



## Interim Order Decision

Site Visit made on 29 August 2015

by **Michael R Lowe** BSc (Hons)

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

Decision date: 22 September 2015

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**Order Ref: FPS/X2600/7/111**

**Norfolk County Council**

- This Order is made under section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the **Norfolk County Council (Paston) Modification Order 2014**.
  - The Order is dated 20 August 2014 and proposes to modify the Definitive Map and Statement by the addition of a length of restricted byway between Paston Road and restricted byway No. 9 as detailed in the Order map and schedule.
  - There was one objection outstanding when Norfolk County Council (the Council) submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.
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### Interim Decision

1. I propose to confirm the Order subject to modifications which require advertisement:

In Part I and Part II of the Schedule delete the words 'The width of the restricted byway is 4.5 metres' and substitute the words 'Width: Commencing at Paston Road at a width of 7.6m and then at variable widths as measured proceeding south-westerly from Paston Road:- at 30m a width of 8.9m, at 58m a width of 7.4m, at 100m a width of 7.5m and at 155m a width of 7m.'

### Preliminary Matter

2. None of the parties requested a public inquiry or hearing. I have therefore considered this case on the basis of the written objection and representations forwarded to me.

### Main Issue

3. The Order has been made under section 53(2) of the 1981 Act relying on the occurrence of events specified in section 53(3)(c)(i). The main issue is therefore whether the evidence is sufficient to show, on the balance of probabilities, that a restricted byway which is not shown in the map and statement subsists on the route in question such that the definitive map and statement require modification.

### Background and Reasons

4. Boundary Lane runs between a road junction near the Methodist Chapel at Edingthorpe Green in a north-easterly direction to join Paston Road, then onwards to Paston Green. As the name suggests it partly follows the parish boundary. Most of Boundary Lane was shown on the Council's definitive map

and statement as a 'road used as a public path' (Bacton CRF9 and Paston CRF7) until those ways were reclassified as 'restricted byways' following the extinguishment of rights for mechanically propelled vehicles by the Natural Environment and Rural Communities Act 2006. For some unknown reason the northerly part of Boundary Lane was not shown on the definitive map and statement and the Council now seeks to correct that anomaly.

5. Boundary Lane is an ancient way. It is shown on maps from 1797 onwards, is described in the Witton, Bacton, Edingthorpe and Paston Inclosure Award of 1827, the Edingthorpe Tithe Apportionments of 1840 and the Paston Tithe Apportionment of 1842. The Ordnance Survey name book, which accompanies the first edition 1885 map, is authority for the name and describes the route as a public road. The records from the Finance Act 1910/1911 exclude Boundary Lane from its valuations consistent with the status of a public highway.
6. The legal status of Boundary Lane as a 'restricted byway' is not in dispute. Mr Ian Witham of the Open Spaces Society objects to the Order recording a width of 4.5m, which he says is less than shown on the 1:2500 scale Ordnance Survey maps and what is evident on the ground. The Council agree and propose to define the width at various points. The Council therefore seeks a modification to the Order and Mr Witham is agreeable to the Council's proposed solution. I agree with that solution and therefore propose an appropriate description based upon defined widths at various points along the way in accordance with the Council's topographical survey.

### **Conclusion**

7. Having regard to these and all other matters raised in the written representations, I provisionally conclude that the Order should be confirmed with modifications.
8. Since the Order as proposed to be modified would affect land not affected by the Order, I am required by virtue of paragraph 8(2) of Schedule 15 to the 1981 Act to give notice of the proposals to modify the Order and to give an opportunity for objections and representations to be made to the proposed modification. A letter will be sent to interested persons about the advertisement procedure.

*Michael R Lowe*

INSPECTOR