
Order Decision

Site visit made on 28 July 2015

by Barney Grimshaw BA DPA MRTPI(Rtd)

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

Decision date: 11 August 2015

Order Ref: FPS/L3055/7/84

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as The Nottinghamshire County Council (Besthorpe Footpath No. 19 and North Collingham Footpath No. 42) Modification Order 2012.
- The Order is dated 2 March 2012 and proposes to modify the Definitive Map and Statement for the area by adding a public footpath running between Besthorpe Byway No. 18 (Trent Lane) and North Collingham Footpath No. 17, as shown on the Order Map and described in the Order Schedule.
- There were 5 objections outstanding when Nottinghamshire County Council, the Order Making Authority (OMA), submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is not confirmed.

Procedural Matters

1. I made an unaccompanied site inspection on 28 July 2015 when I was able to walk the southern part of the Order route and to view the rest of the route from the northern end and an intermediate point. I could not gain access to some parts of the route as this was obstructed by locked gates, barbed wire or hedges.
2. I attach a copy of the Order Map for reference purposes.

The Main Issues

3. The requirement of Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 (the 1981 Act) is that the evidence discovered by the surveying authority, when considered with all other relevant evidence available, should show that a right of way that is not shown on the definitive map and statement subsists along the Order route.

Reasons

4. No evidence of recent use of the Order route has been submitted. On my visit I could identify no indication of the Order route on the ground and the route was obstructed by fences or hedges at various points. Also, at one point the route passes through a water area which appears from the vegetation around it to

have existed for a considerable time. Accordingly, the determination of this Order depends entirely on the evidence contained in documents of various types.

The North Collingham Inclosure Award 1795

5. A plan of the Lordship of North Collingham surveyed in 1790 shows a route annotated as "*Besthorpe footway*" following a similar, but not identical, line to that of the southern section of the Order route.
6. The subsequent inclosure award included provision for the setting out of a public foot way to be called "*The Besthorpe Foot Way*" and the plan that accompanied the award appears to be the same as the 1790 plan referred to above. The foot way is said to run to a foot stile and bridge at the southwest corner of the Lordship of Besthorpe. The plans are not entirely clear but the footway appears to run along the north-eastern side of the boundary separating parcel 56 from an un-numbered parcel and then turn westwards to end at the water course now known as The Fleet. This would account for the need for a bridge. There is no indication of the route continuing north-westwards. The Order Map appears to show the Order route on the south-western side of the same boundary and then continuing north-westwards.
7. There is no inclosure award for Besthorpe and accordingly it is not known whether the foot way continued in that parish or, if so, on what alignment. However the way it is described and named in the North Collingham award suggests that it probably did continue to Besthorpe.
8. No copy of the Inclosure Act enabling the award to be made has been submitted and as a result it is not known what authority the inclosure commissioners had to set out footpaths nor the width of the route referred to. However, equally, I have no evidence to suggest that in this case the commissioners did not have the power to set out footpaths.

The Besthorpe Tithe Map 1838

9. This map shows a route similar to the Order route in Besthorpe parish. It is annotated as "*Footway*" in two places. On behalf of the OMA it is stated that a consideration of other routes annotated in a similar manner suggests that the word 'footway' was used to describe routes used by the public. However, tithe maps were not intended to record public rights of way but whether land was productive and therefore liable to the payment of tithe. Accordingly, whilst this map can be taken as good evidence of the existence of the footpath at the time, it cannot in my view be taken as a reliable indication of the existence of public rights over it.
10. No similar map for North Collingham parish has been submitted.

The 1910 Finance Act

11. The 1910 Finance Act imposed a tax on the incremental value of land which was payable each time it changed hands. In order to levy the tax a comprehensive survey of all land in the UK was undertaken between 1910 and 1920. This survey was carried out by the Board of Inland Revenue under statutory powers and it was a criminal offence for any false statement to be made for the purpose of reducing liability. The existence of public rights of way

over land had the effect of reducing the value of the land and hence liability for the tax; they were therefore recorded in the survey.

12. In this case the base map used in the survey includes the Order route annotated "F.P." (footpath). In two places, the words "*Public not much used*" have been hand written in red alongside the path. It is not known when, by whom or on what basis these words were added but the OMA suggests that this would most likely have been done by the Inland Revenue officer carrying out the survey on the basis of information provided by landowners. However, I note that these annotations appear in hereditaments where no mention is made of public rights of way in the accompanying Field Books.
13. Throughout its length the Order route is included within seven hereditaments, only two of which have any recorded deduction made in respect of public rights of way. In hereditament 50 there is a £3 deduction made in respect of a public right of way affecting 2 acres of the property. The total extent of the hereditament is almost 16 acres, split between 6 parcels. The parcel crossed by the Order route is 1.62 acres and other parcels are between 0.93 and 6.79 acres with one being 2.00 acres. It is accordingly not clear that the deduction relates to the Order route. The other deduction was in respect of footpaths affecting 30 acres of hereditament 62. However, there are three footpaths shown on the base map used within this hereditament and it is again not clear that the deduction relates to the Order route.
14. No deductions for rights of way were recorded for the other five hereditaments crossed by the Order route. It is suggested by the OMA that this may not mean that a public footpath did not exist but that the quality of land crossed was such that the presence of the path did not adversely affect the value of the land.
15. Overall, it is my view that the evidence provided by the Finance Act records is insufficient to show that public rights were considered to exist over the Order route.

The Definitive Map process

16. The Order route was claimed as part of a longer footpath in the parish schedule prepared for Besthorpe parish in 1951 in the process leading to the publication of the first definitive map. The schedule noted that "*The FP south of Besthorpe may be disputed by occupiers as this path has not been in general use for many years (since about 1904). I know of only two people who have used it recently*". The southern part of the Order route was not claimed in the schedule prepared for North Collingham parish although another path crossing the same field (now Footpath 17) was included. No part of the route was subsequently included in the definitive map and I have seen no record of any objection being raised to its omission. The route has not been included on any subsequent version of the definitive map.
17. It would appear that the county council decided in the 1950s that there was insufficient evidence to justify the inclusion of any part of the Order route on the definitive map and that this remained the case until the making of the current order.

Other maps

18. Ordnance Survey (OS) maps of 1884 and 1887 show the Order route annotated "F.P." (footpath). These maps would have contained a disclaimer stating that the representation of roads, track or footpaths is not evidence of the existence of a public right of way. Nevertheless, OS maps provide good evidence of the existence of routes at the time they were surveyed.

Conclusions regarding documentary evidence

19. OS maps indicate that the Order route existed on the ground in the 1880s and earlier maps indicate that a similar route may well have existed from a much earlier date. More recent documents suggest that the route had largely become disused, possibly more than 100 years ago and by the 1950s it was not considered that a right of way existed over it, although part of it at least was claimed. However, lack of use of a way, even over a long period, does not mean that any rights over it are extinguished, unless there has been some formal process to stop it up. I have seen no evidence of any such process in this case. The question that remains therefore is whether public rights ever existed over the Order route.
20. Whilst the North Collingham Inclosure Award includes a public footway similar to the southern part of the Order route, this does not appear to follow precisely the same alignment and, in the absence of the enabling Act, the extent of the commissioners' powers to award public footpaths is not known nor is the width of the route described. The Besthorpe Tithe Map shows a route similar to the Order route but again not on precisely the same alignment and does not in my view necessarily indicate the existence of public rights. The Finance Act records are of little help as, even though the route is shown on the base map used, no mention is made of public rights of way in five of the seven hereditaments crossed and references in the other two may not refer to the Order route. Also, the source and basis of the hand written annotations is not known.
21. Overall, it is my view that, although the available evidence is suggestive of the possible existence of a public footpath linking Besthorpe and North Collingham, it is not sufficient on the balance of probability to justify a conclusion that this follows the alignment of the Order route or to reliably indicate an alternative alignment. In these circumstances it would not be appropriate for the Order to be confirmed.

Other Matters

22. A number of other concerns were raised by objectors including:
- the likely interference with agricultural management if the Order is confirmed and the consequent reduction in the value of farmland crossed by the claimed footpath;
 - the availability of other paths in the area;
 - the loss of security in respect of agricultural machinery left in fields;
 - potential interference with conservation practices.

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

Conclusions

23. Having regard to these and all other matters raised, I conclude that the Order should not be confirmed.

Formal Decision

24. I do not confirm the Order.

Barney Grimshaw

Inspector

