



Order Decision

Site visit on 21 April 2015

by Sue Arnott FIPROW

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

Decision date: 1 February 2016

Order Ref: FPS/L3055/7/72M

(Order A)¹

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981. It is known as the Nottinghamshire County Council (South Leverton Footpath Nos. 27-32, Grove Footpath No. 15 and North Leverton with Habbleshthorpe Footpath Nos. 22-24 and Restricted Byway No. 25) Modification Order 2009.
- The Order is dated 7 August 2009. As originally made², it proposed to modify the definitive map and statement for the area by recording ten public footpaths and one restricted byway in the Parishes of South Leverton, Grove and North Leverton with Habbleshthorpe, as shown on the Order maps and described in the Order schedule.
- Four objections were outstanding when Nottinghamshire County Council submitted the Order for confirmation to the Secretary of State for Environment, Food & Rural Affairs.
- In accordance with Paragraph 8(1) of Schedule 15 to the Wildlife and Countryside Act 1981 I gave notice of my proposal to confirm the remaining parts of the Order but with modifications. Two representations were submitted in response.

Summary of Decision: The Order is confirmed subject to some of the modifications previously proposed but not all, as set out in the 'Formal Decision' below.

Preliminary matters

1. If confirmed with the modifications proposed in paragraph 83 of my interim Order Decision issued on 8 June 2015, the Order would record on the definitive map and in the definitive statement the proposed Restricted Byway 25 in North Leverton with Habbleshthorpe Parish but not Footpaths 27 and 32 (South Leverton), Footpath 15 (Grove) and Footpath 24 (North Leverton with Habbleshthorpe) as originally proposed.
2. When my proposed modifications to the Order were advertised, two representations were submitted, both querying the status of Footpath 24 but providing no substantive new evidence. However in response, the order-making authority, Nottinghamshire County Council (NCC) made further submissions and provided additional evidence in relation to Footpath 24.

The Main Issues

3. For the four proposed footpaths within the Order, the main issue remains whether the evidence shows that in the past they were well established public rights of way that can be presumed to still exist today, even though they have not been used by the public in recent years.

¹ In my interim Order Decision I also considered Order B: the Nottinghamshire County Council (North Leverton Bridleway No. 19 and Footpath Nos. 20 and 21) Modification Order 2008 (reference FPS/L3055/7/73). I concluded it should not be confirmed.

² See paragraph 2 of the interim Order Decision

4. For the proposed restricted byway, there are two main issues: the first is whether the evidence shows that a public right of way for vehicles was once established along the Order route; the second is whether any such rights still exist for motor vehicles that should be recorded on the definitive map and statement.

Reasons

5. No further submissions have been made with respect to Restricted Byway 25 in North Leverton with Habbleshthorpe Parish, or Footpaths 27 and 32 (South Leverton) and Footpath 15 (Grove). My conclusions in respect of these routes are therefore unaltered: on a balance of probability, and for the reasons given in my interim Order Decision, I conclude that the Order should be confirmed in relation to Restricted Byway 25 but not Footpaths 27 and 32 (South Leverton) and Footpath 15 (Grove) and that these three footpaths should be deleted from the Order.

Footpath 24 (North Leverton with Habbleshthorpe)

6. Following the receipt of new evidence, I have reconsidered my conclusions in relation to Footpath 24. I have examined this new material alongside that previously before me, which included Ordnance Survey (OS) maps of 1885, 1887, 1899, 1920, 1947 and 1965, together with records compiled for the purposes of the Finance Act 1910 and the definitive map itself.
7. In short, I previously accepted that OS maps showed a footpath on the line of the Order route had been physically in existence between 1899 and 1966, but this was not proof the path had been a public one. I also accepted that the deduction of £20 on account of a public right of way in the valuation of the relevant land under the Finance Act 1910 was good evidence that the path was recognised as a public footpath in or around 1914 but this was not conclusive.
8. Indeed the unexplained omission of this route from the list of public paths compiled in the 1950s in preparation for the first definitive map weighed against this being an established public path in that period. NCC drew attention to the OS base map (revised in 1966) used for the definitive map that depicts the Order route with a dashed line as proof of its continued existence at that date. In my view this should make it even more surprising that the Parish Council did not identify it as a public path if it was in fact in use.
9. NCC argues that more weight should be placed on Finance Act material and has provided a very thorough explanation of the valuation process. It has expanded the evidence already before me by providing extracts from the Valuers' working plans, the Field Book and further extracts from the Valuation Book for North Leverton, all of which shed more light on the basis for the £20 deduction.
10. I have previously accepted that the deduction for 'public rights of way or user' was probably on account of the Order route since this was the only likely candidate within hereditament 49 and the the extracts from the Field Book lend weight to that conclusion.
11. NCC submits that "*the information about the existence of the path must have come from either the landowner via the Form 4 and that this information was used for the deduction, or (it) must have come from the valuer following his field work.*" I fully agree with that analysis but the question is which. If the deduction arose from the Valuer's own observations (as he was entitled to do)

- then the recognition of a public right of way will carry some weight on account of the reputation of the path being a public one. However if it can be shown to have originated from the landowner, this will attract significantly more weight as it could constitute an admission of a public right of way over his or her land.
12. In this case I consider the extracts from the Field Book for hereditament 49 do confirm direct input from the landowner, a Mr Mason of Retford. NCC draws attention to the underlying pencil entries and calculations which were later inked in by the Valuer. However I also note in particular an entry (directly in ink) on page 1 of the Field Book in relation to the payment of rates and taxes which reads: "*This is the Total Drainage Rate on **my** property (which is) in the area of the Laneham Drainage Commission*". Further there is an entry: "*Palmer's Charity is charged on **my** land but I do not know on what parts of it*". Clearly this does not relate to the claimed footpath but these quotes, apparently from Mr Mason, do confirm the direct interaction between the Valuer and the landowner. It seems safe to deduce that Mr Mason would also be aware of, and consented to, the recording of the deduction noted on page 2 of the Field Book where the Valuer recorded "F.P's sq 20" under the heading "Charges, Easements and Restrictions ..." and which was subsequently recorded in the Valuation Book.
 13. There is no evidence of the provisional valuation for hereditament 49 (including the £20 deduction for a public right of way) being disputed by Mr Mason. A copy of an insert from the front of the Valuation Book for North Leverton shows a hand written note signed by "WWS" on 7 July 1921 stating "Book complete. No queries".
 14. NCC recognises that not every document relating to the process required by the 1910 Act is still available and the individual forms sent to and returned from the landowner no longer exist. It submits that, in the absence of evidence to the contrary, it must be presumed that all the relevant procedures and consultations were carried out unless there is evidence to the contrary.
 15. I acknowledge the 'presumption of regularity' is an important legal principle. However it must be remembered that even where all the processes were followed to the letter, the aim of the 1910 legislation was not to record public rights of way. The acknowledgement of public paths was incidental to its main purpose and it was not the role of the Valuer to determine the legal status of a claimed path. Nevertheless, having considered the additional documents now provided, I attach significantly more weight to the Finance Act records than I did previously.
 16. To help explain the background to the omission of the Order route from the initial list of public paths compiled by North Leverton Parish Council for the definitive map in the 1950s, NCC has discovered relevant correspondence in its parish archives. It seems there was an objection to the absence of this footpath from the draft definitive map by the Nottinghamshire Footpath Preservation Society. In 1960 NCC produced a map showing several routes claimed as missing from the draft map by a Mr Slater on behalf of the Society.
 17. This map was sent to the Parish Council for comment on the omissions, together with a letter which identified one of the claimed paths as "*a footpath leading north from beside the North Leverton Windmill, over the railway and then eastwards to enter the village and join the road just west of the crossroads*". (This is undoubtedly a description of the present Order route.)

18. When the Parish Council replied saying that "*the footpaths only partially existed and were seldom used*", NCC responded by pointing out that the issue was not "*whether the footpaths claimed are used or not, but whether they exist: if they have existed at any time they must be deemed to exist now unless they have been officially stopped up or diverted*". There is no record of any further reply but the Nottinghamshire Footpath Preservation Society withdrew from the process, stating that they could supply no further evidence and would have to "*abide by the Parish Council's decision that they should not be included*".
19. NCC submits, and I accept, this exchange shows that the path in question had been used by the public in the past although by 1960 it was little used.
20. Having examined this new evidence alongside the documents previously provided in relation to the Order, I consider the balance now tips towards the existence of a public right of way along the Order route in the late nineteenth and early twentieth centuries. Since there is no record of this footpath being stopped up or diverted, I conclude that a public right of way still exists and that Footpath 24 should be recorded on the definitive map and statement. It should therefore remain in the Order to be confirmed along with Restricted Byway 25.

Other matters

21. NCC makes a comparison between this and what is described as a similar case in Owthorpe. Whilst I can see some similarities, there do appear to be subtle but important differences. However I do not have before me the full details of that case and make no comment on the decision reached by the Inspector.

Conclusion

22. Having regard to the above and all other matters raised in the written representations, I propose to confirm the Order (Order A) in respect of Restricted Byway 25 and Footpath 24 in North Leverton with Hablesthorpe Parish.

Formal Decision

23. I confirm the Order subject to the following modifications:

In the Order Schedule Part I: Modification of Definitive Map and in Part II: Modification of Definitive Statement,

- Delete entries for South Leverton Footpath No. 27, South Leverton Footpath No. 32 and Grove Footpath No. 15;

On the Order Map(s):

- Delete routes shown as South Leverton Footpath No. 27, South Leverton Footpath No. 32 and Grove Footpath No. 15.

Sue Arnott

Inspector