



## Order Decision

Site visit carried out on 3 December 2015

**by Peter Millman BA**

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

**Decision date: 18 December 2015**

**Order Ref: FPS/E0535/7/36**

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as the Cambridgeshire County Council (Public Footpath No.1, Denton & Caldecote) Definitive Map Modification Order 2011.
- The Order is dated 13 July 2011 and proposes to modify the Definitive Map and Statement for the area as shown on the Order map and described in the Order schedule.
- There were two objections outstanding when Cambridgeshire County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for determination.

**Summary of Decision: I have confirmed the Order.**

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### Main issues

1. The main issue is whether the evidence shows, on the balance of probabilities, that public footpath rights exist over the route shown on the Order map and described in the Order schedule ("the Order route").

### Reasons

2. Footpath 1 runs between Denton and the boundary of Stilton Parish, from where it continues with a different number to the village of Stilton. The County Council's Definitive Map of Rights of Way shows the footpath starting, not from the road opposite the ruined All Saints' Church in Denton, but about 50 metres from the road, north of the farmyard of Red Hill Farm (see copy of the Order map attached below). The path is, however, signposted from the road, and there is a circular waymark disc on a gate post by the corner of the farmhouse. There is a clear path on the ground, in the form of a track about 3 metres wide, between the road and the start of the recorded footpath. It is this 50 metre stretch of track, between the road and the currently recorded footpath, that the Order proposes to add to the Definitive Map.
3. Public rights of way were first surveyed formally and nationally under the National Parks and Access to the Countryside Act 1949. They were surveyed parish by parish. The Parish Survey for Denton, carried out in November 1950, records that the footpath 'starts at F[ield] G[ate] at Rectory Farm'. Red Hill Farm was then known as Rectory Farm. The Parish Survey Map shows that this field gate was at point B on the Order map (see below). There must, therefore, have been a conscious decision to record the path starting some distance from the road past the church. The heading for the footpath description in the Survey, however, is 'From Denton to meet F.P. 4 to Stilton in Stilton Parish.'
4. The County Council states that the 'obvious' explanation of the description starting where it does is that the parish surveyors in the 1950s believed that

- the track through the farmyard to the start of the path was a public road. It notes, however, that it has no record showing that this track was ever considered to be publicly maintainable.
5. The County Council may or may not be correct, but I consider that it would have made no sense for there to have been a public right of way all the way from Stilton to point B, with no legal right to continue to the road at A. I have seen no evidence of there having been any point or purpose such as, for example, a viewpoint, or a public well, in the right ending at B.
  6. I conclude that it is more likely than not that the parish surveyors believed, for whatever reason, that there was a continuous public right of way from A, through B and continuing towards Stilton. There was no provision for the recording of public roads on Definitive maps, so if the surveyors believed that there was a public vehicular road between A and B, it would not have been recorded as such on the Parish Survey Map. Public vehicular rights incorporate public footpath rights. The surveyors indicated that the basis for their belief that footpath 1 was public was that it had been used for over 20 years. I further conclude that in 1950 there was a public right of way on foot between A and B. There is no evidence that it has ever been stopped up or diverted.
  7. The situation since the 1950s seems to have been that members of the public have not been stopped from using the track between A and B to link with the recorded footpath. The County Council has records from as early as 1998 of the signpost by the road (opposite point A) pointing in the direction of A – B. Each of the three original objectors (one later withdrew her objection) referred to public use of the track.
  8. One of the objectors, who lives at Redhill Farm, states that the route A – B has always been used by his consent and express permission. He has, he states, made it clear to various walkers for over 20 years that they are using the route by his consent, and he has done this to ensure that walkers know that this is not a public right of way. However, no evidence has been provided of any permission communicated orally to those using the path, or of any notice stating that use of it was by permission.
  9. This objector's statement, in my view, is not consistent with the situation on the ground, i.e. with the presence of a sign by the road indicating that the route from A – B is a public footpath. Had the objector wished people to understand that the path was permissive, it is unlikely that he would not have removed, or requested the County Council to remove, the signpost indicating that A – B was a public footpath at some time during the past 20 years. Even if the objector did, however, communicate to users of the path between A and B that their use was by his permission, that would not affect the conclusion that it was already a public footpath.
  10. The County Council, noting that the track between A and B did not have clear boundaries, stated that it had based the width of 3 metres in the Order on the width of the track; it was reasonable, it contended, to assume that the whole width had been used by the public. The objector who lives at Red Hill Farm states that this is inappropriate and unreasonably restrictive. I do not agree that it is inappropriate. It seems to me that the basis for the County Council's decision is sound; certainly at the time of my site visit I used the whole width of the track in circumventing the numerous puddles on its surface.

### **Other matters**

11. The objectors raised a number of issues which would concern them if the Order were confirmed. These included a possible increase in dog mess, the dangers of farm machinery and the devaluation of property. All I am allowed, by law, to be concerned with is evidence of the existence of public rights of way. These other issues, therefore, important as they undoubtedly are to those who raised them, cannot be taken into consideration in deciding whether or not to confirm the Order.

### **Conclusion**

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

### **Formal Decision**

13. The Order is confirmed.

*Peter Millman*

**Inspector**

