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| **Order Decision** |
| Accompanied site visit undertaken on 18 February 2025 |
| **by Mark Yates BA(Hons) MIPROW** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 27 March 2025** |

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| **Order Ref: ROW/3332262** |
| * 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 Sutton Courtenay Footpath No. 33 Modification Order 2021. |
| * The Order was made by Oxfordshire County Council (‘the Council’) on 20 September 2021 and proposes to add a footpath to the definitive map and statement in the parish of Sutton Courtenay. |
| * There were 48 objections and 3 representations outstanding when the Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs. |
| **Summary of Decision:** **The Order is not confirmed.** |
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Procedural Matters

1. All of the points referred to below correspond to those delineated on the Order Map.
2. The Council has adopted a neutral stance albeit they do not consider the evidence is now sufficient for the Order to be confirmed. Two of the objections were submitted on behalf of parties who have an interest in land crossed by the route, namely the AERE/Harwell Angling Club (‘the Angling Club’) and the Millenium Common Management Committee. There are other objectors who are aligned to the Angling Club.
3. One of the two applicants has passed away and the other no longer lives in the area. No other supporter has indicated that they would be willing to make the case in support of the Order at a public inquiry or participate at an inquiry. In light of these circumstances, I held a case management conference with the available parties and ultimately it was decided that the case would be determined from an exchange of written representations.
4. I do not consider that the time taken to determine the application and make the Order can be viewed as reasonable. The conflicting evidence in such cases is best resolved from hearing the evidence of witnesses at a public inquiry. It seems to me that the delay in determining this case has led to valuable evidence being lost.

**Main Issues**

1. The Order relies on the occurrence of an event specified in Section 53(3)(c)(i) of the 1981 Act. Therefore, for me to confirm the Order, I must be satisfied that the evidence shows on the balance of probabilities that a footpath which is not shown in the definitive map and statement subsists.
2. The relevant statutory provision, in relation to the dedication of a public right of way, is found in Section 31 of the Highways Act 1980 (‘the 1980 Act’). This requires consideration of whether there has been use of a way by the public, as of right and without interruption, for a period of twenty years prior to its status being brought into question and, if so, whether there is evidence that any landowner demonstrated a lack of intention during this period to dedicate a public right of way.
3. If statutory dedication is not applicable, consideration should be given to whether the evidence is supportive of the dedication of a public right of way under common law. An inference of dedication can be drawn at common law from the actions of a landowner (or lack of action) and acceptance of the dedication by the public in the form of use of the route.

**Reasons**

1. The Council considers that the status of the route was brought into question for the purpose of statutory dedication by the locking of a gate in 2002. It was this action that triggered the application to add the route to the definitive map. Although the Angling Club point to other potential earlier challenges to users of the route, I take the events in 2002 as the starting point for the consideration of statutory dedication. Therefore, the initial relevant period for the purpose of Section 31 of the 1980 Act is 1982-2002 (‘the relevant period’).
2. The D-C section was not considered by the Council to meet the statutory test for dedication as they viewed any use during the latter part of the relevant period to be by right rather than as of right. The land in question now falls within the Millenium Common over which the public have been granted permissive rights of access. The Council took the view that dedication could still arise in respect of this section under common law by virtue of use before permissive access was granted. However, the issues raised in the objections will largely impact on dedication under statute or common law. It is not alleged that statutory dedication could apply to an earlier twenty year period in respect of the C-D section.
3. Twenty-seven people have provided evidence in support of the application which mainly takes the form of completed user evidence forms (‘UEFs’). The Council undertook interviews with a proportion of the users in 2016 and this led to the production of standard forms with particular questions answered. These provide a little more information but do not necessarily clarify certain matters in the UEFs. Nor do they address the conflicting evidence adduced by the objectors.
4. A standard plan was produced for inclusion with the UEFs on which the location of a fence erected in 2002 has been represented and this may have influenced where people marked the route they claimed to have used on the plan. Some of the people who completed a UEF do not indicate the route used but the majority mark a route that generally lies on the northern side of the fence shown on the plan.
5. Reference is made by the Angling Club to the difference between the route marked on the Order Map between points A and B and what physically existed on site by reference to the 1972 Ordnance Survey (‘OS’) map.There is also some variation between the route marked on the Order Map and those shown on the maps with the UEFs. The Angling Club consider that a good proportion of the alleged use between points A and D related to a route to the south of the 2002 fence.Additionally, the users generally describe the route by reference to the Millennium Common which only came into existence during the 1990s.
6. Firstly, it needs to be borne in mind that the 1972 OS map was not produced during the relevant period. Secondly, the route shown is not necessarily reflective of public use. It only indicates that there was a worn path visible when the land was surveyed. The path shown could reflect use by fishermen to access the lake for fishing purposes. Nonetheless, it is evident that the path shown does differs from the route marked on the Order Map. It is also shown continuing to the north-east of point B rather than to point D and no path is shown over the land that is now the Millennium Common.
7. Aerial photographs from 1995, 1997 and 1999 show some signs of a worn route leading towards point B but the first part of this section is obscured by vegetation. There are also signs of a route broadly on the alignment of the Order route between points C-D. It is evident that around the time some of these photographs were taken the land was given over to permissive access. Earlier photographs from the 1960s show the presence of water and trees which would have obstructed the C-D section. This casts some doubt on the reliance that can be placed on the evidence of those who claim to have used the route over more longstanding periods of time. It is likely that any use of this section would only have occurred once the land had been restored following mineral extraction.
8. It is apparent that prior to the erection of the more substantial fencing around the land, there was fencing in place along the boundary adjacent to All Saints Road and near to where the Millenium Common is now sited. There was a pedestrian gate in place at point A and a gate was later placed in the boundary with the common. A schedule of repairs for the period from late 2001 to 2003 records ongoing repairs in response to damage to locks, gates and boundary fencing. These appear to mainly cover a period after the status of the route was brought into question. However, any action taken to break fencing, remove locks or climb a gate during the relevant period is likely to constitute use by force and not use as of right.
9. Statements have been provided by the Angling Club which outline that prior to 1995 coarse fishing on the lakes was not legally allowed between 5 March and 5 June. It is stated that during this period the gate at point A was locked to ensure that no fishing could take place. This evidence points to use of the route being interrupted for significant periods each year until 1995. No mention of any such interruption is made by users of the route.
10. Some weight should be given to the evidence of use provided which when taken at face value could support the dedication of a right of way under statute or common law. However, the evidence and submissions provided by the Angling Club casts doubt on the extent that aspects of the user evidence can be relied upon. There is uncertainty regarding the particular route used during the relevant period. Evidence has also been supplied in support of the locking of a gate to deter access for three months each year prior to 1995. Such action would constitute a significant physical interruption to use and any attempts to climb over a locked gate are likely to constitute use by force.
11. In light of the above, I am not satisfied that the user evidence can be taken on balance to raise a presumption of dedication under statute or support the dedication of a footpath under common law. This means there is no need for me to consider statutory or common law dedication further.

**Other Matters**

1. Some additional matters have been raised regarding the potential impacts of adding the route to the definitive map. However, these matters sit outside of the issues that are relevant to my decision.

**Conclusion**

1. Having regard to these and all other matters raised in the written representations I conclude that the Order should not be confirmed.

**Formal Decision**

1. The Order is not confirmed.

Mark Yates

**Inspector**

ORDER MAP – COPY NOT TO SCALE

