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## Order Decision

Site visit made on 13 October 2015

**by Barney Grimshaw BA DPA MRTPI(Rtd)**

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

**Decision date: 30 October 2015**

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### **Order Ref: FPS/L3055/7/90**

- 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 (Owthorpe Footpath Nos. 11, 12, 13, 14 & 15 and Kinoulton Footpath No. 22) Modification Order 2005.
- The Order is dated 15 July 2005 and proposes to modify the Definitive Map and Statement for the area by adding 5 footpaths, as shown on the Order Maps and described in the Order Schedule.
- There were 8 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: I propose to confirm the Order subject to modifications that require advertising.**

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### **Procedural Matters**

1. I made an unaccompanied site inspection on Tuesday 13 October 2015 when I was not able to walk most of the Order routes but was able to view them adequately from various points.
2. In writing this decision I have found it convenient to refer to points which I have added to the Order Maps. I therefore attach copies of these maps.

### **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 rights of way that are not shown on the definitive map and statement subsist along the Order routes.

### **Reasons**

4. The available evidence relating to each of the claimed footpaths differs in some respects and therefore I have considered each separately. Nevertheless, there is also considerable similarity in the evidence for each path and I have sought to avoid unnecessary repetition with regard to both elements of the evidence itself and my conclusions regarding it where possible.

### **Footpath 11, Owthorpe (Points A to B)**

#### *Ordnance Survey (OS) maps*

5. The OS 6" to the mile map of 1891 shows this route by means of a pecked line between Points A and C and a double pecked line between C and B, it is also annotated "F.P." between C and B. OS maps such as this are regarded as providing strong evidence of the existence of routes shown at the time they were surveyed but they do not indicate the existence of public rights over the routes and they generally included a disclaimer specifically stating that routes shown were not necessarily public rights of way. In this case, as the route shown links with another path (at Point B) which continues to the larger village of Cotgrave, Nottinghamshire County Council, the Order Making Authority (OMA) suggests that it would have been likely to have been used by residents of Owthorpe.
6. The OS 25" map of 1920 also shows the route annotated in a similar fashion but on a slightly altered alignment towards its south-eastern end.

#### *1910 Finance Act Records*

7. 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.
8. In this case the Finance Act base map shows the route in the same way as the 1891 OS map but it is annotated in red "*public*", as is a connecting path, which is now recorded as Footpath 10. Other annotations in red such as hereditament numbers appear to have been added by the Inland Revenue surveyor.
9. The footpath crosses two hereditaments, numbered 117 and 110 in both of which deductions from value were recorded in respect of public rights of way or user. Whilst the records do not specify which right of way the deductions relate to, the Order route would appear to be the only possible route within hereditament 117 and, as the route is annotated "*public*" within hereditament 110, it seems likely that the deduction there related to this route at least in part.
10. Finance Act records generally provide good evidence regarding the status of routes although they must be considered in association with other available evidence.

#### *The Definitive Map process*

11. In the survey of the parish carried out in 1952 as part of the process of preparing the first definitive map this Order route was identified as Footpath 15. However, it was also noted that no path was visible on the ground and the surveyor, Mr IAG Davey of Owthorpe Place, Owthorpe, stated that this and other paths (including Footpaths 13, 14 and 15) "*...are in my opinion short cuts and I cannot remember any of them being used save by farmers and farm labourers in the way of their business. In my opinion they are not genuine*

*footpaths or rights of way*". Mr Davey's position or qualifications are not known, nor, indeed whether he had any interest in land crossed by paths surveyed. He stated that the documents taken into account in completing the survey were a 1921 OS map and unspecified Estate Maps.

12. The subsequent draft definitive map did not include the route as a public right of way, although it was shown on the OS base map used by a pecked line. This map was published in 1952 but stated that it was compiled from sheets last fully revised 1912-19, incorporating partial systematic revision 1938-50. Subsequent versions of the definitive map have also not included the path.
13. This evidence would appear to indicate that the status of this path was considered in 1952 as a result of it having been shown on an earlier OS map and possibly on Estate Maps which I have not seen. However, by 1952, it seems to have become disused and no longer discernible on the ground. It is not known whether the county council took account of any evidence other than the parish survey in preparing the definitive map but I have seen no indication that evidence such as that in the Finance Act records was considered. The OMA states that many paths in the county were omitted from the definitive map because they had become disused, were not regarded as sufficiently useful or were not pursued by the parish council.

#### *Other Evidence*

14. A Land Registry title document dated 2 October 2003 relating to land at Old Hall Farm, Owthorpe which is crossed by the Order route states "*The footpath included in the title is subject to rights of way on foot only*". There is no indication as to whether the rights referred to are public or private.

#### *Conclusions regarding Footpath 11*

15. The 1891 OS map is good evidence that the path existed at that time and may have been used by the public and the 1920 map shows that it still existed then. The Finance Act records also indicate that the route was regarded as being public between the dates of the OS maps. Other evidence from the parish survey and objectors' submissions suggest that the path ceased to be used well before 1952 and possible as early as the 1920s. However, lack of use of a right of way, even over a lengthy period does not cause it to cease to be a right of way unless there has also been some formal process to extinguish it and there is no evidence of this in respect of this route.
16. Although evidence of the establishment of a right of way over this Order route is somewhat limited, there is no substantive evidence to the contrary and therefore, on the balance of probability, it is my view that the route is a public footpath.

#### **Footpath 12, Owthorpe (Points D to C)**

##### *OS maps*

17. This path is also shown on the 1891 map, mainly by a double pecked line, linking the Owthorpe to Cotgrave road with Footpath 11 (above). It is also shown by a double pecked line on the 1920 map and annotated "*F.P.*".

### *1910 Finance Act Records*

18. The base map used for the survey shows the route clearly annotated "F.P.". It crosses 3 hereditaments, numbered 96, 124 and 110, in all of which deductions are recorded in respect of public rights of way. In hereditament 96, the Order route would appear to be the only route to which the deduction might relate.

### *The Definitive Map process*

19. This path was not recorded as a right of way in the parish survey of 1952, although it was shown on the OS base map used. Similarly it was not included as a right of way on the first draft definitive map although it was indicated on the base map used and has not been included in subsequent versions.

### *Conclusion regarding Footpath 12*

20. Again OS maps show that this path existed between 1891 and 1920 at least and Finance Act records suggest that it was regarded as being a public right of way even though not so annotated on the survey map. It also may have become disused soon after 1920 but, there is no evidence of public rights having been extinguished. On the balance of probability, it is my view that this route is still a public footpath.

### **Footpath 13, Owthorpe (Points E to F)**

#### *OS maps*

21. This path is also shown on the 1891 map, mainly by a double pecked line. Between Points G and F it is annotated "F.P.". For the most part the path runs close to the road from Owthorpe to Kinoulton.
22. On the OS 25" map of 1919 a much shorter version of the path is shown by a double pecked line and annotated "F.P.". On this map, the path runs from a point on the Owthorpe to Kinoulton road a short distance to the south of the existing sewage works and rejoins it roughly 400m before Point F.

### *1910 Finance Act Records*

23. The base map used for the survey shows the route in the same manner as the 1891 OS map. As in the case of Footpath 11, it is annotated in red "public" between Points G and F. It crosses one hereditament, number 124 in which a deduction is recorded in respect of public rights of way.

### *The Definitive Map process*

24. In the 1952 parish survey, the shorter version of this path (as shown on the 1919 OS map) is identified as Footpath 13. It is described as being obstructed by a ditch and barbed wire at one end and the surveyor, Mr Davey, made the same comment to the effect that the path was not used and in his opinion was not a right of way as he did regarding Footpath 11 (above).
25. The subsequent draft definitive map did not include the route as a public right of way, although the shorter version was shown on the OS base map used by a pecked line, and it has not been included in subsequent versions.

### *Conclusion regarding Footpath 13*

26. This path also seems to have existed in 1891 but by 1919 and indeed by the time of the Finance Act survey it appears to have reduced in length. The Finance Act records seem to indicate that it was regarded as being a public right of way but it seems logical to assume that this only applied to the path as shown on the map used rather than the whole length of the Order route. Again, there is no record of public rights having been extinguished even though the path probably ceased to be used well before the 1952 parish survey.
27. On balance, it is my view that the route as shown on the Finance Act map and the 1919 OS map is a public footpath. I therefore propose to modify the Order to refer only to this reduced length.

### **Owthorpe Footpath 14 (Points G to H)**

28. This path runs between Footpath 13 at Point G and the Owthorpe to Kinoulton road at Point H. In most respects the evidence regarding this route is similar to that for Footpath 13 and I will not therefore repeat it.
29. The only differences of any significance are that this path was not annotated "F.P." on the 1891 OS map or "public" on the Finance Act map. However, the route has been shown consistently and links with another path to the south of the Owthorpe to Kinoulton road (Footpath 3).

### *Conclusion regarding Footpath 14*

30. The evidence in respect of this path is similar to that for the shorter version of Footpath 13 (above) and, although it was not specifically annotated as public on the Finance Act map, as it provides a link between Footpath 13 and existing Footpath 3, it is my view that it is a public footpath on the balance of probability.

### **Owthorpe Footpath 15 / Kinoulton Footpath 22 (Points I to K)**

#### *OS maps*

31. The 1891 OS map this path is shown by a double pecked line and annotated "F.P.", a "Foot Bridge" is also indicated at Point J.
32. On the larger scale maps of 1919 and 1920 the route is shown in a similar manner.

#### *1910 Finance Act Records*

33. The base map used for the survey shows the route in a similar manner to the 1891 OS map. It is annotated "public" in red in two places.
34. It crosses two hereditaments numbered 113 in Owthorpe and 50 in Kinoulton. In hereditament 113 a deduction is recorded for public rights of way but no such deduction is recorded for hereditament 50. The OMA points out that as only a very short length of the route crosses hereditament 50 it may not have been considered to significantly affect the value of the land.

#### *The Definitive Map process*

35. In the parish survey for Owthorpe, Footpath 15 is identified as path 12; it is described as commencing by way of a field gate and passing through fields

before joining the Owthorpe to Kinoulton road by way of another gate. No mention is made of the path continuing over a footbridge into Kinoulton parish. It is however stated that no path was visible. Again, the surveyor, Mr Davey, made the same comment to the effect that the path was not used and in his opinion was not a right of way as he did regarding Footpath 11 (above).

36. In the Kinoulton parish survey, undertaken by a different surveyor, Captain Smith, Footpath 22 is identified as path 10. The grounds for believing the path to be public are stated as uninterrupted user by the public for 100 years. The path is described as originally continuing into Owthorpe parish by way of a stile through the hedge and a stout plank across the stream. A note which appears to have been added later states that there is no path at all in Kinoulton and the exit of the path now runs on the Owthorpe side of the stream.
37. The subsequent draft definitive map did not include the route as a public right of way, although it was shown on the OS base map used by a pecked line, and it has not been included in subsequent versions.

#### *Conclusion regarding Footpath 15/22*

38. Again the evidence for Footpath 15 is largely similar to that for other paths and leads me to conclude that it is also a public footpath. With regard to Kinoulton Footpath 22, this conclusion is not supported by the Finance Act records but the references in the parish survey nevertheless lead me to conclude that, on the balance of probability, this section did form the continuation of Owthorpe Footpath 15 and is also a public footpath.

#### **Objections**

39. Objectors generally comment that there is no evidence of the Order routes having been used by the public as long as they have known the area, which in some cases extends back to the 1920s. However, if the routes were ever subject to public rights, these would remain in force unless formally extinguished regardless of whether the public actually exercised these rights.
40. It is also pointed out that many of the routes are currently impassable as a result of hedges, fences and other obstructions, including a sewage treatment works, some of which have been in place for a long time. Again, the presence of such obstructions would not have the effect of extinguishing any public rights of way that had previously been established.
41. It is also argued by objectors that the paths are unnecessary as adequate alternative routes already exist. Although this may be the case, the purpose of the current Order is simply to record public rights that exist not to create new ones or to extinguish unnecessary ones and it is therefore not appropriate for me to consider the need for or desirability of the Order routes.

#### **Other Matters**

42. In addition to the matters already considered objectors also raised some specific concerns regarding the Order routes. These included the possible adverse effect of opening up the routes on nature conservation, the impracticality of establishing a footpath through a sewage works and the difficulty and expense of reinstating paths through obstructions of various sorts and private gardens. I understand these concerns but, as they lie outside the criteria set out in the 1981 Act, I have not given them any weight in reaching

my conclusions. I note however that the modifications I am proposing with regard to Footpath 13 will avoid the need to establish a path through the sewage works.

### **Overall Conclusion**

43. Having regard to these and all other matters raised, I conclude that the Order should be confirmed subject to modifications to exclude parts of proposed Footpath 13.

### **Formal Decision**

44. I propose to confirm the Order subject to the following modifications:

- In the Schedule to the Order, Part I, modify the description of Footpath No. 13 to read "*Commencing from a point SK 66973301 at the junction with Kinoulton Lane and proceeding for a distance of approximately 400 metres in a generally southerly direction to a point SK 67013260 at the junction with Kinoulton Lane*".
- In the Schedule to the Order, Part II, Modify the description of Footpath No. 13 to read "*Commencing from a point SK 66973301 at the junction with Kinoulton Lane and proceeding for a distance of approximately 400 metres in a generally southerly direction on an earth surface across fields to a point SK 67013260 at the junction with Kinoulton Lane and having a minimum width of 1 metre throughout the whole of its length*".
- Amend the Order Map accordingly.

45. The proposed modifications would have the effect of not showing as a highway part of a way which is shown in the Order. It is therefore required by virtue of Paragraph 8(2) of Schedule 15 to the 1981 Act that notice of the proposal to modify the Order be given and an opportunity for objections and representations be made regarding the proposed modifications.

*Barney Grimshaw*

**Inspector**





