LOGO

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| **Order Decision** |
| Site Visit carried made on 18 February 2025 |
| **by RJ Perrins MA** |
| **appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 19 March 2025** |

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| **Order Ref: ROW/3332815** |
| * This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981   (“the 1981 Act”) and is known as The Kent County Council (Public Footpath MR623 at Ditton) Definitive Map Modification Order 2023. |
| * The Order is dated 28 March 2023 and proposes to add a public footpath numbered MR623, which commences at its junction with New Road and runs in a generally north westerly, then north easterly direction, for approximately 70 metres to its connection with Ditton Recreation Ground. Full details of the route are given in the Order Plan and Schedule. |
| * Three representations were received in response to the notice. |
| **Decision: The Order is confirmed** |
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Preliminary Matters

1. None of the parties requested an inquiry or hearing into the Order. I have therefore considered this case on the basis of the written representations forwarded to me. I made an unaccompanied inspection of the route at issue on Tuesday 18 February 2025.

**Main Issues**

1. The Order has been made by Kent County Council, the Order Making Authority (OMA), under section 53(2)(b) of the Wildlife and Countryside Act 1981 in consequence of events specified in section 53(3)(c)(i) and (iii). The main issue is whether the discovery by the authority of evidence, when considered with all other relevant evidence, is sufficient to show that a right of way which is not shown in the map and statement subsists over land in the area to which the map relates (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 in order to make a DMMO, the standard of proof is higher for it to be confirmed. At this stage, evidence is required to show, on the balance of probabilities that a right of way subsists. The test to be applied is on the balance of probabilities.

***Reasons***

1. I recognise there was an objection to the order, and I accept anti-social behaviour may have had an unacceptable affect upon the living conditions and health of occupiers of 18 New Road. That could be attributable to those using the proposed public footpath. To that end, I have some sympathy with the occupiers of No 18. However, many of the concerns raised such as anti-social behaviour, maintenance, liabilities, and signage are not matters for consideration as to whether rights exist or not.
2. In the same way, I recognise concerns over land ownership from all those who have made representations. Those representations include concerns that the title may be wrong given the historic involvement of the Parish Council. However, I am satisfied the OMA has done all it can to identify the registered landowners. Moreover, this is not a matter that goes to the heart of determining whether rights exist; such concerns are a private matter for those interested parties.

1. In addition, there is no dispute that the evidence in support of the application, in the form of some 118 User Evidence Forms and 8 face-to-face interviews, or how that was interrogated by the OMA, is incorrect or flawed. Whilst I recognise that previous owners may not have been contacted, it seems to me the weight of evidence, which also includes undisputed aerial images, nevertheless falls in favour of a right of way subsisting. That is to say, in the light of all I have read, and from what I saw on site, I see no reason to disagree with the OMA that the applicant provided credible evidence.
2. Furthermore, when considered with all other available evidence, the applicant demonstrated the use of the Order route for a full period of twenty years prior to the date of challenge (2016). That was when a gate was erected across the line of the Order route, with a sign attached to the gate stating private drive. Albeit with a gap to the side to allow for pedestrian access. Nevertheless, the route was never interrupted ‘as of right’ and there was no evidence during the 20-year period that any landowner showed any intention to dedicate the Order route as a public right of way on foot.

*Conclusion*

1. For these reasons I find that the user evidence is sufficient to raise a presumption that the claimed route has been dedicated as a public footpath. In addition, there is no evidence that the landowner demonstrated to the public, a lack of intention to dedicate a footpath during the relevant period. Therefore, I conclude on the balance of probabilities that a public footpath subsists.

**Overall Conclusion**

1. Having regard to the above, and all other matters raised in the written representations, I conclude that the Order should be confirmed without modification.

**Formal Decision**

1. I confirm the Order.

R J Perrins

**Inspector**

COPY OF ORDER MAP – NOT TO SCALE

