



Order Decision

On papers on file

by Alan Beckett BA MSc MIPROW

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

Decision date: 24 August 2018

Order Ref: ROW/3198478

- This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the East Riding of Yorkshire Council (Preston Footpath Nos. 21, 22 and 23) Definitive Map and Statement Modification Order 2017.
- The Order is dated 26 September 2017 and proposes to modify the Definitive Map and Statement for the area by adding a public footpath as shown in the Order plan and described in the Order Schedule.
- There was 1 objection outstanding when the East Riding of Yorkshire Council (the Council) submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation. That objection was withdrawn in writing on 11 July 2018.

Summary of Decision: The Order is confirmed.

Procedural Matters

1. The Council submitted the Order for confirmation in March 2018; the sole objection to the Order was withdrawn in July 2018. I have therefore considered this case on the basis of the written representations forwarded to me. I am satisfied that I can make an assessment of the evidence against the relevant statutory criteria and reach satisfactory conclusions on the basis of the evidence supplied without the need to undertake a site visit.

The Main Issues

2. The main issue in this case is the requirement of section 53 (3) (c) (i) of the 1981 Act, namely whether the documentary evidence discovered by the Council, when considered with all other relevant evidence available shows that a right of way not shown in the map and statement subsists over the land in question and that the map and statement therefore require modification.
3. Section 32 of the Highways Act 1980 (the 1980 Act) 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 is appropriate, before determining whether or not a way has been dedicated as a highway.

Reasons

Documentary evidence

4. The order route is shown in the plan produced in 1774 by the Inclosure Commissioners acting under the provisions of the Preston Inclosure Act 1773. In the plan the order route is shown as 'Pollard Foot Road'.

5. The 'Pollard Foot Road' is described in the inclosure award of 1777: "*and lastly We do order determine and award that there shall be another Footway or Road leading from the Homestead of the said Joseph Williamson called Pollard Northward over the ancient inclosed Lands of and Lands in the South Field allotted to the said Joseph Williamson into and along the East side of Lands in the said South Field herein allotted to the said Christopher Scott into and across the said Strakes Road to the Foot Causeway at the south end of the homestead of the said Thomas Wright.*"
6. Other than the inclusion of this route as a public footpath in the 1777 award there is no other reference to the footpath in the remaining documentary sources which the Council has investigated. Consideration had been given to: nineteenth century commercial maps by Greenwood (1817) and Bryant (1829); nineteenth and twentieth century Ordnance Survey maps; turnpike and railway deposited plans and books of reference; tithe commutation records; Finance Act 1910 records; records of the East Riding Racecourse Company; and Quarter Sessions records.
7. Although the farmstead known as Pollard is marked on maps such as the Ordnance Survey Old Series edition of 1824 and a track or way is shown leading northwards from Pollard to Staithes Road, that track is shown on a different alignment to the awarded footpath and joins Staithes Road at a different position. This later track appears as a physical feature in the landscape on subsequent maps and plans published after 1824 but these maps do not show the awarded footpath.
8. The Council submits that whilst the awarded footpath is absent from the subsequent documentary record, there is no evidence of the rights which were awarded had been subject to formal action to extinguish them. A search had been made of the Quarter Sessions records and although there was evidence that footpath 20 to the east of the Order route had been diverted by the Quarter Sessions, there was no evidence that the Order route had been the subject of such action.
9. The Council accepted that no evidence of use of the claimed footpath had been submitted in support of the application and that there was no physical evidence of the route on the ground. Nonetheless the Council placed reliance upon the legal maxim '*once a highway, always a highway*' which meant that if it could be shown that a public right of way existed in the past, that right continued until it was formally stopped up or diverted and could not be lost through disuse.

Consideration of the documentary evidence

10. Although there is no physical evidence of the footpath on the ground or any living memory of the path and the buildings which once stood at Pollard have long since been demolished, these facts are not sufficient to demonstrate that the awarded route and the rights over it have subsequently been stopped up. It would seem that the awarded footpath fell into disuse at some point between 1777 and 1824 in consequence of the creation of the track to Pollard shown on the 1824 OS Old Series plan.
11. I acknowledge that the Order route has not been shown on maps and plans published after the inclosure award but this does not in itself demonstrate that the rights over order route have been stopped up. Map and plans are produced for various purposes and record topographical features visible to the surveyor

but do not necessarily provide evidence of public rights unless that was the principle purpose for which the map was produced. The absence of a path or track from a map simply records that no observable feature was present at the time of the survey.

12. Although the only reference to the existence of a public footpath is in the Preston Inclosure Award, I am of the view that the creation of a public footpath by Inclosure Commissioners who were empowered to set out public and private ways as they saw fit as part of the implementation of the 1773 Act provides conclusive evidence of the existence of such a way; I concur with the Council that a public right of way cannot be lost through disuse.
13. Given that the Inclosure Commissioners set out and awarded a public right of way on foot over the Order route, in the absence of any evidence that those rights were subsequently extinguished or diverted, those rights remain and should be recorded in the Definitive Map and Statement of public rights of way.

Conclusion

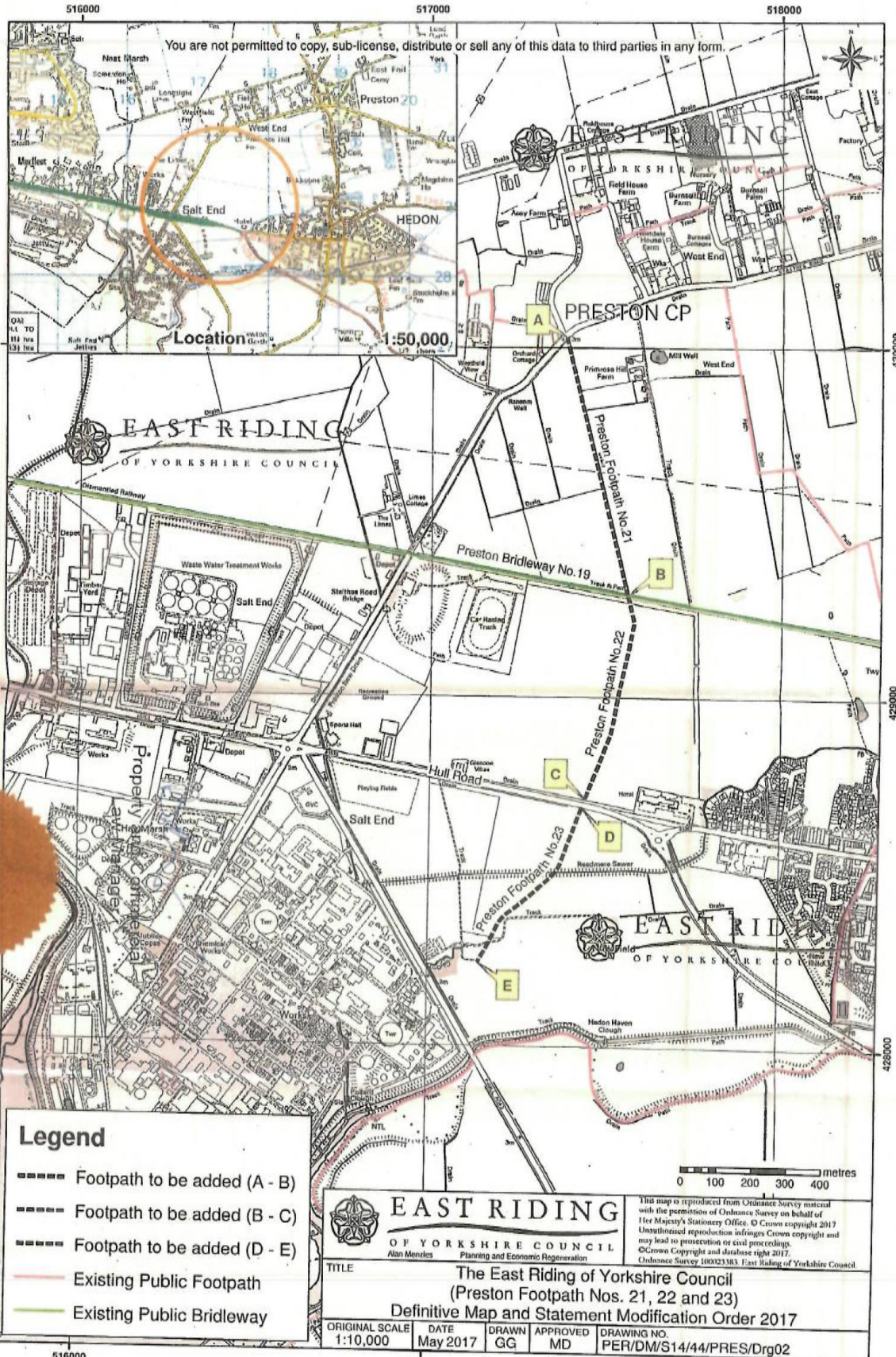
14. Having regard to these and all other matters raised in the papers before me I conclude that the Order should be confirmed.

Formal Decision

15. I confirm the Order.

Alan Beckett

Inspector



Legend

- Footpath to be added (A - B)
- Footpath to be added (B - C)
- Footpath to be added (D - E)
- Existing Public Footpath
- Existing Public Brideway



EAST RIDING
OF YORKSHIRE COUNCIL
Alan Menzies
Planning and Economic Regeneration

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TITLE				
The East Riding of Yorkshire Council Preston Footpath Nos. 21, 22 and 23 Definitive Map and Statement Modification Order 2017				
ORIGINAL SCALE	DATE	DRAWN	APPROVED	DRAWING NO.
1:10,000	May 2017	GG	MD	PER/DW/S14/44/PRES/Drq02

MAP NOT TO ORIGINAL SCALE

