



Order Decision

Inquiry opened on 28 October 2008

by **Peter Millman BA**

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

The Planning Inspectorate
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Decision date:
12 November 2008

Order Ref: FPS/E0535/7/24

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as the Cambridgeshire County Council (Public Footpath No. 21 Stetchworth) Definitive Map Modification Order 2007.
- The Order is dated 19 January 2007 and proposes to add a public footpath to Cambridgeshire County Council's Definitive Map and Statement as shown on the Order map and described in the Schedule.
- There were six objections outstanding when Cambridgeshire County Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.

Summary of Decision: I have confirmed the Order subject to modifications set out in the formal decision.

Preliminary Matters

1. The case against confirmation of the Order was made by Miss K Bartlett, the owner of the land across which the Order route runs, assisted by Mr G Bell, the owner of adjacent land. For convenience I refer to them as 'the objectors' in this Decision.

Main issues

2. Cambridgeshire County Council ("the County Council") relies principally on evidence of public use and the actions or inaction of landowners in response to it to demonstrate that public rights exist on the Order route.
3. In these circumstances there are two separate tests which may be applied, the statutory test and the common law test, the satisfaction of either of which would result in confirmation of the Order.

Statutory test

4. Dedication of public footpath rights may be presumed under the statutory test set out in Section 31 of the Highways Act 1980, which reads as follows: (1) *Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.* (2) *The period of 20 years referred*

to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question...

5. Under this test I must be satisfied that there is a way, and that it is of the appropriate character. The public must have used the way on foot, and this use must have been as of right, that is, not by force, secretly, or with permission, actual or implied. The use must have been without interruption, and in order to be satisfied that use has been for a full period of 20 years, I must decide when the right of the public to use the way was brought into question. Finally, if I am satisfied that the other aspects of the test have been met, I must decide whether deemed dedication is rebutted by sufficient evidence, during the 20 year period, that there was no intention on the part of the landowner that the way should be dedicated.

The common law test

6. At common law an implication of the dedication of a public right of way may arise if there is evidence from which it may be inferred that a landowner has dedicated a right of way and that the public has accepted the dedication. I must therefore consider whether the evidence, and in particular the evidence of use of the route by the public and the actions or inaction of landowners, enables an inference of the dedication of public footpath rights to be drawn.

Reasons

Background

7. The Order route starts from the end of the metalled section of Mill Lane, a cul-de-sac public vehicular road. This lane came into existence in 1820, when it was set out in the Stetchworth Inclosure Award as a 30 foot wide private carriage road. As set out, Mill Lane extended beyond where the metalled section now ends (point A on the Order map), curving round to the south-west, but ending about 20 metres short of point B.
8. Later 19th century and early 20th century large-scale Ordnance Survey plans show Mill Lane hedged or fenced on both sides to its end, with a width of about 10 metres. The 20 or so metres between the end and point B are shown fenced only on the south-east side. These plans show no gates or barriers across the Order route until it reaches the boundary between Stetchworth and Dullingham at point B. At that boundary is a hedge, and parallel to it on its south-west a shallow ditch. Over the past 25 years the removal and alteration of boundary features have led to the continuation of Mill Lane beyond point A being no longer apparent on the ground.

Statutory test

Date of bringing into question

9. It is not in dispute that the whole Order route is of a character such that public use could give rise to a presumption of dedication. The County Council argued that its use was brought into question in October 1996, and that therefore the relevant 20 year period is between October 1976 and October 1996. The objectors did not propose an alternative date, but put forward evidence to show that the route had been barred by locked gates between 1982 and 1987 and by other obstructions since then. The evidence contained in completed

user evidence forms produced by the County Council is, to some extent, contradictory, with dates between about 1993 and 1998 being mentioned as the time when the route became impassable.

10. The Chairman's Report of the May 1998 Parish Meeting for Stetchworth stated: *the way is not open between Millfields and the sandtrack...* This clearly refers to the Order route – the 'sandtrack' is the gallop which can be seen on the Order map running parallel to footpath 2 – and is good contemporaneous evidence that bringing into question occurred before then. The County Council relied on a copy of a letter sent to it by Dr and Mrs Moreton of the Ramblers' Association in October 1996, and provided by them. This letter stated, of what it called 'the link between Mill Lane and Footpath 2, Dullingham', *on attempting to use it today, we found the gate at TL 636 583 [point B] locked and wound round with barbed wire, and the space at the side blocked up, making passage impossible.*
11. The County Council had no record of receiving this letter. There was no record of a reply. Dr and Mrs Moreton, who provided evidence from diary entries of their use of the Order route on a number of previous occasions, did not provide a diary entry in respect of October 1996. The objectors questioned the authenticity of the letter. The County Council witness stated that records of complaints dating from 1996 had been scanned and stored on discs which had since become corrupted. Although it was therefore impossible to be certain that the letter had reached the County Council, its long experience of these two ramblers was that they were trustworthy.
12. It does not seem to me likely that the 1996 letter is anything other than a genuine contemporaneous record of an attempt to use the Order route in October 1996, thwarted by an obstruction hitherto not encountered. One of the diary entries referred to in the previous paragraph, from October 1994, recorded a walk which, in my view, probably included the Order route. It is possible, therefore, that the route was blocked as early as November 1994.
13. The objectors provided evidence of interference with the Order route before 1996 by its narrowing, by locked gates (paragraph 9 above), and by the digging out of the ditch which runs along the parish boundary. I consider this evidence further below, but note that apart from the deepening of the ditch, which one witness referred to as an obvious attempt to stop walkers using the route, none of the users appears to have noticed these actions, or to have reacted to them as challenges to their use.
14. I conclude that 1996 is probably the year during which the public's right to use the Order route was brought into question. I shall, however, consider below whether, if the route was blocked in 1994, a presumption of dedication would be raised by a period of use between 1974 and 1994.

Use by the public

15. The County Council's evidence of public use consisted of completed user forms, a list of names showing dates of alleged use, diary entries recording walks, and oral recollections put forward at the inquiry. Taken at face value, this shows that at least 17 people used the route for the full 20 year period between 1976 and 1996, with a further 16 using it for more than 10 of those years. The objectors produced evidence from those who owned, lived by, or worked near the Order route during the period 1976 to 1996 and who stated that they had

- seen no public use of the Order route or that there were obstructions on it preventing use.
16. I do not consider that a list of names with dates of use next to them may be given significant weight. That is not to suggest that the named people did not use the Order route, simply that there is too little information in such a list; it gives no information, for example, about frequency of use, or whether use was by permission.
 17. Discounting the list of names and dates, there is direct evidence of the use of the Order route by six members of the public over the full 20 year period. The evidence of two of these people was given orally. There is direct evidence of the use of twelve members of the public for shorter periods during this time, and four of them gave oral evidence. The evidence of these witnesses stood up well under cross-examination. This was supported by evidence of use before the 20 year period. Apart from those who simply provided their name and dates, twelve people provided evidence of the use of the Order route prior to 1976, 4 of whom stated that they had used it in the 1930s, 1940s or 1950s. From this evidence, the amount of use in the 20 year period from 1974 to 1994 would have differed little from that between 1976 and 1996.
 18. Mrs Moreton of the Ramblers' Association kept diaries which described briefly the walks that she and her husband had taken. In evidence she produced photocopies of 20 pages from these diaries, the earliest of which dated from 1975, the latest from 1994. These refer to walks including Stetchworth. Nine of these entries refer to Millfields (shown on the Order map) and, in my view, can only be describing a route including the Order route. I consider that because they were contemporaneous records and because they were made at a time when it cannot have been known that there would be a dispute about it, the diary entries provide strong evidence that the Order route was usable and used between those dates.
 19. Because Dr and Mrs Moreton were in the habit of writing to the County Council when they encountered routes which were obstructed, and they did not complain until 1996, the diary evidence, which includes entries for every year between 1982 and 1986, seems on the face of it to be completely at odds with the objectors' evidence that there were two locked gates across the Order route between 1982 and 1987. These gates may be seen on an aerial photograph taken for the Estate Agent's brochure when Millfields was sold in 1987. No evidence was provided of obstruction to the Order route between 1974 and 1982.
 20. The user evidence forms completed by people who had lived in or near Stetchworth all their lives and who recalled using it as children, as far back as the 1930s or 1940s in some cases, generally refer to a wide route – a continuation of Mill Lane. Those whose use of the Order route did not start until the 1980s mention a much narrower route, of as little as six feet in width.
 21. This apparently conflicting evidence may, however, be reconciled. Mrs A Rolinson, who owned the land over which the Order route runs between 1982 and 1987, drew a diagram which she produced in evidence, showing the Order route as it was in 1982. There was a locked gate at or close to point B, and another about 20 metres to the north-east, where the 30 foot wide private

- carriage road (paragraph 7 above) ended. These were the gates seen in the aerial photograph of 1987. The diagram, however, shows a gap just to the south-east of the gate at B, and a narrow strip of land running north-eastwards adjacent to the boundary of the Old Mill, to the end of the private carriage road. This Mrs Rolinson labelled as 'gap 4-6 ft left between new post & rail paddock fence to protect neighbour's garden fence. Not for access.'
22. I conclude from the evidence mentioned in the last two paragraphs that even after locked gates were installed in 1982 it would still have been possible for pedestrians to get from A to B without encountering obstructions. I conclude too, from the fact that there was no apparent complaint about the erection of the post and rail fence and the gates, that any walkers going between A and B probably kept fairly close to the fence bounding the garden of the Old Mill.
23. The objectors produced a photograph of the northernmost of the two gates, taken in 1988, showing that the ground immediately to its north-east was poached and muddy. They put this to the Council's witnesses who had either not recalled the gate, or who had maintained that the surface of the Order route was usually quite hard. It seems to me that if, after 1982, members of the public were walking between the post and rail fence and the fence surrounding the Mill garden, they would not have had to go via this gate and would not have encountered ground poached by horses. The objectors also referred to a large muck heap, which had grown in the 1990s and might have prevented use of a route to the north-west of the post and rail fence. Again, if walkers were utilising the gap between that fence and the fence to the garden of the Old Mill, they would not have encountered it.
24. Although it is not disputed that the purpose of the post and rail fence was to protect the Old Mill fence from damage by horses, and that Mrs Rolinson did not leave the gap to facilitate public use, it cannot be concluded from that that any public use of it would not have been as of right (paragraph 5).
25. In her statement of 2005 Mrs Rolinson wrote that she never saw anyone using the track as a footpath and that she did not think that anyone ever did use it as a footpath. Two users, however, referred to seeing Mrs Rolinson while on the Order route, yet not being challenged. Under cross-examination Mrs Rolinson said that she had seen one of these people, and that 'a few people she knew came through – not enough to worry about the danger [to Riding for the Disabled activities].'
26. The objectors called a number of witnesses who had worked at Millfields during the 20 year period, or who had lived close to the Order route. All stated that they had seen no public use of the Order route, but all agreed, under cross-examination, that they did not have continual sight of the route. It seems to me that their evidence is not incompatible with a modest level of public use, mostly by local people, and that there was such a level of use is supported by Mrs Rolinson's evidence.
27. One witness called by the objectors read out a letter he had written in November 2006 stating that he had been employed by Clare House Stables, which owns the land to the south-west of point B in Dullingham, across which footpaths 2 and 3 run. This stated that in 1992 he had installed a fence in the gap in the hedge which led to Millfield land to ensure both walkers and riders

did not regard the route as a right of way, and that he had widened the ditch which runs parallel to it on its south-western side. I noted that this witness had some difficulty reading the letter he was said to have written, and under cross-examination he stated that the purpose of the fence and ditch was only to prevent riders getting through, that the fence was on the Dullingham side of the ditch, and that the date was 1992 'as near as I can be sure'. It seems to me that the works described would probably not have made the Order route impassable to walkers.

28. I conclude from the evidence discussed so far that there was probably sufficient use of the Order route (though not to its full width) throughout the years 1976 to 1996 to constitute use by 'the public'. I would draw the same conclusion about the period 1974 to 1994. I conclude that the use was as of right. I conclude that it was without interruption, as far as a strip about two metres wide adjacent to the garden of the Old Mill is concerned. Use of the remaining 8 metres of width was interrupted between 1982 and 1987.

Evidence of a lack of intention to dedicate

29. Apart from one user form which recalls a 'private' notice – completed by a person who did not give oral evidence – no evidence was provided of any notice intended to have deterred use of the Order route. The ditch on the boundary with Dullingham does not appear to have deterred pedestrians from using the Order route, even when it was dug out towards or at the end of the 20 year period. The locking of gates across part of the width of the route and the erection of a post and rail fence is, however, evidence of an intention not to dedicate that part of the Order route which was thereby made inaccessible.
30. I conclude that there is insufficient evidence to rebut the presumption of dedication. I conclude that the Order route has been dedicated as a public footpath, although not to a width of 10 metres (see paragraphs concerning width below)

Common Law test

31. For completeness I shall consider the common law test for dedication (paragraph 6 above).

Documentary evidence

32. None of the map evidence is directly supportive of the existence of public rights on the Order route. It shows only that, at least until the first half of the 20th century, there were probably no gates or other obstructions across the route except at the parish boundary. Since even large-scale Ordnance Survey plans do not show gates, stiles or short gaps in boundaries, it is not possible to tell from them whether there was access from Stetchworth into Dullingham at point B.
33. Later maps produced in evidence – for example a map showing the length of Mill Lane which is currently adopted highway – show a continuous track continuing from Mill Lane and running the whole length of the Order route. It may have been such a depiction which Dr and Mrs Moreton referred to in their 1996 letter as a 'white road' shown on their Pathfinder map. The County Council witness speculated, when asked why the Order route did not appear on

the first Definitive Map if it was in existence in the 1950s, that if it appeared on maps to be a road ending at point B, it might have been thought unnecessary to record it. I consider that no more than a possibility.

34. The sole piece of documentary evidence directly supportive of the existence of public rights on the Order route is the Definitive Statement for footpath Dullingham 3, part of which is shown on the Order map. The heading for the Statement gives the path's destination as Stetchworth Mill, although the Statement itself describes the path ending at its junction with footpath 2. No other maps or documents compiled during the process of making the first Definitive Map in the 1950s were produced in evidence, and I can give this evidence only the slightest weight in support of the view that there was, at the time, a through route from Dullingham into Stetchworth.
35. Since the 1960s Ordnance Survey maps have shown information about rights of way taken from Definitive Maps. Ordnance Survey maps of this area of Cambridgeshire have shown the Order route as a public right of way until recently. A very few user forms and statements mention this. Although the route was clearly shown in error, since the Order route has never been included in a Definitive Map and Statement, it would be understandable if at least some public use was prompted or encouraged by the depiction.

User evidence

36. Five of the user forms and statements produced by the County Council gave evidence of use of the Order route during the 1930s, 1940s or 1950s. The objectors called an elderly gentleman, born in 1916, who had lived and worked in the area for more than 90 years. The clarity of his evidence was diminished to some extent by his forgetting to bring his hearing aid with him to the inquiry. He clearly stated, nevertheless, that people from Mill Lane used to cut through the Order route to get to Dullingham, and that before the Second World War there was a footpath, although he never saw anybody much using it. He also remembered, however, a locked gate across the Order route after the war.
37. I do not think it would be right to give this oral evidence a great deal of weight, partly because of the gentleman's deafness, and also because it was not feasible to ask him why his evidence ran counter to what the objectors' statement of case stated that he would say. The weight that can be given to it, though, is supportive of the existence of public footpath rights on the Order route.
38. I mentioned above at paragraph 17 evidence of use from the 1930s to the 1950s. Some of this evidence provided details of the purpose of use, for example to get to the bakehouse in Dullingham, since there was none in Stetchworth, or to get to the Co-op in Stetchworth. In addition to this, and ignoring again those who had simply provided a name and some dates, a further eight people claimed to have used the route before 1976.
39. I have no reason to doubt that the use described occurred, particularly since the only reference to an obstruction on the route prior to 1982 came from the gentleman who recalled public use before the Second World War.

40. Before 1982 the land over which the Order route runs was owned by the Stetchworth Estate. No evidence was produced to the inquiry of where the landowner lived or where any agent of steward operated from, or whether the land was leased. It seems to me, however, that since there is evidence that the Order route was probably in continuous use from the 1930s to the 1990s, even if by a fairly modest number of people, it must be presumed that the landowner was aware of the use, and because no action was taken to prevent it or advise users that it was merely tolerated that he intended it to be dedicated as a public right of way.

The width of the route

41. The Schedule to the Order states that the route is 10 metres wide. The County Council based this width on the fact that the route, apart from the south-westernmost 20 metres or so, was set out at a width of 30 feet in 1820. Later maps showed the route at least that wide. It should be presumed, the County Council argued, that the pedestrian public had taken advantage of that width until it was narrowed in recent times and that therefore public rights had been dedicated over a 10 metre wide strip of land.

42. I accept that it is possible that the public used the full 10 metre width when it was available. It should be remembered, however, that when the route was physically created, it was created as a private carriage road, and the boundaries were not made to separate an area over which public pedestrian rights existed from other land.

43. Although some users recollected a wide route – a continuation of Mill Lane – there is no significant evidence that the whole width was routinely used. As I noted above in paragraphs 20-21, there is no evidence of complaint when Mrs Rolinson's post and rail fence restricted the width of the route, and those whose use began in the 1980s recall a path only about 2 metres wide. One whose use started in 1985/6 recalled, *The path was no more than 6-8 feet wide, with a fence on the Old Mill side and stud post and rail on the Millfields paddock side.* It seems likely to me that before the fence was erected in 1982 most people would naturally have tended to keep fairly close to the Old Mill garden fence because that would have been the shortest route.

44. Although Mrs Rolinson's diagram (paragraph 21) showed the post and rail fence extending along only the southernmost 20 metres or so of the route, it has subsequently been extended to run along the greater part of it.

45. I conclude from this evidence that public rights exist over a width of about 2 metres. It is possible that they extend over a greater width, but the evidence does not show, on the balance of probabilities, that they do so.

Conclusion

46. Having regard to these and all other matters raised both at the inquiry and in written representations, I conclude that the Order should be confirmed subject to a modification to reduce the width of the Order route to two metres.

Formal Decision

47. The Order is confirmed subject to the modifications described below:

- In parts I and II of the Schedule, insert after the words 'around the outside of' 'and adjacent to'.
- In parts I and II of the Schedule, where '10 m' occurs, delete it and replace with '2 m'.

Peter Millman

Inspector

APPEARANCES

For the Order Making Authority:

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| Mr R Carr, instructed by the Director of Highways, Cambridgeshire County Council | Robin Carr Associates, 2 Friarage Avenue, Northallerton, North Yorkshire DL6 1DZ |
| He called | |
| Mrs J Moreton | 23 Emery Street, Cambridge CB1 2AX |
| Mr G Gardiner | 5 West End, Woodditton, Newmarket CB8 9SW |
| Mrs F Garrod | 31 Strollers Way, Stetchworth CB8 9TZ |
| Mr C Hurrell | Chalk Farm, Brinkley CB8 0RP |
| Mrs E Hurrell | Chalk Farm, Brinkley CB8 0RP |
| Mrs A Taylor | Rose Cottage, 32 High Street, Stetchworth CB8 9TJ |
| Mrs L Whymer | 22 Coopers Close, Stetchworth, Newmarket CB8 9TT |
| Miss C Taylor | Countryside Access Team, Cambridgeshire County Council |
| Mr Osbourn | 11 Poplars Close, Burwell CB25 0ET |

For The Objectors:

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| Miss K Bartlett | Millfields, Mill Lane, Stetchworth CB8 9TR |
| She called | |
| Mr G Bell | The Old Mill, Stetchworth CB8 9TR |
| Mrs A Rolinson | Field End, Wickhambrook Road, Hargrave, Bury St Edmunds IP29 5HY |
| Mr B Ringrose | Rosemount Lodge, The Green, Gazeley, Newmarket CB8 8RS |
| Mr S Taylor | Parsonage Farm, Woodditton, Newmarket CB8 9RZ |
| Mr G Gentleman | 31 Brinkley Road, Dullingham, Newmarket |
| Mr J Day | 37 Mill Lane, Stetchworth CB8 9TR |
| Mr A Dell | 21 Jock Jarvis Close, Newmarket CB8 8HY |
| Mrs P Hutt | 12 High Ditch Road, Fen Ditton CB5 8TE |
| Mr J Kennington | 107 Stetchworth Road, Dullingham CB8 9UH |
| Mrs R Harrison | 18 The Green, Snailwell, Newmarket CB8 7LT |

Interested Person:

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| Mr C Prewer | 25 Strollers Way, Stetchworth CB8 9TZ |
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DOCUMENTS HANDED IN AT INQUIRY

1. Extract from booklet of walks and rides round Cambridge
2. Cambridge Rambling Club leaflet
3. Photograph of part of the Order route
4. Mr Ringrose's statement
5. Mrs Rolinson's additional report
6. Mr Kennington's statement
7. Fax from Roythornes enclosing Mrs Hutt's statement
8. Mrs Rolinson's map
9. Extracts from Stetchworth parish records
10. Mrs Carter's letter
11. Miss Bartlett's submissions
12. Mr Carr's submissions