



Order Decision

On papers on file

by K R Seward Solicitor

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 13 November 2019

Order Ref: ROW/3218855

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 ('the 1981 Act') and is known as the Lincolnshire County Council Addition of Navenby Public Footpath Number 1146 Definitive Map Modification Order 2017.
- The Order is dated 23 June 2017 and proposes to modify the Definitive Map and Statement for the area by adding a footpath as shown in the Order plan and described in the Order Schedule.
- There was one objection outstanding when Lincolnshire 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 subject to modifications.

Procedural Matters

1. The sole objection was withdrawn after the Order was submitted to the Secretary of State for confirmation. I must nevertheless be satisfied that there are grounds to confirm the Order pursuant to the relevant provisions within the 1981 Act. Based upon all evidence available the Council as Order Making Authority ('OMA') submits that the Order should be confirmed.
2. In the circumstances of this case I am satisfied that I can make the decision without the need for a site visit.
3. The Council has requested modifications to the Order in the event that it is confirmed. The Order follows a successful appeal to the Secretary of State under Schedule 14 of the 1981 Act on 13 December 2016¹. This was not reflected in the Order as made. The modifications sought are to clarify that the Order was made in accordance with the direction made by the Secretary of State. As minor points of clarification, such modifications can be made without the need for the Order to be re-advertised.
4. The original application sought the addition of a public bridleway to the Definitive Map and Statement. The appeal was allowed subject to the claimed route being described as a footpath rather than a bridleway. The Order was made on that basis and it is the status of the route as footpath which now falls to be considered.

Main Issue

5. The Order has been made under Section 53(3)(2)(b) of the 1981 Act in consequence of the occurrence of an event specified in Section 53(3)(c)(i).

¹ Appeal Ref: FPS/Q2500/14A/3

6. The main issue is whether the discovery by the authority of evidence which (when considered with all other evidence available) 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.

Reasons

7. 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 public right of way subsists.
8. No relevant historical documentation has been found to exist. The evidence adduced is of claimed use by the public. It is necessary for me to consider whether dedication of the way as a public footpath has occurred through public use. This may be either by presumed dedication as set out in the tests laid down in Section 31 of the Highways Act 1980 ('the 1980 Act'), or by implied dedication at common law.
9. Under Section 31 of the 1980 Act, there must have been use of the claimed route by the public as a footpath 'as of right' and without interruption, over a period of 20 years immediately prior to its status being brought into question so as to raise a presumption that the route had been dedicated as a public footpath. This may be rebutted if there is sufficient evidence that there was no intention on the part of the relevant landowner/s during the 20 year period to dedicate the way for use by the public.
10. The Order route runs from Grantham Road to Doncaster Gardens in an easterly direction. Public use of the route was prevented when a locked gate was erected by the landowner across the western end of the route in February 2015. This act brought the status of the route into question. Therefore, the relevant 20-year period for the purposes of establishing whether a presumption of dedication arises under section 31 is February 1995 to February 2015.
11. When the OMA originally made its decision not to make an order, the application was supported by 17 user evidence forms ('UEF's) from 18 users. More UEF's were submitted during the appeal. By the time of the previous Inspector's determination there was evidence of pedestrian use in 39 UEF's (disregarding one duplicate form), plus one letter. A couple of UEF's were completed on behalf of more than one person.
12. Three of the UEF's fail to show use during the requisite 20-year period. A further three users apparently have private rights over the Order route. Therefore, not all of their use is likely to have been without consent.
13. If these forms are discounted, there remains evidence from 6 users for the full 20-year period. Eight users claimed between 15-20 years use and the remainder claim lesser periods. The amount of use progressively increases so that by 2015 there is evidence from well over 30 users. Several people claim to have seen others using the route and so the amount of actual use may well have been higher. Most users claim use more than once per week. Whilst the level of use in the earlier years does not appear particularly high, there is a reasonable amount of uncontested evidence of regular and continuous use steadily increasing over the years. The amount of claimed use is such that the route would have become in daily use.

14. On the evidence, no steps were taken to prevent public use of the Order route prior to February 2015.
15. The user evidence is unchallenged. I am satisfied on the balance of probabilities that the Order route has been used by the public as of right and without interruption for the full period of twenty years and that the use suffices to raise the presumption that the way has been dedicated as a public footpath.
16. The test for statutory dedication has been met under section 31 of the 1980 Act and it is unnecessary for me to consider the dedication of the way at common law.

Conclusion

17. Having regard to these and all other matters raised, I conclude that the Order should be confirmed subject to the requested modifications.

Formal Decision

18. I confirm the Order subject to the following modifications:-

- In the first paragraph delete "*it appears to the Authority*" and replace with "*the Secretary of State for the Environment Food and Rural Affairs, under the powers contained in paragraph 4 (2) of Schedule 14 of the Act, has directed the Authority to make such an Order because it appears to the Secretary of State for the Environment Food and Rural Affairs*".
- In the third paragraph before "*Lincolnshire County Council hereby orders that:*" insert "*In accordance with the direction of the Secretary of State for the Environment, Food and Rural Affairs*"

KR Seward

INSPECTOR