



## Order Decision

Inquiry held on 22 October 2015

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

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

**Decision date: 14 December 2015**

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### **Order Ref: FPS/M1900/7/82**

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the 1981 Act") and is known as the Hertfordshire County Council (Widford 13, 18, 26 and Wareside 84) Modification Order 2011.
- The Order was made by Hertfordshire County Council ("the Council") on 1 July 2011 and proposes to modify the definitive map and statement in respect of rights of way in the parishes of Widford and Wareside, as originally detailed in the Order Map and Schedule.
- There were twelve objections and one representation outstanding at the commencement of the inquiry.

**Summary of Decision: The Order is proposed for confirmation subject to the modifications set out below in the Formal Decision.**

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### **Procedural Matters**

1. I held a public inquiry into the Order on 22 October 2015 at Wodson Park Sports and Leisure Centre, Ware. I undertook an unaccompanied visit to the site on 21 October 2015. After canvassing the views of the parties present I concluded that there was no need for me to make a further visit to the site.
2. Subject to the issue outlined in paragraph 9 below, all of the points referred to in this Decision correspond to those delineated on the Order Map.

### **Main Issues**

3. The Order is made under Section 53(2)(b) of the 1981 Act. In light of the matters detailed below in relation to the Order, consideration needs to be given to Sections 53(3)(c)(i), (ii) and (iii) of the Act. Therefore, for me to confirm the Order, I must be satisfied that the evidence shows that:
  - (i) rights of way which are not shown in the map and statement subsist;
  - (ii) a section of footpath ought to be shown as a restricted byway; and
  - (iii) there is no public right of way over land shown in the definitive map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.
4. I shall consider whether the historical documentary evidence provided is sufficient to infer the dedication of public rights of way over the route claimed at some point in the past. The burden of proof to be applied is the balance of probabilities.
5. Section 32 of the Highways Act 1980 requires a court or tribunal to take into consideration any map, plan or history of the locality, or other relevant document which is tendered in evidence, giving it such weight as appropriate, before determining whether or not a way has been dedicated as a highway.

6. The Council's view that none of the exemptions found in Section 67 of the Natural Environment and Rural Communities Act 2006 are applicable is not disputed by the applicant (Mr Westley). In the absence of anything to show that one or more of the exemptions apply, any unrecorded public rights for mechanically propelled vehicles are extinguished. Therefore, if public vehicular rights are shown to subsist, the appropriate status for the route would be a restricted byway.

### **The Order**

7. Subject to the matters outlined below, I have to consider the merits of the provisions in the Order rather than the proposals included in the original application. The main purpose of the Order is to record a continuous restricted byway between points C-D-E-F-G-H-I. In contrast, the connecting A-B-C section is already recorded as a restricted byway in the definitive map and statement. It does not therefore fall to me to determine whether this section subsists. Nonetheless, I do need to address the proposed width for this section.
8. In respect of the H-I section, the Order proposes to upgrade part of Widford Footpath No. 13. The Council draws attention to the missing reference to Section 53(3)(c)(ii) of the 1981 Act in the Order. There is no evidence to suggest that anyone was misled in their understanding of the purpose of the Order and the proposed upgrading of the footpath is set out in the Order Schedule. In the circumstance, I agree that, if confirmed in respect of this proposal, the Order should be modified.
9. In light of the submission by Mr Colloff, on behalf of one of the objectors (Thames Water Utilities Limited), the Council reviewed its position regarding the alignment of the route between points E-F-G-H. It requests that the Order is modified to show the route following a revised alignment, as set down in the proof of evidence of the Council's witness (Ms Denton). I shall give consideration to this issue when assessing the evidence and references to the 'claimed route' should be taken to relate to the revised alignment claimed. Should I find that a right of way subsists and a section of Footpath 13 ought to be shown as a restricted byway, I shall have regard to the width specified in the Order for the claimed route.
10. The Council considers that there is a slight deviation between the alignment of the restricted byway presently recorded on the definitive map and its historical route, between points C-D. However, it is accepted that it would not be appropriate to delete the part of this section which coincides with the route considered to subsist. Following the close of the inquiry, the Council provided details of the proposed modifications to the Order in light of this issue and these were circulated to the other parties. I agree that, if confirmed in respect of this proposal, it would be appropriate to modify the Order accordingly.
11. The alterations to the other existing public rights of way in the Order would arise as a consequence of the modifications outlined above.

### **Reasons**

#### ***Consideration of the evidence***

12. There may be a little difficulty in distinguishing particular features shown on the small scale maps provided. Reference is made by Mr Colloff to features corresponding in some cases to field boundaries and drainage ditches. In

- addition, original copies of the documents were not available to inspect at the inquiry. However, Ms Denton assisted by highlighting on the maps provided the location of sections of the claimed route, the earlier historical through-route and Pegs Lane. The latter links with the claimed route towards the eastern end of the route. Mr Westley refers to the change in the course of the River Ash over time. The landscape also changed following the construction of the railway line which one of the objectors, Mr Buck, says was completed in 1864.
13. It cannot be determined that any part of the claimed route or corresponding through-route is shown on the Dury and Andrews' map of 1766. This map does appear to show Pegs Lane following a straight course and terminating to the east of the River Ash. The map is stated to be based on an original survey but is schematic in nature.
  14. The 1822 Bryant map is also stated to be based on an original survey. Reference is made by the Council to a feature recorded under the category of '*lanes or bridleways*' on this map but a copy of the key for the map has not been provided. This lane or bridleway appears to proceed on the northern side of the River Ash from the direction of Wareside and continue towards Hadham. It is apparent that Pegs Lane is shown linking with the above route just beyond the river at the time.
  15. Little, if any, reliance can be placed on the Dury and Andrews' map. The relevant route shown on the Bryant map cannot be said to correspond with the claimed route to any significant extent but it appears to have served as a through-route between particular villages. This could be supportive of the existence of a highway. The use of the term '*lanes or bridleways*' is ambiguous. However, commercial maps cannot in any event be relied upon to confirm the status of the roads and tracks shown.
  16. A map compiled in relation to the Widford tithe award of 1839 shows a feature by way of double pecked lines continuing from around point A. However, only a small section appears to correspond to the existing Widford Restricted Byway No. 18. On the northern side of the river, there is a route that may correspond to a proportion of the feature depicted on the Bryant's map. It follows the parish boundary and is shown leading into Little Westney Common but no continuation is depicted through the common. In contrast, a route is shown leading northwards from Pegs Lane towards Hadham. The route leading to the common appears to be excluded from the taxable parcels of land in the parish of Widford. A feature is also shown following the northern boundary of the common and to the east is a drain which leads towards Pegs Lane.
  17. A route is shown following the parish boundary on the Ware tithe map of 1845 which corresponds to the one shown at the edge of the Widford tithe map leading into Little Westney Common. Again it appears to be excluded from the taxable parcels of land.
  18. I do not agree with the Council's view that the tithe maps provide evidence of the existence of a highway between Ware and Hadham. It can only be determined that there was a route as far as the common. From an examination of the maps, it appears that this point was located where the parish boundary continues north westwards at around point E. Therefore, in terms of the claimed route, only the C-E section is depicted on these maps. The Council points to the route being shown on the tithe maps in the same manner as presently recorded highways. I accept that the depiction of a route outside of the taxable parcels of land could be supportive of highway status.

However, the tithe process was undertaken to identify land subject to the payment of tithes and not the recording of highways which will limit its evidential weight. Further, the depiction of a route in this way is not necessarily indicative of public vehicular rights.

19. Reference is made to features shown through Little Westney Common on an inclosure map of 1856. Ms Denton identified a route which curves around the edge of the common. This in turn linked with a route awarded in the inclosure award as a private carriage road. Whilst I have not had the opportunity of examining the award in full, the inference to be drawn is that the section of the claimed route shown joined a private road rather than a highway.
20. The 1860 plan for the Ware, Hadham and Buntingford Railway shows a number of tracks and paths. I am not necessarily convinced that one of the routes shown corresponds entirely with the A-B section, as asserted by the Council. Nor is it alleged that it can be determined from the railway documents that public rights were considered to exist at the time over the relevant section shown. The route shown on the tithe maps is depicted by way of solid lines in conjunction with the parish boundary. It crosses over the proposed railway and continues to point E. A pecked line continues northwards from this point over the claimed route in line with the inclosure map. This feature links with other tracks and there is a route available through to Pegs Lane. A further route continues northwards from Pegs Lane towards Hadham.
21. The accompanying book of reference contains an entry for parcel 23a, which incorporates a section of the claimed route. This parcel is described in the book of reference as "*Public Road*" in the ownership of the "*surveyors of highways*". It appears that the parcel involved encompasses the route shown along the parish boundary through to point E.
22. The railway documents are indicative of a section of the claimed route being considered to be a public road. However, nothing has been provided to show that a highway continued to the north of point E. Bearing in mind also that a proportion of the claimed route beyond point E proceeded through the limits of deviation for the proposed railway. A further issue arises in that no documentation has been provided to indicate what provision was to be made for the crossing of the railway which would have been necessary if a road was to remain. These issues will serve to limit the weight that can be attached to the railway documents.
23. An 1876 map shows various proposals to alter the highway network in the area to be considered by the Quarter Sessions court. This map indicates that a section of the route which followed the parish boundary mainly to the west of the railway line was proposed to be stopped up. It is annotated as "*Watery Lane*" and it was also proposed to stop up the "*path used when lane overflowed*". A "*proposed new road*" is shown corresponding to the A-B-C section. It appears that the existing way was considered to continue northwards over the claimed route.
24. A notice of 8 June 1876, which outlined the effect of the proposed diversion, made it clear that the historical route was a highway for all forms of traffic and the same applied to the proposed new route. The proposed road is described in the notice as proceeding through to the "*existing roadway leading to Widford village*" and it was to be at least 20 feet wide. The landowner's consent for the proposal includes a map which shows the continuation annotated "*To Widford*".

25. Whilst the Quarter Sessions Order is not available, the certification provided by Mr Westley is supportive of the diversion being implemented. The contemporary map detailed below is also supportive of the A-B-C section having being constructed. The absence of the Order must limit the weight that can be attached to the other documents. Further, the matter before the court was the diversion of a highway onto the A-B-C section. These documents provide supporting evidence of a highway continuing to Widford via points C-D-E. However, there is an element of doubt regarding the route taken towards Pegs Lane.
26. Although Ordnance Survey ("OS") maps provide no confirmation regarding the status of any path or track shown, they serve as a reliable indication of the presence of particular physical features on the date of the relevant survey. A route depicted by a pair of solid lines is clearly visible between points A-B-C on the 1880 OS map. This would suggest that a roadway was created in line with the Quarter Sessions proposal. No path or track is apparent over the claimed route aside from towards its eastern end. The drain depicted on the Widford tithe map is also evident in this locality. A footbridge is depicted at point H but there is no indication of a ford or other crossing in this location.
27. In contrast, the 1898 OS map shows a track by way of two solid lines only as far as the crossing of the River Ash to the north-east of point B. A path or track is then shown continuing to point D. Between points C and D is the annotation "FP" which indicates that the feature had the appearance of a route used by pedestrians. There is also a track in the locality of point H but a visual reduction in the extent of the feature shown is apparent at the crossing of the river. The 1921 OS map depicts the above features in a similar manner.
28. A section of Widford Restricted Byway No. 18 is shown excluded from the surrounding parcels of land, known as hereditaments, on a map produced in relation to the 1910 Finance Act. Namely, from point A to the crossing of the River Ash just to the north-east of point B. The depiction of a route in this manner can be a good indication of highway status, probably but not necessarily vehicular in nature. However, it appears to me that the remainder of this right of way and the whole of the claimed route were not excluded from the surrounding hereditaments. Nor is there any sign of a path or track beyond point D on the OS base map used for this process. The Council confirms that no tax relief was claimed for the hereditaments which would have been crossed by the claimed route.
29. It cannot be determined that public rights were considered to extend beyond point D when the original definitive map was compiled in the 1950s. However, this would not impact upon any unrecorded rights that are subsequently found to subsist. Nor would the relatively recent deposits made by a landowner under Section 31(6) of the Highways Act 1980 have an impact on any historical highway deemed to exist.
30. There is no mention of a public right of way in a deed of 1964 in relation to the transfer of land to Ware Rural District Council and in connection with the subsequent construction of the sewage works site. However, as outlined above, it is apparent that any public rights were not recognised at the time.

### **Conclusions**

31. The Bryant map depicts a through-route between Wareside and Hadham but not necessarily over any significant part of the claimed route. In contrast, the two tithe maps show that there was a route which continued as far as the common, including the C-E section of the claimed route. A separate route is shown on the Widford tithe map between Pegs Lane and Hadham. The inclosure award evidence indicates that a route across the common, over part of the claimed route, was viewed as a private road. Overall the early evidence is not supportive of the existence of a highway over the whole of the claimed route. The tithe maps could nonetheless be supportive of a highway leading to the common.
32. The railway documents are supportive of a section of the claimed route being a public road. However, I have highlighted particular issues which impact upon the weight of this evidence in relation to the remainder of the claimed route. The public road mentioned in the railway documents appears to proceed only as far as the common at point E. In respect of the section of the claimed route across the common, regard should be given to the contemporaneous evidence from the inclosure award.
33. I consider that the greatest weight should be given to the Quarter Sessions documents. However, the weight will be limited to some extent by the absence of the Order. The diversion did not relate to the claimed route but the documents provided are supportive of a public road continuing to Widford. Whilst this road could have corresponded to the claimed route, I note that the Quarter Sessions map shows two routes leading to Pegs Lane and another stopping at the river. One of the routes shown appears to be distinct from the drain shown in the same location on some of the other maps. It is apparent from the contemporary 1880 OS map that the A-B-C section was constructed but no feature corresponding to a road is shown continuing beyond point C. Further, the 1910 Finance Act map is not supportive of a highway continuing as far as point C.
34. The map evidence points to a highway historically following the parish boundary between points C-D. Having regard to the tests outlined in paragraph 3(i) and (iii) above, I conclude on balance that the evidence is supportive of the historical alignment of the restricted byway corresponding to the relevant section of the claimed route. This is subject to the modifications put forward by the Council in relation to the extent of the way to be deleted.
35. In respect of the remainder of the claimed route, I am unable to conclude on the balance of probabilities that a public right of way subsists over a particular route beyond point E. It follows that I do not consider that a section of Widford Footpath No. 13 ought to be recorded as a restricted byway. The evidence is on balance supportive of a highway historically continuing to point E.
36. Therefore, it is my intention to remove the remainder of the claimed route, between points E-F-G-H-I from the Order. I recognise that this will lead to the unsatisfactory situation of a cul de sac highway which leads only as far as the site of the former common. However, it would be for the Council to determine what action, if any, should be taken in respect of this issue. It is also necessary for me to remove particular references to other rights of way from the Order in light of my proposed modifications.

37. I accept that the existing restricted byway between points A-B-C should have a recorded width of 20 feet (6 metres) in light of the Quarter Sessions evidence irrespective of the current width of the bridge near to point B. However, I do not accept that this width can be applied to the claimed route or any existing right of way that was outside of the scope of the diversion. Nor does the map evidence provide a reliable indication of the historical width between points C-D-E. In the circumstance, I consider that 3 metres would provide a reasonable width for a restricted byway in this locality.

### **Other Matters**

38. It is not my role to consider whether any part of the claimed route should be diverted. This would involve a separate process. Whilst some references have been made to Widford Footpath No. 18, I am not satisfied that it has been shown that the matters raised have any bearing on my decision.

### **Overall Conclusion**

39. Having regard to these and all other matters raised at the inquiry and in the written representations I conclude that the Order should be confirmed with modifications.

### **Formal Decision**

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

- Remove "13" from all references to the title of the Order.
- Delete lines two to five of the first description in Part I of the Order Schedule and insert "TL4131 1616 (point C on parts 1 and 2 of the Order Plan), for a length of approximately 185 metres, to TL4146 1625 (point C1 on parts 1 and 2 of the Order Plan)".
- Delete the remainder of the text after "Order Plan)" in the sixth line of the second description in Part I of the Order Schedule and insert "Width 3 metres between TL4131 1616 (point C on part 1 of the Order Plan) and TL4156 1635 (point E on part 1 of the Order Plan).
- Delete the text in relation to the third description in Part I of the Order Schedule.
- Delete the sixth line from the first description in Part II of the Order Schedule.
- Delete "10 feet (3 metres)" from the seventh line of the first description in Part II of the Order Schedule and insert "1.5 metres".
- Delete lines four to eight of the second description in Part II of the Order Schedule and insert "**Width** 1.5 metres between TL4149 1628 and TL4156 1635 being".
- Delete "10 feet (3 metres)" from the ninth line of the third description in Part II of the Order Schedule and insert "1.5 metres".
- Delete the text in relation to the fourth, fifth and sixth descriptions in Part II of the Order Schedule.
- Insert "C1" at TL4146 1625 on parts 1 and 2 of the Order Plan.

- Delete the section of the claimed route between points E-F-G-H-I from parts 1 and 2 of the Order Plan.
41. Since the confirmed Order would not show parts of ways in the Order as submitted I am required by virtue of Paragraph 8(2) of Schedule 15 to the 1981 Act to give notice of the proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modifications. A letter will be sent to interested persons about the advertisement procedure.

*Mark Yates*

**Inspector**



