



Order Decision

Inquiry held on 28 August 2007

by **Barney Grimshaw BA DPA**
MRTPI (Rtd)

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

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Decision date:
04 September 2007

Order Ref: FPS/L3055/7/31

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as The Nottinghamshire County Council (Greasley Footpath No. 76) Modification Order 2005. It was sealed on 14 October 2005.
- The Order proposes to add to the Definitive Map and Statement a footpath running between Greasley Bridleway No. 56 and Giltway as detailed on the Order Map and Schedule.
- There were 4 objections outstanding at the opening of the inquiry.

Summary of Decision: I have confirmed the Order subject to modifications that do not require advertising.

Preliminary Matters

1. I held a public inquiry into this Order at Kettlebrook Lodge, Kimberley on Tuesday 28 August 2007. I made an unaccompanied site inspection on Monday 27 August and a further visit on 28 August when I was accompanied by parties who appeared at the inquiry.
2. The Order route in this case is a very short link between a bridleway and an industrial estate. In practice, the route comprises little more than a gap in a hedge which would allow passage between Bridleway No. 56 and the head of a cul de sac, which forms part of Giltway on the Giltbrook Industrial Estate. The route is apparently owned along with the premises either side of it, namely Derbyshire Refrigeration Ltd to the north-east and Leech Pension Scheme Trustees to the south-west. The Leech Pension Scheme land is occupied by tenants, Truckcraft Ltd. The Order route is currently blocked by a 2.2 metre high fence.

The Main Issues

3. The requirement of Section 53(3)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) is that a period has expired such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path.
 4. All the relevant evidence in this case relates to usage of the route. In respect of this, the requirements of Section 31 of the Highways Act 1980 (the 1980 Act) are relevant. This states that where it can be shown that a way over land has been enjoyed by the public as of right and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway unless
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there is sufficient evidence that there was no intention during that period to dedicate it. The period of 20 years is to be calculated retrospectively from the date when the right of the public to use the way was brought into question.

5. Common law also requires me to consider whether the use of the path and the actions of the landowners have been of such a nature that the dedication of the path by the landowners can be inferred.

Reasons

Documentary Evidence

6. The OMA had discovered no documentary evidence indicating footpath rights along the claimed route and no other party presented any such evidence.

Evidence of Use

Date of calling into question

7. In June 2004, a 2.2 metre high fence was constructed across the Order route by Derbyshire Refrigeration Ltd. This effectively prevented continued use of the path and led directly to the application for the route to be added to the Definitive Map. No substantive evidence was presented of any action which called the public's right to use the route into question before June 2004.
8. The relevant 20 year period required before dedication of the route can be presumed under the 1980 Act therefore runs from June 1984 to June 2004 in this case.

Evidence of Users

9. Forty User Evidence Forms (UEFs) were submitted in support of the claim for the footpath to be added to the Definitive Map. Three people who had completed UEFs appeared at the inquiry. In addition, 10 letters or statements giving details of use of the route were submitted, 8 of which were written by people who had also completed UEFs. In total, therefore, evidence of use of the claimed footpath was submitted by 42 people.
10. A petition in support of the confirmation of the Order was also submitted; this contained 22 signatures, 13 of which were those of people who had completed UEFs.
11. The period covered by the evidence of use runs from 1930 to 2004 although, not surprisingly, there is much more evidence of use later in this period than in the earlier years. During the relevant 20 year period, 12 people claim to have used the route throughout the whole 20 years and a further 27 for part of that period. Many users also stated that they had seen other people using the route.
12. The frequency of use claimed varied but most users stated that they had used the route on a daily basis at least and some had used it several times a day. No user recorded ever having been challenged or obstructed on the route before June 2004 and none had seen any signs seeking to discourage use. Many stated that there had been a stile on the route at some time but this had disappeared a long time ago. However, most of these appeared not to have personally seen a stile but had heard of it from others.

13. No evidence was presented to suggest that any of the use of the route during the relevant 20 year period was with the permission of the owners of the land.
14. Objectors to the Order sought to cast some doubt on the user evidence and, although they acknowledged that the route had been used, they suggested that use might not have been uninterrupted. A written statement from SM Oakes, a fencing contractor, dated 12 October 2005, says that he was approached by Derbyshire Refrigeration in June 2004 to erect fencing at their premises and recognised the boundary as one he had fenced in 1978 when working for another company. He does not specify the location of the 1978 fencing or who it was erected for but it was in June 2004 that the fence across the Order route was erected. I could see no physical evidence of any previous fence on my visits but, it may be that remains of any old fence would have been removed when the new fence was constructed.
15. Mr A Witts in a letter states that in 1982 he worked on security on the industrial estate and regularly used the claimed route as did others. He states that a security fence was constructed after completion of the units backing onto Black Lane but that this ran behind Units 8, 10 and 12 and not by the side of Unit 6, now occupied by Derbyshire Refrigeration.
16. Mrs Booth gave evidence that from July 1984 until August 1989 she worked for a company that occupied the premises now belonging to Derbyshire Refrigeration and that she sometimes took a short cut to get to work by climbing over a fence separating Black Lane, Bridleway No. 56, from the industrial estate. She was not sure whether the point where she climbed was on the claimed route but said there was no way into the estate from that part of the bridleway that did not involve climbing a fence. Mrs Margaret Pinnock said in a written statement that she worked at the same factory for a similar period and was shown a place by other workers where it was possible to force a way through by pushing down a fence to climb over it. She also stated that there was never a stile where the claimed route is, although there was one further down the road. Natalie Bass worked at a different factory on the estate in 1986 and said in her written statement that there was no obvious way through from Black Lane to the industrial estate in the vicinity of the claimed route as, if there had been, she would have used it.
17. Mike Davies, who was Branch Manager of Truckcraft, the company occupying the premises opposite Derbyshire Refrigeration, lodged an objection to the Order. In it he stated that he had worked there for 25 years and remembered ducking under a tree to get through the hedge, not using a public footpath.
18. It was also pointed out that before 2004 there was more than one hole in the hedge which might have been used by walkers. Some users also acknowledged that there were other gaps but stated that the claimed route was always the main one that was most used. Only one of the 40 UEFs appears to indicate a different route to that claimed.
19. Overall, the evidence suggests that there has been considerable public use of the Order route during the relevant 20 year period. However, there is some doubt as to whether this use was interrupted at any time by the presence of fencing or was only possible at times by forcing a way through or over fencing and/or vegetation. The evidence of a large number of path users indicates that

use was uninterrupted and unobstructed throughout the 20 years whereas that relating to a fence across it is more limited and to some extent less consistent. On balance therefore, it is my view that the available evidence shows that the Order route was used in such a way as to raise the presumption that it had been dedicated as a public footpath unless there is sufficient evidence that there was no intention on the part of landowners so to dedicate it during the same period.

Evidence of lack of intention to dedicate

20. Little evidence was adduced of action by or on behalf of owners of the land crossed by the claimed footpath to indicate a lack of intention to dedicate it for public use. There is no evidence of any sign being erected on the route to indicate that it was not a public right of way or of any challenge being made to people using it. No declaration or notice has been lodged with the county council to indicate that the claimed route has not been dedicated as a highway.
21. There is some evidence that a fence may have been erected across the route in 1978 but, it is not known who had this fence erected or certain that it actually obstructed the claimed route. There is no evidence of any action being taken to maintain such a fence between June 1984 and June 2004 and the evidence of users is that there was no fence in place.
22. On balance, it is my view that there is insufficient evidence of action by landowners to indicate a lack of intention to dedicate the Order route as a public footpath during the relevant 20 year period to negate the presumption that it had been so dedicated.

Conclusions regarding User Evidence

23. Overall, it is my view that the available evidence suggests that the Order route was used by the public throughout the 20 year period from June 1984 to June 2004 in such a way as to raise the presumption that it had been dedicated as a public footpath and there is insufficient evidence that there was no intention on the part of landowners so to dedicate it during the same period to negate this presumption.

Common Law

24. In view of my conclusion regarding the presumption that the order route has been dedicated as a public footpath in accordance with the provisions of the 1980 Act, I have considered further the possibility that such dedication might also be inferred at common law only briefly.
25. Before the construction of the Giltbrook Industrial Estate commenced in 1978 it would appear that the land it occupies was agricultural land and the land to the north-west of Black Lane was allotments. Longer ago still there was a football ground to the south-east of Black Lane. It was not clear from the evidence available when the football ground ceased to exist. It is shown on an Ordnance Survey (OS) map revised in 1938 and user evidence suggested it might have continued until the late 1950s or early 1960s.
26. Some users stated that the claimed footpath provided access to the football ground and was used by players and spectators. The evidence also indicates that use of the route continued after the football ground reverted to

agricultural use and was used for grazing cattle and during and after the construction of the industrial estate. The user evidence available consistently identifies the Order route as the route used before the development of the industrial estate. However, a number of users refer to it being alongside a large oak tree and there is no current evidence of an oak or other particularly large tree in the vicinity of the route.

27. If there was a stile on the route at some time this might be indicative that it was accepted as a public footpath. However, the available evidence relating to the existence of a stile is limited and to some extent contradictory.
28. Objectors pointed out that use of the field for keeping livestock would have made any gap in the hedge unacceptable and that it is unlikely that use of a path could have safely continued during the construction of roads and factories on the industrial estate. They also drew attention to the existence of another footpath running south-eastwards from Black Lane which is marked on the 1938 OS map and suggested that this may have been the route used by some people.
29. Overall, although there is some evidence of use of the Order route from the 1930s to the 1970s this is more limited than that of use in recent years and there is some reason to doubt whether the same route was always used. On balance, I do not think there is sufficient evidence available to infer that the Order route has also been dedicated as a public footpath at common law.

Other Matters

30. Objectors to the Order raised a number of points relating to the suitability of the Order route for use as a public footpath. These included:
 - the detrimental effect on the security of both industrial and residential properties. On behalf of both Derbyshire Refrigeration and Truckcraft, it was stated that the incidence of damage and other crime had been greatly reduced since the construction of the fence across the path. This view was supported by Nottinghamshire Police and it was also stated on their behalf that before 2004 the footpath had been used as an escape route following burglaries at houses to the north-west of Black Lane;
 - the safety of pedestrians. The claimed footpath emerges directly onto Giltway which is used by industrial traffic including large lorries reversing at this point. Objectors stated that this posed an obvious risk to walkers and raised concerns regarding the possible liability of landowners;
 - there was concern that the route might be abused and become a rat run for motorcycles or other vehicles;

I understand all these points but, as they concern matters outside the criteria set out in the 1981 Act, I have given them no weight in reaching my decision.

31. On the other hand, supporters of the Order pointed out that the claimed footpath would provide a useful link to bus stops, a pub, shops and places of work. Again, this matter lies outside the criteria set out in the 1981 Act and I have given it no weight in reaching my decision.

32. The OMA drew attention to a typing error in the Order itself in that the heading to the second page differed slightly from that on the first page and they asked that it be modified to correct this. I do not think that this error will have misled any party or prejudiced their interests and I therefore propose to modify the Order as requested.
33. Part II of the Schedule to the Order states that the footpath has a minimum width of 1 metre throughout its length. It is currently regarded as good practice for orders such as this to specify the width of routes that are to be recorded as precisely as possible so as to avoid problems occurring in the future with regard to the management or enforcement of them. Accordingly, I suggested to the OMA that the Order required modification in this respect and it was agreed that the width of the route is in fact 1 metre. I therefore propose to modify the Order so as to specify this width.

Conclusions

34. Having regard to these and all other matters raised in the written representations and at the inquiry, I conclude that the Order should be confirmed, subject to the minor modifications referred to earlier (paras. 32-33).

Formal Decision

35. I confirm the Order subject to the following modifications:

Amend the heading to the second page of the Order to read:

"THE NOTTINGHAMSHIRE COUNTY COUNCIL

(GREASLEY FOOTPATH NO. 76) MODIFICATION ORDER 2005"

In the Schedule to the Order, Part II, delete the word "minimum" before the width of the footpath.

Barney Grimshaw

INSPECTOR

APPEARANCES

For the OMA

Anna Bicarregui

Counsel
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(representing Nottinghamshire County
Council (NCC))

Who called:

Eddie Brennan

Definitive Map Officer, NCC

Ken Marsland

Applicant
15 Giltbrook Crescent
Giltbrook NG16 2GH

Kenneth Parkinson

188 Main Street
Newthorpe NG16 2AG

Supporters

Mr SA Brown

473 Nottingham Road
Giltbrook

Objectors

Steve Walsh

Nottinghamshire Police
Beeston Police Station, Chilwell Road
Beeston NG9 1EH

Terence Hill

Derbyshire Refrigeration Ltd
Unit E2 Giltway
Giltbrook Industrial Estate NG16 2GN

Andrea Burton

As above.

Sarah Booth

The Old Vicarage, Vicarage Street
Ilkeston DE7 8QL

DOCUMENTS

1. Statement and bundle of documents, NCC.
2. Copy of extract from OS 1:1250 map, published 1981.
3. Statement of Mr A Brown.
4. Statement of K & JM Burbanks, dated 26 June 2007.
5. Statement of Mrs AE Gretton.
6. Statement of Mr K Marsland and subsequent letter, dated 28 July 2007.
7. Statement of Mrs A Palin.
8. Statement of Mr K Parkinson.
9. Statement of Mr A Witts (and subsequent letter).
10. Petition containing 22 signatures.
11. Copy of a letter, dated 29 July 2007, from RA Chambers.
12. Copy of a letter, dated 20 July 2007, from the Fretwell family.
13. Copy of Email message, dated 28 August 2007, from Roy Plant.
14. Copy of a letter, dated 26 July 2005, from Sarah Booth.
15. Statement of SM Oakes, dated 12 October 2005.
16. Statement of Natalie Bass, dated 10 October 2005.
17. Statement of Margaret Pinnock, dated 14 October 2005.

