise to a presumption of dedication.

*The evidence and action 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 claims that public use of the route would have been habitually subject to interruption by parked cars which would conflict with vehicular use of the area as a car park serving both the school and the public house. None of the users mention any such difficulties on their evidence forms.
3. Gates and chains were recently erected on the route, the landowner submitted undated photographs of these, the google earth image from November 2020 shows no trace of either feature, therefore their installation does not affect the relevant 20 year period.
4. Signage is shown in photographs adjacent to the order route, the photographs of the signage do not show the specific wording. The applicant and objector were not able to provide details as to the exact wording of the signage. Of the three signs, one indicates parents on the school run should only use the upper carpark, one shows a standard public house car park sign not referring to any public rights of way and one sign shows a picture of a CCTV camera. The CCTV sign is the most likely of the three to have been intended as a deterrent to public pedestrian use of the route, although it may have been intended as a warning to dissuade criminal activity. The sign is visible on the November 2020 view, but not on earlier ones, so was erected between 2014 and 2020. While the Parish Council maintain that it was present before the application was submitted, they are unable to provide a specific date. It is plausible that it was erected contemporaneously to the closure of the “Nags Head” which prompted the submission of the application. In the absence of further detail, this evidence is insufficient to be treated either as lack of intention to dedicate, or an earlier “bringing into question” that might define a slightly earlier twenty year period. I do not consider any of the three signs as evidence of a lack of intention to dedicate the order route within the relevant 20 year period.
5. 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 1999 to 2019 to rebut the presumption that it had been dedicated.

***Conclusions regarding Statutory Dedication***

1. In view of my findings above I am satisfied that a public right of way on foot subsists over the order route.

***Common Law***

1. 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. In this case a claim under statute succeeds, therefore, I do not need to give consideration to the evidence of common law.

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.

Charlotte Ditchburn

INSPECTOR

