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## Order Decision

Site visit made on 21 July 2015

**by Martin Elliott BSc FIPROW**

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

**Decision date: 14 September 2015**

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### **Order Ref: FPS/L3055/7/77**

- 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 (Elkesley Footpath Nos. 9 and 10).
- The Order is dated 1 March 2013 and proposes to modify the Definitive Map and Statement for the area by adding two public footpaths as shown in the Order plan and described in the Order Schedule.
- There were six objections outstanding when Nottinghamshire County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

**Summary of Decision: The Order is not confirmed.**

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### **Procedural Matters**

1. I carried out an accompanied site inspection on 21 July 2015. I did not inspect the entire route but was able to view the route from various vantage points. I am satisfied that I am able to make my decision on the basis of my site visit. The south eastern end of the Order route is affected by road junction improvements associated with the A1. The effect of these works have no bearing on my consideration of the Order.
2. I sought further information from the Council in respect of the deposited railway documents. The response from the Council was circulated to the parties for comment; no comments were received.

### **The Main Issues**

3. The Order has been made under section 53(2)(b) of the Wildlife and Countryside Act 1981 in consequence of an event specified in section 53(3)(c)(i). The main issue is whether the discovery by the authority of evidence, when considered with all other relevant evidence, is sufficient to show that a right of way which is not shown in the map and statement subsists over land in the area to which the map relates.
4. The test to be applied to the evidence is on the balance of probabilities.

### **Reasons**

#### ***Elkesley Footpath 9***

##### *Mapping evidence*

5. The 6 inch Ordnance Survey map published in 1890 shows the Order route as a double pecked line. The Ordnance Survey map used as the base map for the

1910 Finance Act records shows the route in the same way and is annotated 'F.P.' in the map margin. The 1920 25 inch Ordnance Survey map depicts the Order route in the same way as the base map used for the 1910 Finance Act records.

6. Ordnance Survey maps were produced to record topographical features and not to record public rights. The Ordnance Survey maps show the physical existence of the Order route from 1890 but provide no evidence as to status. The annotation 'F.P.' identifies a route that the public may not mistake for a route traversable by horses or wheeled traffic. However, the annotation provides no indication as to whether the route is public or private.

#### *1910 Finance Act*

7. The Order route passes through the hereditament numbered '109 pt' for which a deduction of £10 is made in respect of public rights of way or user. The Council argue that mapping the full extent of hereditament 109 reveals that the property is crossed by a single footpath and that the deduction can only relate to the Order route. From my examination of the records hereditament 109 is extensive and it is a possibility that the deduction relates to another right of way. It doesn't necessarily follow that the deduction relates to a route marked on the map, noting my comments above in respect of Ordnance Survey maps. Whilst a deduction would provide evidence as to the existence of public rights the entry in the field book alone does not, in the absence of other documentation, provide a clear acknowledgement by the landowner and the Inland Revenue of the existence of a public right of way. This evidence needs to be considered with all other evidence.
8. The Order route also passes through hereditament 149 for which there is no deduction. Although it may be the case that the existence of a footpath through this land had no effect on the commercial value of the property, and hence no deduction, the records provide no evidence as to the existence of a public right of way through the hereditament. Nevertheless the absence of any deduction does not preclude the existence of a public footpath.

#### *Deposited railway documents*

9. The schedule for the London and North Eastern railway (Nottingham and Retford railway) of 1925 identifies the two fields over which the Order route passes as 'Spinney and Footpath' and 'Field and Footpath'. The Council assert that the lack of the word 'public' is not significant given the clear indication of the path's status in the 1910 Finance Act records. However, I revert to my comments at paragraphs 7 and 8 above as to the evidential value of the 1910 Finance Act records.
10. The schedule recognises the existence of a footpath over the relevant parcels of land. However, there is no indication as to whether the footpath was considered to be public or private. Nevertheless, I note the observation of the Council that corresponding entries in respect of a route now recorded as a public bridleway read 'Field and Bridle Road' and make no reference to the way being public. The evidence needs to be considered with all the other available evidence.
11. It is noted that the scheme was not completed and would therefore not have been through the whole parliamentary process; this may mean that the

documents may not be as reliable as those associated with completed schemes. Nevertheless the plans would have been open to scrutiny in the public domain and must be accorded some weight.

#### *Definitive map records*

12. The Order route was not included in the Elkesley Parish Schedule. The absence of the route from the schedule suggests that the Parish Council did not consider the route to be public. However, this does not preclude the existence of public rights.
13. The Ordnance Survey base map used for the draft map for the area published in 1953 depicts the Order route as a pecked line annotated 'F.P.' I revert to my comments at paragraph 6 above.

### **Footpath 10**

#### *Ordnance Survey mapping*

14. The Ordnance Survey 6 inch maps published in 1890 and 1891 show the Order route as a pecked line. The route is annotated 'F.P.' to the south west of Tea Table Plantation. The 25 inch map published in 1899 used as the base map for the 1910 Finance Act records shows the Order route in a similar fashion. The 25 inch map published in 1920 shows the Order route in the same way as the previous maps.
15. I revert to my comments at paragraph 6 above which are equally applicable to footpath 10.
16. An objector has submitted an Ordnance Survey map of 1900 and also the 1920 map considered by the Council. It is argued that the maps show footpath 10 coming to an abrupt stop at Apley Head Farm and that if the route continued it would be shown as such. In this regard, as noted above, the annotation 'F.P.' identifies a route that the public may not mistake for a route traversable by horses or wheeled traffic. The fact that the route leading from Apley Head Farm to the A614 is not so marked does not preclude the existence of a public footpath. Clearly the continuation of the route to the A614 is a route which would be used by wheeled traffic albeit most likely in connection with the landholding and would not be marked 'F.P.'

#### *1910 Finance Act*

17. Footpath 10 passes through the hereditaments numbered 99, 105 pt, 140 pt, 146 pt, 155 and 150. In respect of hereditament 99 a deduction of £7 is made in respect of public rights of way user. The field book identifies a footpath affecting 11 acres which is the area of the two fields through which this part of footpath 10 passes.
18. A deduction of £20 and £25 is made for footpaths in respect of hereditaments 105 and 140 respectively. The field book entry for hereditament 146 is for the most part incomplete. However, under 'Charges, Easements and Restrictions affecting market value of Fee Simple' there is an entry 'FPath £14'. Given that the land forms parts of larger hereditaments it cannot be certain that the deductions relate to footpath 10. I have not been provided with evidence as to the extent of the hereditaments which might have been of assistance.

Nevertheless, given the deductions in adjacent hereditaments it is quite likely that any deductions relate to footpath 10.

19. The Order route continues through the hereditament number 155 for which a deduction of £30 is made for public rights of way or user. The field book identifies 'footpaths' passing through field numbers 13, 21, 254 and 349. Footpath 10 passes through field number 21 and therefore part of the deduction is likely to relate to footpath 10.
20. The Order route also passes through hereditament 150 for which no deduction is made for public rights of way. The Council notes that the path passed through land comprising solely of 'Woods and Plantations'. It is contended that no deduction was made because the Inland Revenue did not regard the existence of rights of way affecting the commercial value of the property. Although this may be the case, the records in respect of hereditament 150 do not provide any evidence as to the existence of public rights. Nevertheless this does not preclude the existence of such rights.
21. Overall the 1910 finance Act records are supportive of the existence of a public right of way which corresponds with the route of Footpath 10. However, this evidence needs to be considered with all the other available evidence. I do not accept that deductions identified in the records provide a clear acknowledgement by both the landowner and the Inland Revenue that the route in question is a public footpath. In the absence that the information contained in the field books was provided by the landowner this conclusion cannot be reached without further information from the 1910 Finance Act records.

#### *Deposited railway documents*

22. In the deposited documents for the London and North Eastern Railway (Nottingham and Retford railway) of 1925 the eastern end of the Order route passes through a field which is identified in the schedule as parcel number 20 described in the schedule 'Field and Footpath'.
23. In the documents relating to the London Midland and Scottish railway of 1925 the Order route passes through plots identified as numbers 13 and 14 described as 'Field and public footpath'. I do not accept the assertion of the Council that the path's public status as a public right of way is confirmed by the owner, or reputed owner, being East Retford Rural District Council. The schedule provides information as to the ownership of the land and not to the status of any route passing through.
24. The deposited documents for the Mid-Nottinghamshire joint railways of 1926 show that the Order route passes through the parcels numbered 14 and 15 both identified as 'Field and public footpath'. Again the Council assert that the status of the path is confirmed by reference in the ownership column to the land being owned by the East Retford Rural District Council. I refer to my comments at paragraph 23 above.

#### *Definitive map records*

25. I revert to my comments at paragraphs 12 and 13 above which are equally applicable to footpath 10.

***Consideration of objections and conclusions on the evidence***

26. The objectors raise a number of issues which I consider below before reaching my conclusions on the evidence.
27. It is contended that the Council have not produced any evidence of the Order route being in existence from 1953 and it is stated that there is no evidence that the route has been used since that time. Whilst I note these points it is not necessary to show evidence of public rights post 1953, or for use to be demonstrated, for public rights to be shown to exist.
28. A farm tenancy agreement (25 March 1934) has been submitted by one of the objectors. It is suggested that the tenant farmer would not have been permitted to allow the creation of a public right of way or to allow any form of trespass. No information has been provided as to the land covered by the tenancy agreement but in any event the agreement refers to the creation of public rights of way and the prevention of trespass. The tenancy agreement would have no effect on pre-existing rights.
29. One objector makes the point that the Order route was not identified in the parish schedule as use of the route ceased long before the 1950s. It is contended that the parish council only included routes used pre-war which they wished to reopen. It is suggested that the footpath never did go beyond Apley Head Farm to the A614 otherwise it would have been included on the basis that it may have been some use to the public. Whilst this may have been the view of the Parish Council it does not demonstrate that the Order route is not public or that the route did not continue beyond Apley Head Farm. From the evidence before me it appears to be the case that the Order route has not been used since the 1930s with use dwindling from the 1880s. It seems quite possible that use would have ceased by the 1950s. Nevertheless, the lack of use does not remove any pre-existing rights.
30. It is also asserted that it is unlikely that the route continued alongside Apley Head Woods because the wood had been specifically designed as a shooting wood. However, whilst the woods may have been used for shooting there is nothing to suggest that this would preclude access along the road to Apley Head Farm; the Order route does not provide access into the wood through which gamekeepers would not have wanted public access. It may also be the case that the land formed part of a private estate and that public access would be limited and controlled. Nevertheless this does not mean that no public rights could have existed over the land.
31. I note the contention that a more direct route exists between Elkesley and Worksop and the point is made that there has never been provision for the route in any of the upgrades of the Worksop Road or the A1 which began in 1938. Although I note these points, this does not preclude the existence of public rights. It is also likely that the route has not been accommodated in any upgrades since the 1950s as the route is not recorded on the definitive map and would not have been identified as public.
32. Having regard to all of the evidence in respect of footpath 9 the 1910 Finance Act records when considered with the railway plans are suggestive as to the existence of public rights along a route which was physically in existence from 1890. However, I do not consider that the evidence is sufficient to show, on the balance of probabilities, that a right of way subsists.

33. In respect of footpath 10 the 1910 Finance Act records and the railway documents, when considered together, provide good evidence as to the existence of public rights from Cross Lane to the east of Rough Hill Wood. It is of particular note that the railway documents identify a public footpath over land for which a deduction was made under the 1910 Finance Act for public rights of way or user. However, from the east of Rough Hill Wood to the A614 there is a dearth of evidence supportive of the existence of public rights. Given the likely existence of public rights to the east, it is improbable that the route terminated at Apley Head Farm to provide access solely for estate workers from Elkesley. Nevertheless it cannot necessarily be concluded that the public right of way continued along the track shown on the Ordnance Survey maps to the A614. As noted previously, Ordnance Survey maps do not provide evidence as to public rights of way. Having regard to the Ordnance Survey maps it is also possible that any public rights continued northwards along the road shown leading to the Worksop Road from Apley Head Farm. In the absence of any evidence supportive of public rights I am unable to conclude, on the balance of probabilities, that public rights continue to the A614.

34. Bearing in mind the above I conclude that the Order should not be confirmed.

### **Other Matters**

35. The objections raise concerns in respect of health and safety, security, privacy and enjoyment of property, value of property, impact on wildlife and the cost to businesses and the taxpayer. Concerns are also raised as to the involvement of landowners in the decision making process of the Council. Questions are also raised as to the need for the Order route and reference is made to the consideration of alternative proposals and the existence of other routes. One of the objections refers to an application for an extinguishment order in respect of the Order route. Reference is also made to the diversion of part of the Order route and the erection of barriers to prevent cyclists or motorbikes.

36. Whilst I note these concerns and issues they are not matters which I can take into account in reaching my decision.

37. The Ramblers, in support of the Order, contend that the Order route forms part of the Robin Hood Way and that it is important that public rights remain open so as to serve this route. This is not a matter for my consideration and from the information before me it does not appear that the Robin Hood Way follows the Order route.

### **Conclusions**

38. Having regard to these and all other matters raised in the written representations I conclude that the Order should not be confirmed.

### **Formal Decision**

39. I do not confirm the Order.

*Martin Elliott*

Inspector