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| **Order Decision** |
| Site Visit made on 6 January 2025 |
| **by G D Jones BSc(Hons) DipTP DMS MA MRTPI** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 11 February 2025** |

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| **Order Ref: ROW/3334538** |
| * This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981. It is known as the Devon County Council (Footpath No. 7, Colyford) Definitive Map Modification Order 2023. |
| * The Order is dated 27 July 2023 and proposes to modify the definitive map and statement for the area by adding Footpath No. 7, Colyford between points A, B and C as shown on the Order map and described in the Order schedule. |
| * There was one objection when Devon County Council submitted the Order for confirmation to the Secretary of State for Environment, Food & Rural Affairs. |
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**Procedural Matters**

1. Mr Pady (the applicant) applied to Devon County Council (the Council) in June 2020 for a Definitive Map Modification Order to add a footpath to the Definitive Map and Statement (DMS). The footpath would connect two unclassified roads, running through a valley, crossing a brook. Following research and the collection of evidence, the Council resolved to refuse the application in June 2022. The applicant appealed against that decision. The appeal was allowed in June 2023 and the Council directed to make the Order (the Appeal Decision).
2. The Order was made by the Council on 27 July 2023 to add a new footpath to the DMS consistent with the direction, running from point A to C via point B as shown on the Order map. An objection was submitted by the current landowner in respect to the made Order. It appears that not all of the matters now raised by the objector were before the Council when it considered the application nor before the Inspector when she determined the appeal and made her direction.

**The Main Issue**

1. As the Order seeks to add a public right of way to the DMS, Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 must be considered to establish whether the evidence, as a whole, supports the addition. Accordingly, the main issue relates to whether or not, on the balance of probabilities, the evidence shows that a public footpath subsists over the Order route.

Reasons

1. The evidence comprises a combination of claimed use of the route by local people and documentary evidence. It includes additional information that has come forward since the Appeal Decision and associated direction were made.

*User Evidence and Lack of Intention to Dedicate*

1. I note that the previous Inspector in her Appeal Decision concluded that the relevant 20-year period for when the right to use the Order route was brought into question is 1997 to 2017. From the information before me I have found no reason to disagree.
2. Although the objector’s submissions include reference to the use of the claimed footpath, the wider user evidence appears to be unchanged from the time of the Appeal Decision.
3. The user evidence includes:

* The 30 user evidence forms (UEFs) that accompanied the original application or were submitted during the informal consultation process and one from the 1970’s Definitive Map review. The UEFs show use of the route from 1963 through to 2022, with some five people using the route across the duration of the relevant period; and
* A number of emails and letters that were received from people who claimed to have used the route but did not submit UEFs.

1. Frequency of use varied, with four users stating that they used the path daily to four times per week. Four users claimed weekly use and six users claim monthly use. Ten users claimed to use it every few months, with two users claiming to have used the route once a year. Claimed use was on foot to access nearby paddocks, to use a fishing pond, to avoid walking along roads and as a short cut to Seaton.
2. The previous Inspector concluded, based on the evidence before her, that this use was without interruption or challenge with no notices or obstructions encountered prior to 2017. I have come to my own, albeit similar, conclusions as summarised at the end of this section having considered all of the evidence before me afresh.
3. At the time the Appeal Decision was made the objector maintained that the route has been difficult to use or impassible due to waterlogging and obstruction by crops such that the claimed public use could not have occurred. In any event, he also asserted that any use of the route had been permissive. Additional information has been provided subsequently to support the objector’s case. I deal with these in turn below.
4. The objector says that he has lived in the area for 54 years and his parents before him, and that in all that time the path *was known not to have been a footpath*. There is little before me to substantiate this claim. Indeed, much of the objector’s wider evidence appears to contradict this assertion, or at least sit awkwardly with it. For instance, in terms of his submissions that the footpath has become closed, been rerouted and / or was a permissive route.
5. The objector maintains that a neighbour has advised him that the path had been closed since she took up occupation of her property. However, there is no evidence to help substantiate this claim, nor has she made any submissions of her own to this effect. Similar unsubstantiated claims are made regarding the former landowner closing the footpath due to sheep worrying, as well as altering its alignment. Accordingly, these submissions carry limited weight.
6. Indeed, the objector refers to this lady’s husband having completed one of the UEFs referred to above. This appears to be the case. The UEF in question indicates that the husband used the route as a footpath at least four times per week from 2009 up to when the Form was completed in April 2020, thus providing some support for the case in favour of confirming the Order. Indeed, I note in particular that his UEF states that he never obtained permission to use the route and was not stopped or turned back when using the route during the relevant period.
7. The objector also states that the former landowner, who also happens to be the applicant, allowed people to walk over all of his land and not just the Order route. He also raises a query over use that might indicate interrupted use of the path. However, the point is not substantiated by any evidence.
8. Additionally, the objector states that the path was in a different location prior to 1990. However, this predates the relevant 20 year period such that it is largely irrelevant. He also queries the route of the path during the relevant period. Ordnance Survey (OS) maps included in the objector’s submissions show a footpath coinciding with the Order Route from Point C to a little to the north of Point B, but then diverting from the Order route to the east around a pond, ultimately returning to Point A. However, both maps appear to predate the relevant 20 year period. In any case, while there may have been other routes used, including during the relevant period, this does little, if anything, to call into question the wider user evidence regarding the Order route itself.
9. The objector also refers to inconsistencies in the applicant’s evidence and queries his intentions regarding the potential dedication of the path prior to the sale of the land, from applicant to objector, in 2014. In this regard, reference is made to the applicant not signing a ‘Creation Order’. The objector maintains that this indicates that the intention of the former landowner and applicant was for the path not to become a public right of way at that time. There is also a plan, ‘Plan 3’, which the objector says was annotated by the applicant. The Plan indicates a ‘permissive path’, which appears to be consistent with the Order route. There is also a document, which seems to relate to the land sale, that refers to ‘Plan 3’. It states, amongst other things, that *Plan 3 shows the permissive footpath over Waterleys. The path is well used. Devon County Council are aware of the permissive nature of the path and there is currently no written material available concerning it*.
10. Furthermore, there is a letter dated 23 November 2017, from the Clerk to Colyton Parish Council to the objector that refers to *the future of the permissive footpath.* I also note that the objector is listed as a Parish Councillor on the letter, although there is nothing to indicate that he was or was not aware of the contents of the letter. A further letter from the Parish Council’s Clerk, dated 13 November 2019, to the objector also refers to the reinstatement of *the Permissive Path* that crosses theland. The objector also alludes to waymarkers and signs referring to the Order route as a permissive path.
11. In contrast to the assertions of the objector, none of the UEFs mention that the route had been obstructed. Several do, though, refer to the route as a ‘permissive path’ and that signs relating to this had been positioned on either end of the route. Moreover, some of the users’ submissions state that they sought permission from the landowner to use the route. Nonetheless, a significant number of users did not have direct permission and used the path because they had seen other people use it, it had been waymarked, and its use was ‘local information’.
12. As the previous Inspector explained, most Permissive Path schemes involve a formal, legal, agreement between the relevant council and landowner detailing the length of time for which the path is to be provided, when and under what circumstances the path may be closed, and setting out the steps required by either party to terminate the agreement. While the previous landowner did draft a ‘Creation Agreement’ with the Council, no formal agreement appears to have been put in place at any time. Accordingly, there is no good reason to believe any ‘permissive path’ across the land was ever formalised.
13. Indeed, given the length of time that this matter has been under consideration and the associated investigations that have been undertaken – most notably by the applicant, the objector and the Council - it is reasonable to conclude that had there been any formal permissive path scheme for the land, it would have come to light by now. Moreover, while I note the speculation regarding the previous landowner’s reasons for not putting such a scheme in place, it is no more than speculation. As such it carries little weight. Sadly, the previous landowner has now passed away. So, there is no opportunity for him to clarify this matter. Nonetheless, the fact that he applied for the Order to be made and supported its confirmation rather contradicts the objector’s submissions in this regard.
14. There are inconsistencies within the evidence taken as a whole, with some aspects of the submissions being directly contradictory. However, the user evidence in support of the Order builds a persuasive picture of use, as of right, of the Order route on foot, for an uninterrupted period of 20 years dating back from 1997. While counter evidence has been submitted, it does not rebut the user evidence to any significant extent. Moreover, notwithstanding the assertions of the current landowner, there is no compelling evidence that the previous owner did not intend to dedicate the route.

*Documentary Evidence*

1. Numerous OS Maps ranging from the 1880s to the 1970s show a footpath partly corresponding with the Order route yet deviating eastward along the northern section. Notwithstanding the route’s alignment, the evidential weight of the OS maps is necessarily limited. This is chiefly because there can be no confidence that any such route had public use rights.
2. The Order route does not appear on the OS Maps dated 1809 and 1898, on the Colyton Tithe Map 1843, nor on the Bartholomew’s Maps of 1902, 1923 and 1943. This, though, is unsurprising given the scale of the maps and the purpose for which they were produced.
3. The aerial photographs dated from 1946 to 2015 show various sections of the Order route as a well-worn path. However, a continuous route is not apparent.
4. As set out in the Appeal Decision letter, the Parish Council minutes provide a comprehensive history of the rights of way in the area and it would seem that the Order route features in the 1952, 1953, 1954 and 1955 minutes as having been inspected. While not featuring in the 1967 inspection minutes, in December 1965 the minutes record the discussion regarding the dangerous condition of the footbridge on the Order route and that the Parish handyman would prepare an estimate to put the bridge in order. This strongly suggests that the Parish Council took there to be a public duty to maintain the bridge. On this basis, it is reasonable to conclude that the route at large was considered to be a public right of way at that time.
5. The Definitive Map Review process commenced in 1969 but was never completed. As part of that process the Parish Council provided maps which included the Order route for inclusion in the Definitive Map. The notes from the Council’s Highway’s Officer titled ‘Colyton - inspection routes’ state that “Whitewell Lane - new 36 A - Agree - already signposted and well used - suggest it goes west of the pit. Signposted as FP.”
6. The Parish Council put forward the Order route for inclusion in the Definitive Map again as part of a further review from 1989 to 1992. An associated file note states, “very well used but seems to have little evidence” and “no user evidence” against the Order route. The Council’s schedule of proposed routes, dated 1991, also includes the Order route. In 1992 the then landowner agreed to the Council’s suggested ‘Creation Agreement’, but as outlined above, this was not completed.
7. Walk 6 of the ‘Exploring the Coly Valley’ booklet includes the Order route. The book was prepared by the Parish Path Partnership Warden and a Ramblers Association Representative. While the Order route is not included in the diagram depicting the rights of way network in the area, the supporting text to Walk 6 highlights that the route was waymarked.
8. None of the documentary evidence is conclusive individually. However, when taken together - particularly the evidence associated with the Parish Council’s records of inspections, including the prospective maintenance of the footbridge, and that associated with the Definitive Map Review process – the documentary evidence, on the balance of probabilities, indicates that a public footpath exists along the Order route.

**Other Matters**

1. The objector also suggests that confirmation of the Order might be seen as some form of precedent by landowners in the County, thereby discouraging them from offering new or retaining existing permissive footpaths. In this way, confirmation of the Order might be to the detriment of walkers. However, regardless of how likely this scenario might be in practice, this matter can have no bearing on my decision, as it must be made exclusively on the basis of the user evidence and documentary evidence.
2. I also note the Ramblers submissions following the making of the Order. However, they add nothing to the user / documentary evidence, such that they too have had no bearing on my decision.

**Conclusion**

1. For the reasons outlined above I am satisfied, on the balance of probabilities, that a public footpath subsists along the Order route. I have come to this same conclusion based on the user evidence alone and on the documentary evidence alone. In other words, these two sets of evidence separately and individually indicate that the Order should be confirmed.

Formal Decision

1. I confirm the Order.

G D Jones

INSPECTOR

