



Order Decision

Site visit on 10 December 2019

by Paul Freer BA(Hons) LLM PhD MRTPI

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

Decision date: 22 January 2020

Order Ref: ROW/3219085

- This Order is made under Section 53(2) of the Wildlife and Countryside Act 1981. It is known as The Borough Council of Gateshead (Footpath Blaydon 121) Definitive Map and Statement Modification Order 2016.
- The Order is dated 10 June 2016. It proposes to modify the definitive map and statement for the area by adding a public footpath linking Hollinhall Lane with Bridleway Blaydon 120, in the Parish of Blaydon, as shown on the Order map and described in the Order schedule.
- There was one objection outstanding when The Borough Council of Gateshead submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.

Summary of Decision: The Order is confirmed.

Procedural matter

1. The points raised by the sole objector to the Order were scheduled to be heard at a Public Inquiry to be held on 10 December 2019. However, the sole objection outstanding was withdrawn on 8 November 2019. I have therefore made my determination based on the papers on file, together with an unaccompanied site visit.

Main Issues

2. The Order was made under the Wildlife and Countryside Act 1981 on the basis of events specified in sub-section 53(3)(c)(i). If I am to confirm it, I must be satisfied that, on a balance of probability, the evidence shows that a public right of way on foot subsists along the route described in the Order.
 3. The case in support is based primarily on the presumed dedication of a public right of way under statute, the requirements for which are set out in Section 31 of the Highways Act 1980. For this to have occurred, there must have been use of the claimed route by the public on foot, as of right and without interruption, over the period of 20 years immediately prior to when the right to use the way was brought into question, thereby raising 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 this period to dedicate the way for use by the public; if not, a public footpath will be deemed to subsist.
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4. The main issue here is whether the evidence is sufficient to show that in the past the Order route has been used in such a way that a public footpath can be presumed to have been dedicated.

Reasons

5. The Order was made in response to an application dated 18 August 2015 from Mr A.J.Cowell, supported by eleven forms giving evidence of use.

Bringing into question

6. I am satisfied that the status of the Order route was brought into question by the application made by Mr Cowell dated 18 August 2015. Consequently I need to examine use by the public during the period between August 1995 and August 2015.

Assessment of the evidence

7. In addition to the eleven user evidence forms submitted with the application, a further user evidence form was added subsequently. However, one of those user evidence forms must be discounted on the grounds that the route shown on the attached plan is different to the Order route.
8. Eight of the user evidence forms cover the entire period from August 1995 to August 2015, and indicate that those respondents walked the whole route for dog walking or as part of a circular walk. The earliest use of the route recorded in the user evidence forms dates to 1940, with another user recording having walked the route from 1968. These forms refer to use of the route for periods of 75 years and 46 years respectively. Another evidence form records use of the route for a period of 51 years commencing in 1963, of which 19 years were within the relevant period. The evidence forms, including those covering only part of the relevant period, all refer to walking the entire length of the route. Analysis of the user evidence forms reveals that the respondents used the route on a regular basis, many on a weekly basis. Others record using the route on a monthly basis, but some less frequently.
9. There is additionally a witness statement dated 8 March 2016 by Mr Robert Hindhaugh, Rights of Way Officer at TBCG, detailing telephone conversations that he had with users of the route in February of that year. The evidence recorded in that witness statement confirms that some of the users had continued to walk the route throughout 2015 and into 2016. However, the evidence relates to only one short part of the relevant period and also is short on detail. For those reasons, I have attached only limited weight to this evidence.
10. There is repeated reference in the user evidence forms to two locked gates across the route, one at the northern end of the route at the junction with Hollinhill Lane (Point A) and the other to the south of Sherburn Tower Farm (Point D). The user evidence forms consistently refer to a stile next to the latter, and to the presence of Red Kite Trail markers on the posts of the locked gate at Point A. The users do not indicate that these gates prevented them from following the route and it would therefore appear that the route remained passable at all times, notwithstanding these obstructions.
11. None of users report being stopped from using the path by the landowner. There is reference in just one user evidence form to the recent appearance of a

notice saying "private road" at the entrance to Sherburn Tower Farm and to another sign at the 'entry to the woods' of a sign saying "Private Road, no access" (Point D). I will return to the erection of these signs in more detail below but, on the whole, there is no meaningful evidence to suggest that those completing the user evidence forms were ever challenged whilst using the path, by notice or otherwise, or used the route in secret or with express permission.

12. In addition to the user evidence forms, two letters have been received in support of the Order. The first of these letters is from Mr Ken Sanderson on behalf of the Friends of Red Kites (FoRK) and is dated 8 August 2019. In his letter, Mr Sanderson explains that FoRK used the Order route to monitor the movements and activities of Red Kites in the area. However, no detail is provided about the frequency of those walks on this particular footpath or the period of time over which those walks took place. Consequently, I attach only limited weight to this letter.
13. The second letter is from Mr William Gallon and is dated 16 October 2019. In his letter, Mr Gallon explains that he had walked the route as a member of the Whickam Pathfinders from the 1970s and later as a member of the Durham Countryside Voluntary Ranger Service. Mr Gallon then goes on to explain that sections of the Order route were used in connection with walks along the Tyne and Wear Heritage Way. The lack of detail regarding dates limits the weight that I can attach to Mr Gallon's letter, but his letter nonetheless supports other user evidence relating to the Order route.
14. Having regard to the user evidence in its totality, I am satisfied that the use was 'as of right', regular, and without interruption. I therefore conclude that the evidence raises a presumption of dedication.

Intentions of the landowner

15. Although the sole objection to the Order has been withdrawn, there is reference in the material submitted with that objection to the locked gates and notices referred to in the user evidence forms. It is therefore convenient to set out the background to the erection of these notices here.
16. In a letter dated 10 February 2016, the agent acting for the tenant farmer confirmed that both the gate at Point A and the gate at Point D have been in situ and locked for the preceding 20 years. The reason given for the erection of the gates was to prevent fly-tipping. There is no indication in that letter that the intention of the tenant farmer or the landowner was to prevent walkers from using the route. The presence of a gap beside the locked gate at Point A and a stile next to the locked gate at Point D are consistent with that, and with the user evidence that they continued to walk the route notwithstanding the presence of the locked gates.
17. The letter also confirms that the notices at Point D and at the entrance to Sherburn Tower Farm were both erected during 2015. However, no precise date is given for the erection of these signs and the photographs taken by the agent date to October 2015, outside of the relevant period. I therefore cannot discount the possibility that these notices were only erected after the end of the relevant period.
18. Furthermore, the notice at Point D expressly says "Private Road, no access" and makes no reference to access on foot. It is entirely possible that users

confronted with that sign would assume that the restriction applied to use by vehicles only and that there was no restriction on access by foot. Such a conclusion would be reinforced by the presence of the stile beside the locked gate.

19. The original notice at the entrance Sherburn Tower Farm appears to have been erected in or around 1990 and was subsequently (and somewhat crudely) embellished with the words "private road". In my view, the wording and placement of the original notice is more akin to a name plate to identify the farm. This would be consistent with the location of the notice, given that it is only visible having walked a substantial portion of the Order route from whichever direction it is approached. It is therefore reasonable to conclude that the addition of the words "private road" at a later date were intended to indicate that the short of stretch of surface between the farm buildings and the Order was a private road giving access to the farm, rather than any attempt to indicate a lack of intention to dedicate.
20. Having regard to the above, I consider that there is insufficient evidence to show that any landowner demonstrated a lack of intention to dedicate. I therefore conclude that the statutory dedication is made out.

Historical evidence

21. Successive editions of the Ordnance Survey maps show the route in existence from 1856 to the present day. In addition, the Winlaton Tithe Map of 1838 shows a route that is approximate to the Order route although, on the copy made available to me, the quality is not sufficient to discern the precise route followed at that time. The evidence provided by the Ordnance Survey maps, and to a lesser extent the Winlaton Tithe Map, tends to support the claim that a footpath subsists on the Order route.

Conclusion

22. Having regard to the above and all other matters raised in the written representations, I conclude that the Order should be confirmed.

Formal Decision

23. I confirm the Order.

Paul Freer

INSPECTOR