



The Planning Inspectorate

SH-BEN-95

Order Decision

Site visit on 28 May 2018

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

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

Decision date: 24 August 2018

Order Ref: ROW/3175719

- The Order is known as The Sheffield City Council (Definitive Map and Statement) Modification Order (No 59) 2016.
- The Order was made by Sheffield City Council ("the Council") on 18 August 2016 and proposes to add a footpath ("the claimed route") to the definitive map and statement, as detailed in the Order Map and Schedule.
- There was one objection outstanding when the Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.

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

Procedural Matters

1. This Order was scheduled to be determined by way of a public inquiry. However, in light of the absence of a statement of case or proof of evidence from the objector (Mr Winstone) and the lack of response from him to correspondence sent by the Planning Inspectorate regarding the inquiry, it was decided that the matter should be determined from the written submissions of the parties. In this respect, I have had regard to the objection made to the Order and Mr Winstone's previous comments. I made an unaccompanied visit to the site on 28 May 2018.
2. The Council draws attention to an error in the Order regarding the title of the definitive map to be modified and the fact that the Order is stated to take effect on the date it is made rather than when it is confirmed. Further, I sought clarification from the Council regarding the reference in the Order to it being made under Section 53(2)(a) and (b) of the Wildlife and Countryside Act 1981 ("the 1981 Act"). It is evident that reliance is placed on 53(2)(b) of the Act. Nothing is apparent to me to suggest that any party was prejudiced by these errors. I therefore take the view that, if confirmed, the Order should be modified accordingly.

Main Issues

3. The Order, in accordance with Section 53(2)(b) of the 1981 Act, relies on the occurrence of an event specified in Section 53(3)(c)(i) of the Act. Therefore, if I am to confirm the Order, I must be satisfied that the evidence discovered shows that a right of way, which is not shown in the 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 ("statutory dedication"). This requires consideration of whether there has been use of a way by the