



Order Decision

Inquiry opened on 5 December 2017

by **Mark Yates BA(Hons) MIPROW**

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

Decision date: 24 January 2018

Order Ref: ROW/3172081

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the 1981 Act") and is known as The Wiltshire Council Parish of Box Paths 107A, 107B and 107C Rights of Way Modification Order 2016.
- The Order was made by the Wiltshire Council ("the Council") on 1 September 2016 and proposes to add three footpaths ("the claimed routes") to the definitive map and statement, as detailed in the Order Map and Schedule.
- There was one objection and one representation outstanding at the commencement of the inquiry.

Summary of Decision: The Order is confirmed subject to a modification set out below in the Formal Decision.

Procedural Matters

1. I held a public inquiry into the Order on 5-6 December 2017 at the Box Multi Sport, Youth and Community Pavilion. I made an unaccompanied visit to the site of the claimed routes on 4 December 2017 and I revisited the site accompanied by the interested parties following the close of the inquiry.
2. All of the points referred to below correspond to those delineated on the Order Map.

Main Issues

3. The Order relies on the occurrence of an event specified in Section 53(3)(c)(i) of the 1981 Act. Therefore, I must be satisfied that the evidence discovered shows in each case that a footpath which is not shown in the definitive map and statement subsists. The burden of proof to be applied is the balance of probabilities.
4. 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. Section 31 does not apply to land belonging to the Crown¹¹, except under a special agreement pursuant to Section 327(2) of the 1980 Act.
5. Section 31(8) of the 1980 Act states that "*Nothing in this section affects any incapacity of a corporation or other body or person in possession of land for public or statutory purposes to dedicate a way over that land as a highway if the existence of a highway would be incompatible with those purposes*".

¹¹ Including government departments

6. If statutory dedication is not applicable, I shall consider whether an implication of dedication can be shown at common law. Dedication at common law requires consideration of three main issues: whether the owner of the land had the capacity to dedicate a highway, whether there was express or implied dedication by the landowner and whether there has been acceptance of the dedication by the public. Evidence of the use of a way by the public as of right may support an inference of dedication and may also show acceptance of the dedication by the public.

Reasons

Statutory Dedication

7. All of the claimed routes terminate at Leafy Lane² and proceed through an area of woodland in this locality. There is a 'main route' that proceeds beyond the woodland and continues along the boundary of playing fields to terminate at Boxfields Road (point A). The other claimed routes proceed solely within the woodland and join the main route at points E and F. The majority of the land crossed by these routes was owned for an unspecified number of years by Mr Padfield before it was purchased by Leafy Lane Playing Fields Ltd ("LLPF") in 1998. Near to the junction with Boxfields Road the main route crosses land owned by the Webb family.
8. Prior to the involvement of LLPF, the layout of the site outside of the woodland was different and comprised of sports pitches and pasture land. There was longstanding use of the sports pitches by the Ministry of Defence ("MOD"). The remainder of the land was tenanted at times by Mr Maidment and Mr Freeman. Although the position in respect of land leased to the Crown is not certain, it cannot be determined whether there was a lease in place regarding the MOD's use. Therefore, it is not possible to conclude that statutory dedication is precluded by virtue of the main route crossing Crown land for any period of time.
9. Whilst LLPF is a registered charity, there is nothing to prevent the statutory dedication of public rights of way over land held for charitable purposes, provided that such a dedication would not be contrary to the stated purposes of the charity concerned, by reference to Section 31(8) of the 1980 Act. I do not consider that the dedication of the claimed routes through the woodland and around the sports pitches would be incompatible with the charitable objectives of LLPF. Nor would the existence of a mortgage since 2007 for the land crossed by the claimed routes prevent dedication from arising under statute.

When the status of the claimed routes was brought into question

10. The Council's primary position is that the status of the claimed routes was brought into question by the application to add them to the definitive map and statement. This application was made by Mr Turner, on behalf of the Springfield and Clift Residents Association, on 1 September 2015. Whilst other earlier potential events have been suggested, I start from the position that the claimed routes were brought into question by the application. This means the twenty year period to be considered for the purpose of Section 31 of the 1980 Act is 1995-2015 ("the relevant period").
11. As there is a degree of symmetry between acts that constitute a lack of intention to dedicate a public right of way and action to bring the status of a

² At points B, C and D

route into question, there may be a need to consider an earlier period for the purpose of statutory dedication. On this issue, I note the reference by Mr Mullins for LLPF to the case of *R v Secretary of State for the Environment ex parte Billson [1998]*. However, as outlined in the subsequent House of Lords judgment in the case of *R (on the application of Godmanchester Town Council) v Secretary of State for the Environment, Food and Rural Affairs [2007]*, there needs to have been some overt action on behalf of the landowner that is sufficient to demonstrate to the users of a way that there was no intention to dedicate a public right of way.

Evidence of use by the public

12. Forty-two user evidence forms ("UEFs") were completed in support of use of the claimed routes. Nineteen people gave evidence at the inquiry in relation to use of the routes, some of whom had not originally completed a UEF. A number of people have provided supporting evidence in the form of letters and photographs.
13. In terms of the routes drawn on the plans attached to the UEFs, it is evident that in a number of cases they do not accurately reflect the claimed routes. However, it is clear from listening to the evidence of the users at the inquiry that the routes they used corresponded to the claimed routes. It is apparent that the discrepancies arose from the difficulty in transposing the routes walked onto the plan. In respect of the point raised by Mr Mullins regarding the southern termination point shown on the plans for the main route, I put this down to the plan not extending as far as Boxfields Road. This is supported by the notation on a proportion of the plans and the text in the UEFs. It is also borne out by the evidence of the users at the inquiry.
14. I found the evidence of the users at the inquiry provided a good insight into the use of the claimed routes. The use was on the whole for recreational purposes, particularly in relation to dog walking. A number of users walked one or more of the routes on a daily basis for this purpose. Although it is apparent that the main route was used to a greater extent, the user evidence is supportive of widespread use of the other claimed routes. There also appears to have been some use of other routes, which included walking over the playing fields on occasions. The latter was supported by the evidence of one of the users (Mrs Barstow). Nonetheless, the evidence is supportive of the use being predominantly confined to the claimed routes rather than by people wandering over the site generally.
15. Mr Mullins refers to the absence of evidence of use of the claimed routes visible on the aerial photographs of 2001, 2006 and 2014. However, the tree cover on these photographs prevents any meaningful conclusion from being reached in relation to the routes through the woodland. Although the land crossed by the north-south section of the main route is visible, it is not possible to determine whether it was being used to any significant extent from the aerial photographs. In respect of the 1950 aerial photograph, I do not accept that it has any relevance to the use of the routes during the relevant period.
16. I find the user evidence to be supportive of widespread use of the claimed routes during the relevant period. This is acknowledged in the application by LLPF for tree works in 2009, which refers to use by walkers and dog walkers on a daily basis. There is additional photographic evidence which shows people on the claimed routes or signs of worn tracks over sections of the routes. It

cannot be determined whether any of the worn tracks visible can be attributed to use by the cattle that were present at times within the woodland.

17. LLPF refer to the presence of metal fencing to secure the site at Leafy Lane. Written information has been provided in support from Mr Padfield and two local residents (Mr Hancock and Mr Beattie) who have longstanding knowledge of the area. Mr Beattie says there was a metal fence in the 1970s and 1980s which you had to climb over. However, I note that this period lies outside of the relevant period. Further, the evidence of the users is that access has been available at points B, C and D, most notably by the presence in the past of a stile at point B. Mr Maidment also says that there was a stile at around point B when he tenanted the land in the 1980s and people walked through the woodland. In terms of the older photographs that have been provided of Leafy Lane, I find these to be of limited value in determining the nature of the locality during the later relevant period. There is clear evidence in support of the existence of stiles at point A.
18. The provision of a stile may not be necessarily indicative of the dedication of a public right of way by the landowner. Nonetheless, the evidence indicates that access was available at particular points. Whilst there may have been some variation in the position of stiles over time, as asserted by Mr Mullins, it cannot be determined that there was any significant difference in the access points for the claimed routes during the relevant period. In terms of the presence of two structures at point A, I accept that both of these should be recorded as limitations if the Order is confirmed.
19. There is nothing to show that the use of the claimed routes was interrupted to any significant extent by tree works taking place within the woodland. Although some of the users acknowledge that they avoided walking the routes when cattle were in this locality, this was a matter of personal choice and would not have served as an interruption to use of the claimed routes for the purpose of Section 31 of the 1980 Act.
20. I now turn to the issue of whether the user was as of right³. There is no evidence to indicate that the use was undertaken in secret and the LLPF signage outlined below and acknowledged use is supportive of the use being conducted openly. The vandalism that has occurred in the area cannot be attributed to the users of the routes and does not appear to relate for the most part to use of the claimed routes.
21. LLPF have erected signs at the entrances to their land. Although they have faded and suffered from vandalism, the presence of such signs is acknowledged by a proportion of the users. These signs were accompanied by a map and it is evident that the claimed routes crossed the area shaded green. The signs contained the wording "***This is Private Land Owned by Leafy Lane Playing Fields Ltd*** We are pleased to welcome walkers and dogs in the designated areas coloured green on the adjacent plan marked by signs on the site. This area has been developed for the enjoyment of local residents and walkers. Please make sure that dogs do not enter the playing field areas coloured red...".
22. LLPF put in place a fence and hedge to separate the north-south section of the main route from the adjacent playing fields soon after taking ownership of the site. There is fencing elsewhere to separate the woodland from the pitches. It is clear that the signs were erected in order to deter use of the sports pitches

³ Without force, secrecy or permission

by dogs. The signage does not specify that the use of the existing routes within the green area was by way of permission. In my view, the action taken did not amount to express or implied permission for the public to use the claimed routes. Nor is it alleged that the charitable objectives of LLPF extended to the provision of access for the public generally over the land. Therefore, the evidence does not suggest that the use was 'by right' rather than 'as of right'.

23. The evidence provided by Mr Turner and Mrs Barstow is supportive of a stile previously being located in a boundary to the south of the gate which leads to the MOD land off Park Avenue. This could potentially mean that there was some variation in the alignment of a short section of the main route prior to the removal of the stile. This point was acknowledged by the Council's witness (Ms Madgwick) at the inquiry. However, she points to the evidence of the users being supportive of them using a route around the playing fields. The signage placed by the MOD, outlined in paragraph 25 below, would have served to encourage people to walk around the edge of the fields. On balance I consider that any deviation from the main route, taken prior to the removal of the stile, would have been relatively minor in nature.
24. Having regard to the above, I find on balance that the user evidence is sufficient to raise a presumption of the dedication of three public footpaths corresponding to the claimed routes. Therefore, the first part of the statutory test is satisfied.

Whether the landowners demonstrated a lack of intention to dedicate any public footpaths

25. I have addressed the signs erected by LLPF in paragraphs 21-22 above. In terms of the initial wording, public rights of way will invariably cross private land. The signs do not indicate that there was a lack of intention to dedicate particular routes. They actually state that people are welcome to walk within the part of the site crossed by the claimed routes. Similarly earlier signs erected by the MOD asking people to keep dogs on leads and only walk them around the sports fields would not have prohibited use of the claimed routes. Further, there is nothing to suggest that the MOD signs were erected on behalf of the landowner.
26. Mr Padfield says signs were erected which stated the land was private and there was no public right of way. A few of the users have a vague recollection of a sign in the woodland which referred to the land being private. However, Mr Padfield provides no information regarding the particular locations of these signs. In particular, there is no indication of when the signs were erected and how long they remained in place. It cannot be determined that the signs were in place during the relevant period and most of the users cannot recall any such signage.
27. Mr Mullins confirms that programme sellers were present on the main route at an entrance to the playing fields on two occasions in 2014 and 2015 during an annual footpath tournament. However, there is no evidence that any action was taken to deter access over this route. These people were only selling programmes and there was no charge to spectators entering the land adjacent to the route. Mrs Barstow says she was able to walk along the main route whilst the tournament was taking place. Overall, no evidence has been provided to demonstrate that verbal challenges were issued to people walking

the claimed routes during the relevant period. The challenges mentioned relate to other activities or use of the pitches.

28. Some correspondence has been provided involving Mr Padfield and Ms Hair of the Rudloe Action Group ("RAG"). A letter of 17 April 1995 from Mr Padfield refers to the issue of whether residents would continue to have access to the land. It is apparent that he was aggrieved by RAG obtaining tree preservation orders for the woodland. He nonetheless stated that he was prepared to allow future access in return for an annual fee.
29. The extent of the membership of RAG is unclear. However, the minutes of a RAG meeting of 1 March 1995 reveal that ten people were present and there were apologies from three others. It is apparent that four of these people have provided evidence in support of use of the claimed routes. The committee is stated to have been formed to investigate the possibility of preserving the field and woodland area adjacent to Leafy Lane as an open space for public use.
30. It appears from the limited amount of correspondence that the issue related to access within the site generally. No mention is made of the use of specific routes. Nor can it be determined that other members of the public would have been aware of the contents of this correspondence. Further, this correspondence does not clearly state that use of the claimed routes was by way of permission or that there was a lack of intention to dedicate these routes. There is also no suggestion that Mr Padfield took any subsequent action to inform members of the public that this was the case.
31. There is evidence that the gate leading to the MOD land was locked on one occasion but this gate is not located on the main route. In response to a complaint regarding the maintenance of the hedge adjacent to a section of the main route, a letter from Mr Mullins of 11 February 2013 made it clear that this was not a public right of way. This could have served to challenge the status of the route in respect of the complainant (Mrs Barstow). However, I am not satisfied that this action alone would have been sufficient to demonstrate a lack of intention to dedicate the route to the public.
32. A note of a telephone conversation between Mr A. Webb and Ms Madgwick records that he had removed the step for the stile at point A. At the inquiry, Mr D. Webb stated that his family did not remove the step. He outlined that he did not object to the stile but reported it to the Council and it was removed. Whilst there is conflicting evidence regarding the removal of the step, I am not satisfied that this prevented access and Mr A Webb acknowledges that people used the squeeze gap.
33. It is my view, on balance, that the evidence is not supportive of any landowner taking sufficient action to communicate to the public that there was a lack of intention to dedicate the claimed routes during the relevant period.

Conclusions

34. I have concluded on balance that the evidence of use is sufficient to raise a presumption that the claimed routes have been dedicated as public footpaths. In addition, I consider that the landowners did not take sufficient action to demonstrate to the public that there was a lack of intention to dedicate these routes during the relevant period. Therefore, I conclude on the balance of probabilities that three public footpaths subsist. In light of this conclusion,

there is no need for me to address the user evidence in the context of common law dedication.

Other Matters

35. In terms of the assertion that the claimed routes should have a lesser width than the 2 metres included in the Order, I am not satisfied that evidence has been provided to support such a modification.

Overall Conclusion

36. Having regard to these and all other matters raised at the inquiry and in the written representations I conclude that the Order should be confirmed with a modification.

Formal Decision

37. I confirm the Order subject to the following modification:

- Insert "*and stile*" after "*Squeeze gap*" in the final line of the first description in Part 2 of the Order Schedule.

Mark Yates

Inspector

BOX 107 A, B and C ORDER PLAN

- Footpath to be added BOX 107 A **A** - - - - - **B**
- Footpath to be added BOX 107 B **C** - - - - - **E**
- Footpath to be added BOX 107 C **D** - - - - - **F**
- Unaffected footpath **X**-**X**-**X**-**X**-**X**-**X**-**X**-**X**-

MAP NOT TO ORIGINAL SCALE
Date: 16/02/2016

