



Order Decision

Site visit made on 12 November 2018

by D. M. Young BSc (Hons) MA MRTPI MIHE

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

Decision date: 20 December 2018

Order Ref: ROW/3203355

- This Order is made under Section 118 of the Highways Act 1980 (the 1980 Act) and is known as the Footpath between The Mount and Clipstone Drive, Newlands, Mansfield Woodhouse, Nottinghamshire.
- The Order is dated 10 November 2017 and proposes to extinguish the unrecorded footpath shown on the Order plan and described in the Order Schedule.
- There were seven objections outstanding when Mansfield District Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is not confirmed

Procedural Matters

1. This case concerns the proposed extinguishment of a short footpath between Clipstone Drive and The Mount. The original line of the path, which is some 70 metres in length, has been obstructed by a combination of fences, gates, an electricity substation and a private dwelling.
2. Although the Council appear to have accepted the route is a public right of way by virtue of this Order, for reasons that are not entirely clear, it is not recorded on the Definitive Map and Statement (DMS). An earlier Order to extinguish the same route in 1980 was not confirmed by the Secretary of State. In 2011 an application to add the route to the DMS was submitted to Nottinghamshire County Council (NCC). As I understand it, that application is being held in abeyance pending the outcome of my decision. I have noted Mr Cooling's view that a Public Right of Way has never existed along the Order route. However, the process under section 118 of the 1980 Act allows for the extinguishment of unrecorded rights of way. I also note there has been no objection from NCC on the basis of the route not being a public right of way.
3. No-one requested an accompanied site visit, so my inspection was carried out unaccompanied.

The Main Issues

4. In order to confirm the Order I must be satisfied that it is expedient to stop up the path having regard to:
 - (a) the extent that it appears likely that the footpath in question would, apart from the Order, be likely to be used by the public, and:
 - (b) the effect that the extinguishment of the footpath would have as respects land served by it, account being taken of the provisions as to compensation.

5. For the purposes of the above, any temporary circumstances preventing or diminishing the use of the path should be ignored. In respect of the tests to be considered, I must look at the question of likely future use of the path concerned. The question of the expediency of stopping up the path enables a variety of matters to be taken into account.
6. I must also have regard to the material provisions of any public rights of way improvement plan ('ROWIP') which has been prepared for the area in which the path lies, and government advice contained in the DEFRA Circular 1/09.

Reasons

Background

7. The Council's statement sets out the background to the Order in some detail. In summary, the path previously served as a 'cut through' from The Mount to Clipstone Drive passing the former Newlands Community Centre. It appears to have come into being in the 1960s as part of the development of the wider estate.
8. In December 2009 the Council granted planning permission for the demolition of the community centre and the erection of 5 houses¹. The right of way was acknowledged in the Officer's report and was intended to be retained as part of the development. Despite that, it seems it was omitted from the layout approved pursuant to the subsequent Reserved Matters application². Quite how that decision was arrived at or why the necessary applications under either section 257 of the Town and Country Planning Act or section 118 of the 1980 Act were not progressed at that time, the evidence is unclear.
9. The housing development was built out in 2011 at which time the route was obstructed and has not been available for public use since. No alternative route has been proposed or provided by the landowner (Rufford Estates Ltd). The application for the extinguishment was made by the landowner due to ongoing conveyancing difficulties in the sale of the westernmost property in the new development.

The extent to which the footpath would be likely to be used

10. The objections show that the right of way was well used prior to its closure. As I was able to see on my site inspection, Point A links to Bridleway 30 and recently added Footpath 58 which in turn provide good access to woodland walks as well as the wider rights of way network in the area. Point A is also located opposite the park known locally as the 'top field' which includes sports pitches and a children's play area.
11. The Ramblers and the Nottinghamshire Local Access Forum both point out that the path was convenient to local people and 'well-used' for many years prior to its closure. This is supported by the testimonies of various local residents who have stated that they used the path regularly up until its closure and would do so again if it were available. For its part, the Council accept that if the route were to be made available it would attract use from the wider public. In view of the written submissions, I see no reason to take a contrary view. The fact

¹ LPA ref: 2009/0550/NT

² LPA ref: 2010/0433/NT

that the Inspector in the 1980 decision came to a similar view adds further weight to my findings in this regard.

12. Overall, I find that local people have been disadvantaged by the stopping up of the Order route. If it were to be reinstated I believe it would be a well-used route bearing in mind it provides convenient access to the park and other walks in the area.

The alternative route

13. Despite some suggestion from the Council that it might be possible to provide an alternative route around the substation and neighbouring gardens, no details are before me of what this might look like. Instead the Council suggests that users could use the existing estate roads as an alternative. However even the most direct route via Coppice Drive would be over 3 times longer than the Order route. In my view, this is significantly longer. For the above reasons, the route highlighted by the Council does not add significant weight in favour of the Order.

The effect on land served by the footpath

14. No issues have been raised in connection with any effect on land served by the path nor have compensation issues been raised.

Rights of way improvement plan

15. No material provisions of the plan have been brought to my attention for consideration.

Other Matters

16. Although no substantive details of any alleged incidents have been provided, those supporting the Order have made references to the potential for anti-social behaviour. Whilst I can appreciate these concerns, these are not matters which can be taken into consideration under section 118 of the 1980 Act other than taking into account the possible consequences on the potential level of usage. To that end, no party has suggested that any future anti-social behaviour would discourage use of the route. Moreover, I noted that most of the route is overlooked by windows in the side elevations of adjacent properties.
17. I appreciate that the reinstatement of the Order route or a suitable alternative might well prove costly to the landowner and involve taking land away from neighbouring dwellings. However, these are not matters to which I can attribute any significant weight under Section 118 of the 1980 Act.

Conclusions

18. Having regard to these and all other matters raised in the written representations I conclude that it would not be expedient to confirm the Order.

Formal Decision

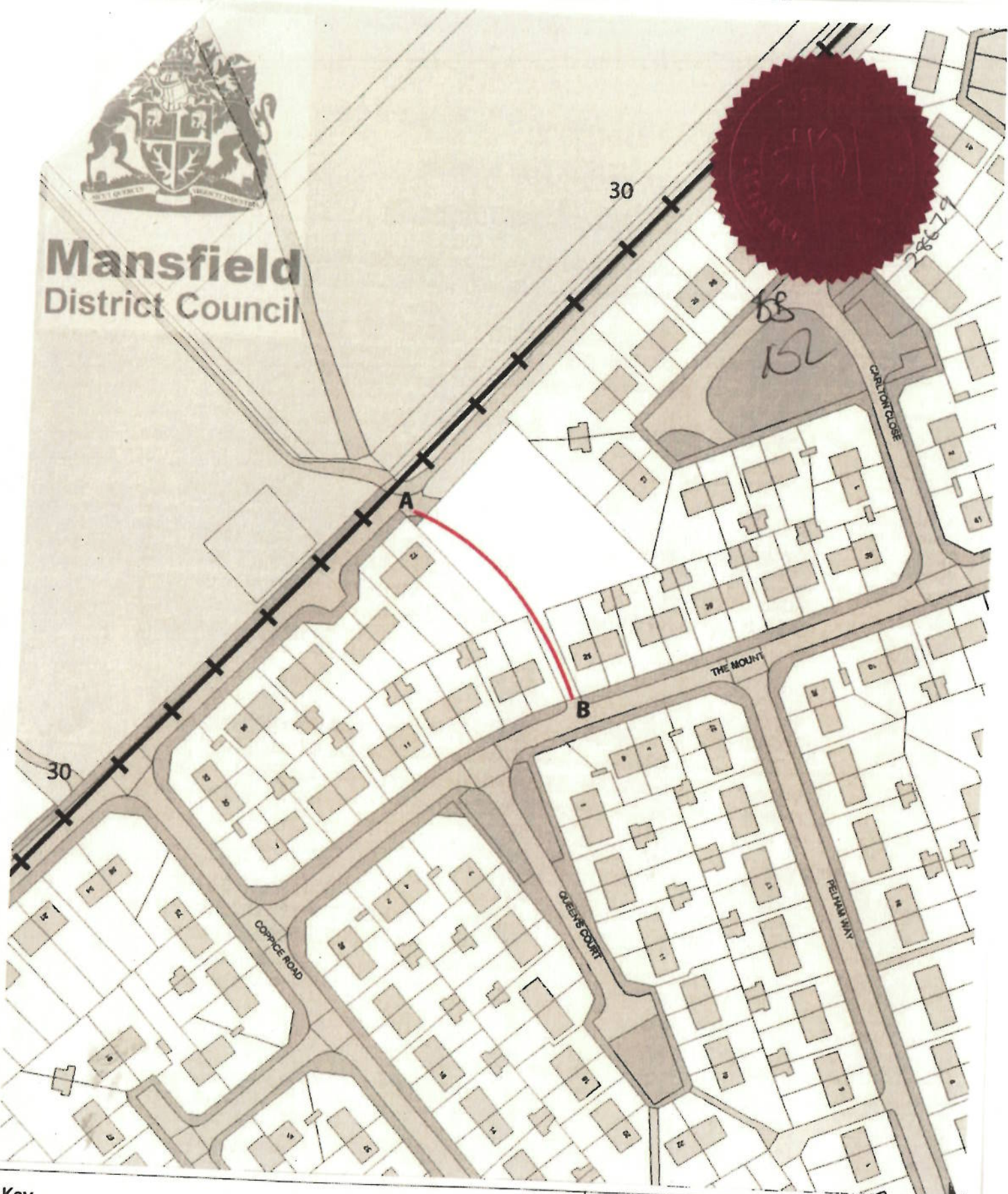
19. I do not confirm the Order

D. M. Young

Inspector



Mansfield District Council



Key

- Path to be extinguished
- X Bridleway (unaffected)

MAP NOT TO ORIGINAL SCALE

MANSFIELD DISTRICT COUNCIL

CIVIC CENTRE,
CHESTERFIELD ROAD SOUTH,
MANSFIELD,
NOTTINGHAMSHIRE,
NG18 7BH

TITLE

Land off Clipstone Drive Forest Town Mansfield

DATE	30/8/2017
SCALE	1:1250
DRAWN	C.Dennis

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