



Order Decision

Inquiry opened on 13 February 2008

by Heidi Cruickshank BSc MSc MIPROW

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

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Decision date:
26 Feb 2008

Order Ref: FPS/E0535/7/20

- 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. 8 Eynesbury (St Neots Urban)) Definitive Map Modification Order 2006.
- The Order is dated 7 March 2006 and proposes to add a footpath running from Linley Road to Hardwick Road. Full details are set out in the Order Plan and Schedule.
- There was one objection outstanding at the commencement of the Inquiry.

Summary of Decision: The Order is proposed for confirmation subject to modifications set out below in the Formal Decision.

Procedural Matters

1. On 15 May 2003 an application was made to Cambridgeshire County Council, the order-making authority ("the OMA"), under the Wildlife and Countryside Act 1981 ("the 1981 Act") to add a public footpath to the Definitive Map and Statement for the area. Following investigation of the application a report was put to the Director of Highways & Access in November 2005 and the OMA determined that a Modification Order should be made.
2. I made an unaccompanied site visit on 12 February 2008 and held a Public Inquiry into the Order at the Berkley Methodist Church, Eynesbury, on 13 February 2008. No-one requested a further site visit at the close of the Inquiry.

Main issues

3. The Order is made under section 53(2)(b) of the 1981 Act relying on the occurrence of an event specified in section 53(3)(b), namely, whether there has been an expiration of any period 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. The reason that the initial application was made was that the use of the route was prevented. In such circumstances, it is appropriate to consider the Order with reference to the statutory requirements of section 31 of the Highways Act 1980 ("the 1980 Act"). In considering the statutory requirements, the main issues are:
 - i. when the status of the claimed route was called into question;
 - ii. the extent and nature of the claimed use;
 - iii. whether there is evidence of a lack of intention to dedicate a public right of way.

5. Before a presumption of dedication can be inferred under statute, the 1980 Act requires that the relevant period of use be calculated retrospectively from the date on which the status of the way is 'called into question'. The use during that period must be shown to have been actually enjoyed by the public as of right and without interruption for a full period of twenty years.
6. It was argued for the objector that the Order route had not been available to the public throughout the entire period, being blocked at certain times, which it was said constituted an interruption to public use.

Reasons

Section 31 of the Highways Act 1980

When the status of the claimed route was called into question

7. The Order route formed a short-cut leading directly from the end of Linley Road to Hardwick Road. It was wide enough for vehicular use but this access was prevented, apparently in about the 1970s, by bollards at the end of Linley Road; these did not prevent pedestrian access. The properties directly to the north of the Order route, numbers 26 – 32 Hardwick Road are businesses with living accommodation above and known locally as the parade¹.
8. In 2002 the objector and his wife bought 32 Hardwick Road, the property adjacent to the claimed route on the northern side, and at least part of the Order route itself². They have owned number 26 Hardwick Road from the early 1960s and now own all premises in the parade. He and his wife have lived above the premises at 26 Hardwick Road since the early 1960s.
9. In order for the use to be 'called into question' under the terms of the 1980 Act it is necessary that the action is sufficient for the public to have been clearly aware that their rights had been challenged. The case of *Lewis v Thomas, 1950*, was submitted on behalf of the OMA and held that the reason that the route is blocked must be to demonstrate to the public that there is no public right of way, not for some other purpose.
10. When the objector bought 32 Hardwick Road he put up notices to show it was private property; the notice still on site is the only notice that has been in place and this says "*PRIVATE PROPERTY. No unauthorised parking. Wheel clamping in operation.*" Although this notice was initially placed on the corner of the building alongside the Order route the user evidence shows that people thought that the notice and gates were erected at the same time, indicating that they were not aware of the notice before this. I consider that this notice would have been understood to be trying to prevent people from parking in this area and I do not consider that it was sufficient to have called the use of the Order route into question.
11. The objector said that the Order route was used for car-parking overnight, as well as loading and unloading lorries in connection with the shops, and so people were not able to walk through at all times. He said that the public did not have uninterrupted access throughout the 1970s, 1980s and 1990s.

¹ Although different businesses operated from these premises I will simply use the term 'shops' for clarity.

² I note that the objector claims ownership of the entire width of the Order route.

12. It was clear that people were aware that vehicles would sometimes be found on the route, either parked or making deliveries to the rear of the shop, although there were inconsistencies as to whether use would actually have been prevented due to these vehicles; taking account that none of the initial user evidence mentioned vehicles as obstructions I consider that they were not prevented from using the route by vehicles. Furthermore the comments that problems, such as vandalism and noise, were encountered at night when the route was open indicates that there was access overnight, albeit undesirable.
13. People were aware that full access might not be available at certain times but this was over short periods and no more than might be expected on any urban footway. There was no evidence that they believed that it called their rights to use the route into question. It is not the case that vehicles were on the Order route for the purpose of demonstrating to the public that there is no public right of way; they were simply parked or making deliveries. I do not consider that the evidence indicates an interruption to the public use on foot.
14. In 2003 the objector applied to Huntingdonshire District Council for planning permission to convert the shops into office space and the application included the erection of gates across the Order route. Those completing user evidence forms ("UEFs"), interviewed and giving evidence at the Inquiry, said that they had never found the route to be blocked until 2003. They were clear that use of the route had been blocked by the erection and subsequent locking of gates in early 2003, most people indicating this to be April or May of that year; the formal application to record the route was submitted shortly after this time.
15. I note that there were apparently minor obstructions, such as rubbish or old machinery, placed on the Order route before the erection of the gates and at least some people seemed to be aware that the gates were to be put up and later locked. It is not entirely clear when this occurred but it appears to have been within no more than a few months from the erection of the gates. There seems to have been awareness on the part of at least some members of the public that their rights were possibly being challenged and this could have called into question the rights of the public to use the Order route at a slightly earlier date, however, it appears this was still in the early part of 2003 and some people remembered these events as occurring together.
16. In my opinion, the event that clearly called the public rights into question was the one that was answered by way of the application to record the route on the Definitive Map and Statement for the area, and that was the erection of gates; therefore, I consider that the relevant twenty-year period is 1983 – 2003.

Evidence of use

17. Forty-six UEFs were completed as part of the claim to record the Order route and the OMA carried out interviews with twenty-four of those completing UEFs to verify the evidence. Looking at the twenty-year period 1983 – 2003 there were a minimum of thirty-two people declaring use in each year, with a maximum of forty-three in the period 1996 - 2002.
18. Although one person said that his use was only occasional, the majority used the route as a daily short-cut going to the shops, the allotments, work or school, the bus stop, and for other purposes, such as visiting friends and family

or walking the dog. Some people used the route more than once a day as part of their daily routine.

19. The objector queried the UEFs on the basis that certain activities, such as collecting newspapers from the shops or visiting Tesco, would not have been possible during some of the time mentioned. I have looked carefully at the evidence but consider that these were simply listed as some of the reasons that people used the Order route and do not detract from the statements as a whole. I am satisfied that there is consistency within the evidence and that it shows use of the route by the public on foot throughout the relevant twenty-year period, prior to 2003.
20. I consider that the use has been without secrecy and without force, however, it was argued for the objector that the use had not been 'as of right' because it was in connection with the shops and so was effectively with permission. Less than half of those completing UEFs mentioned shopping as one of the reasons that they used the Order route and of these only two did not mention other reasons for walking there. Whilst I agree that the shop was an important destination for some people I consider that the evidence clearly shows that the totality of use was far more general.
21. I accept that the business owners and tenants would have wished to encourage people to walk through to use the shops and so would not have wished to challenge the use, however, I agree with the OMA that there are ways in which dedication can be prevented, whilst not discouraging such custom, for example by putting up notices to say that use was by permission. This did not occur.
22. I consider that there was open and regular use of the Order route as of right throughout the twenty-year period relevant to my determination and this raises a presumption that the way has been dedicated as a public footpath.

Evidence of lack of intention to dedicate a public right of way

23. The presumption of dedication can be rebutted if there is evidence that at any time during the relevant twenty-year period the landowner did not intend to dedicate a public right of way over the route in question.
24. Evidence was submitted that at the time that the houses and surrounding area was built, including the Order route itself, there was no intention on the part of the developers to lay out the Order route as a link between Linley Road and Hardwick Road. This came from Mr Searle, who had worked for the architects designing the layout for the developers but he agreed in cross-examination that what was actually built differed from the original plans.
25. These plans dated from the early 1960s, when the area was under construction. I note that it was not included as one of the roads later adopted by the County Council in its capacity as the local highway authority; however, even if I accept the argument that there was no intention on the part of the developers to build the Order route as a footpath this does not assist with regard to the intention of the landowner within the relevant twenty-year period.
26. It was argued for the objector that blocking the route with vehicles indicated a lack of intention to dedicate the route, however, the evidence showed that the

vehicles were not parked at the request of the landowner in order to prevent use; the letter of May 2002 from Montlake & Co regarding the parking of vans in this area showed that some were not even present with permission.

27. I agree with the OMA that the parking of vehicles is not one of the methods identified under the legislation of the 1980 Act to show a lack of intention to dedicate a right of way and would not be understood as such by the public at large. As I noted earlier the public clearly did not find the vehicles challenged their use.
28. I do not find that there is any evidence that the landowner indicated a lack of intention to dedicate the Order route as a public right of way at any time during the relevant twenty-year period.

Documentary evidence

29. This case relied primarily upon the user evidence discussed above; however, the OMA investigated some documentary evidence during their determination of the claim. I agree with the OMA that there was nothing within the evidence submitted to support the existence of a public right of way; however, I do not consider that this weighs against the clear evidence of use discussed above.

Width

30. The width specified in this Order is for a minimum unobstructed width of 3 metres, however, the principle is that widths should be recorded as accurately as possible and I do not consider that a minimum width is appropriate. The width to be recorded varies at the junction with Linley Road due to the extent of the already recorded highway in this area and the OMA requested a modification to the Order to better identify the width to be recorded.
31. I consider that any such modification would require advertisement under the provisions of paragraph 8(1)(a) of Schedule 15 to the 1981 Act, as it could be said to 'affect land not affected by the order'.
32. Having looked at the user evidence, the maps and the route on the ground, I am satisfied that the modification to width proposed by the OMA is appropriate and this is set out below in my Formal Decision.

Other matters

33. The majority of concerns, raised by statutory and non-statutory parties, related to issues of the desirability or otherwise of the route in question. When the route was first blocked there was local action to reopen it, however, the opinion of some local people now appears to have swung towards a desire for it to remain closed; a petition was submitted to the Inquiry, which had been signed by a number of local residents who did not wish for the Order route to be reopened.
34. A report had been prepared by the Cambridgeshire Constabulary Architectural Liaison Officer; any management issues arising as a result of my decision will need to be dealt with separately.
35. Whilst I have taken note of all the concerns raised, and understand how important these issues are for the people living near to the claimed route, they

are not matters that I am able to take into account under the legislation; therefore, I have given them no weight in reaching my decision.

Conclusions

36. I consider that the evidence shows that the route probably originated as an access for the shops on Hardwick Road but it was used by the public as soon as it was built and there is no evidence that this use was ever prevented. The public used the route as part of the normal urban highway for the usual wide variety of reasons that any such route might be used.
37. This use was prevented when gates were erected and locked across the route following a change in ownership. In the relevant twenty-year period prior to this I consider that the route had been used by the public, as of right, in a manner leading to a presumption of dedication of a footpath under statute, the landowner not having shown a lack of intention to dedicate the route.
38. 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 modifications relating to the width to be recorded, as discussed above.

Formal Decision

39. I propose to confirm the Order subject to the following modifications;
- Within Part I of the Schedule, in the column headed '*Width*':
 - Delete "*Minimum unobstructed width 3 metres*" and replace with "*A varying width from 3.0m to 6.3m as shown (hatched) on the Order plan*"
 - Within Part II of the Schedule, in the column headed '*Width*':
 - Delete "*Minimum width 3 metres*" and replace with "*Width varying from 3.0m to 6.3m as shown (hatched) on the Order plan*"
40. Since the confirmed Order would affect land not affected by the Order as submitted, I am required by virtue of paragraph 8(2) of Schedule 15 to the Wildlife and Countryside Act 1981 to give notice of the proposal to modify the Order and to give the opportunity for objections and representations to be made to the proposed modifications. A letter will be sent to interested persons about the advertisement procedure.

Heidi Cruickshank

Inspector

APPEARANCES

For the Order Making Authority:

Mrs Sue Rumfitt Rights of Way Consultant *instructed by* Cambridgeshire County Council, Box No ET1009, Babbage House, Castle Park, Cambridge, CB3 0AT

who called:

Miss C Haggett Senior Definitive Map Officer, Cambridgeshire County Council

Mr W Allen 6, Linley Road, Eynesbury, St Neots, Cambridgeshire, PE19 2UJ

Mr D Davies 45, Ferrars Avenue, Eynesbury, St Neots, Cambridgeshire, PE19 2TZ

Mr J Tokens 31, Ferrars Avenue, Eynesbury, St Neots, Cambridgeshire, PE19 2TZ

In Support of the Order:

Cllr Sandra Giles 6, Stratford Place, Eaton Socon, St Neots, Cambridgeshire, PE19 8HY

In Objection to the Order:

Mr P Vialls Wilkinson & Butler Solicitors, Peppercorn House, 8 Huntingdon Street, St Neots, Cambridgeshire, PE19 1BH *instructed by* Mr G Buckham

who called:

Mr G Buckham 26, Hardwick Street, Eynesbury, St Neots, Cambridgeshire, PE19 2UE

Mrs L Hall 57, Hardwick Street, Eynesbury, St Neots, Cambridgeshire, PE19 2UE

Mr K Martin 14, Linley Road, Eynesbury, St Neots, Cambridgeshire, PE19 2UJ

Mr J Porter 59, Hardwick Street, Eynesbury, St Neots, Cambridgeshire, PE19 2UE

Mr A Rudd 20, Linley Road, Eynesbury, St Neots, Cambridgeshire, PE19 2UJ

Mr J Searle 26, Constable Avenue, Eaton Ford, St Neots, Cambridgeshire, PE19 7RH

Interested Parties:

Mr J Ryan 18, Linley Road, Eynesbury, St Neots, Cambridgeshire, PE19 2UJ

DOCUMENTS

- 1 The Order
- 2 Proof of evidence of Miss Haggett, including appendices
- 3 Lewis v Thomas, 1950
- 4 OMA request for modification of width
- 5 Two letters in support of the Order
- 6 Bundle of documents and statements submitted on behalf of Mr Buckham, including attachments
- 7 Letter objecting to the Order