



## Order Decision

Site visit made on 29 January 2019

**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: 12 March 2019**

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### **Order Ref: ROW/3185634**

- This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Definitive Map and Statement for the Parish of Westhall in the District of Waveney Suffolk County Council (Parish of Westhall) Modification Order 2017.
- The Order is dated 19 July 2017 and proposes to modify the Definitive Map and Statement for the area by adding a footpath and bridleway as shown in the Order plan and described in the Order Schedule.
- There was 1 objection outstanding when Suffolk County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

### **Summary of Decision: The Order is confirmed.**

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#### **Procedural Matters**

1. None of the parties requested to be heard, I have therefore considered the case on the basis of the written representations received.
2. The proposed Order seeks to resolve a long-standing anomaly in respect of cul-de-sac routes Footpath 14 (FP14) and Bridleway 16 (BR16) within the parish of Westhall. For ease of reference in this decision, I shall refer to points labelled on the Order plan.
3. I carried out an accompanied site inspection of the Order routes on the morning of 29 January 2019. I was able to walk the section A-B-C which was well delineated on the ground. I was also able to walk through the woodland between points C-D and C-E-G.
4. The Order is supported by Suffolk County Council (the "Order Making Authority" (OMA)), Professor Higgins (a local resident) and also by Westhall Parish Council. The objector is Mr Fairclough who is also the main landowner.

#### **The Main Issues**

5. The Order is made under Section 53(2)(b) of the 1981 Act, relying on the occurrence of an event specified in Section 53(3)(c)(i) of the Act. This section requires me to consider whether the evidence discovered by the OMA, when considered with all other relevant evidence, is sufficient to show, on the balance of probabilities, that the rights of ways described in the Order subsist and that the Definitive Map and Statement (DMS) therefore require modification.

## Reasons

### *The Routes*

6. The Order comprises two separate but connected routes. The first is described as the missing section of BR16 connecting termination point D to the western end of unclassified county road U1322 (point A) with intermediate points B and C in between. Hereafter I shall refer to this route as the "missing section".
7. The second route relates to FP14 which the supporters argue is recorded incorrectly on the DMS. It is therefore proposed that the current legal alignment (H-E-F) which ends in a cul-de-sac is deleted and replaced with a route connecting FP14A to the west (point G) with BR16 (point C).
8. The case in support of the Order relies mainly upon historical documentary evidence to demonstrate that the Order routes have been dedicated as public right of ways at some point in the past. I shall now consider the available evidence.

### BR16

9. The missing section is first depicted on the 14<sup>th</sup> Century map of Westhall and shown between two solid lines. The 1812 Barnes Map of Westhall shows a similar arrangement but marked with a single dashed line and annotated "Packway" with the wider route referred to as "Scalesbrook Lane". Bryant's 1824-25 Map annotates the route as "Scalebroke Lane" and "Bridleway". On the basis of these maps it appears Scalebrook Lane which incorporates the missing section was a green lane linking the villages of Holton and Westhall.
10. In terms of Ordnance Survey (OS) mapping, the missing section is shown as part of a longer route on a variety of maps including but not limited to the following: 1837 edition of the 1 inch Old Series Map, the 1888 6 Inch 1<sup>st</sup> Edition Map, the 1905 6 Inch 2<sup>nd</sup> Edition Map, the 1927 6 Inch 3<sup>rd</sup> Edition Map, all three editions of the 25 Inch OS County Series Maps (1892-1914) and the 1939 Edition Map. Although OS maps have carried a disclaimer since 1888 stating that the representation of a road, track or footpath is no evidence of the existence of a right of way, the maps nonetheless show that a physical route existed along the same general alignment as the missing section.
11. The entire length of BR16 including the missing section is shown as a publicly maintainable highway on the 20<sup>th</sup> Century Rural District Council Road Record maps as "E107". According to the OMA, these records date from the late 1920s/early 1930s. BR16 is again shown on the survey map and described on the survey form completed by the parish as part of the survey of public rights of way completed in the early 1950s under the National Parks and Access to the Countryside Act 1949. Although it is depicted as a footpath on the map, its status is clarified in a memorandum from the County surveyor dated 30 January 1952 which states; *"based on ancient maps and previous enquiries, it is a bridleway"*. The parish survey describes the route thus *"the first part of the path runs along Scalesbrook Lane. At a point approximately 115 yards south-west of Grove Farm it leads in a south-westerly direction for a distance of about 650 yards."*
12. Although there is no recent evidence of public use, the statement from Dr Peter Warner who grew up in the area, details his use of the route as a child from point A across the former Grove Farm and airfield. It is said that the route was

known to be a public right of way and was used by vehicles and was maintained by the owner (Mr Foat) at that time.

13. Mr Foat's statement confirms that in the 1960s his family used the route and that he was aware of the existence of an access route across the land. In 1994 Mr Foat had discussions with the Council and others with a view to diverting the route away from the field between points B and C. A ditch crossing was apparently provided to facilitate the diversion. Despite that it appears the DMS was never formally amended.

#### *Conclusions on evidence*

14. The documentary evidence strongly suggests that Scalesbrook Lane incorporating the missing section of BR16 was a historic public route which once linked Holton to Westhall. It appears to have subsisted as a continuous route from at least the 14<sup>th</sup> Century up until the Second World War when the airfield was taken over by the American Air Force and parts of the route were stopped up presumably for security reasons. Although sections of the route were subsequently downgraded to a bridleway, the missing section was recorded as being public highway on the original DMS. This squares with the handover maps and the entry on the Parish survey which states that the first part of the path runs along Scalesbrook Lane. Based on the foregoing, it can be reasonably inferred that the route was at that time reputed to be a public highway up to the former Grove Farm House at point D. This explains why BR16 currently terminates on the DMS at point D. The missing section also appears to have been used by the public until the late 1990s. I am therefore satisfied that on the balance of probabilities the evidence is sufficient to demonstrate that a bridleway subsists over the order route.

#### FP14

15. A footpath following a similar alignment to G-E-C (annotated as 14) is marked in red on the 1932 Rights of Way Composite Map. The same route is shown on the parish survey of the early 1950s and described in the survey as "*Grove Farm N to Spexhall-Westhall Road east of Brick Kiln Farm*". When the first DMS was published in 1952 the aforementioned description was retained but owing to limitations of the map's scale and perhaps the thickness of the line used, FP14 was drawn to the north of the former buildings at Grove Farm site rather than to the south on its correct alignment. This lack of precision infected subsequent maps.
16. In the 1990s the landowner Mr Foat had discussions with the OMA and others about resolving the 'anomaly' by extending FP14 to point B. The evidence would suggest that Mr Foat made the necessary alterations on the ground to facilitate these changes including the construction of a footbridge over the drainage pond. However these changes were never recorded formally on the DMS and at some unspecified point the bridge ceased to exist resulting in the current cul-de-sac arrangement.

#### *Conclusions on evidence*

17. On the balance of probabilities, I am satisfied that the documentary evidence is sufficient to demonstrate that a public right of way subsists over the route G-C.

### **Other Matters**

18. The objector, Mr Fairclough, has adduced very little, if any, evidence of his own to repudiate the findings of the Council and Professor Higgins. It is argued, that there has been no recent use of the route [BR16] during his or Mr Foat's ownership. However even if I were to accept that, this would not preclude the possibility of a right of way being added to the DMS bearing in mind the long-established legal principle "*once a highway, always a highway*".
19. Mr Fairclough has suggested that an alternative route could be provided. However, the suitability of the proposed routes or the availability of alternatives are not matters that I can consider under Section 53 (2) (b) of the 1981 Act. It is also alleged that the evidence in support of the Order is not '*conclusive*'. However, the burden of proof to be applied in these cases is 'on the balance of probabilities' and that being so, I am satisfied that the relevant test has been met.
20. Finally, Mr Fairclough has criticised the OMA's handling of the matter and the motives of those pursuing the Order. However again these matters are not relevant to my consideration of this Order.

### **Conclusions**

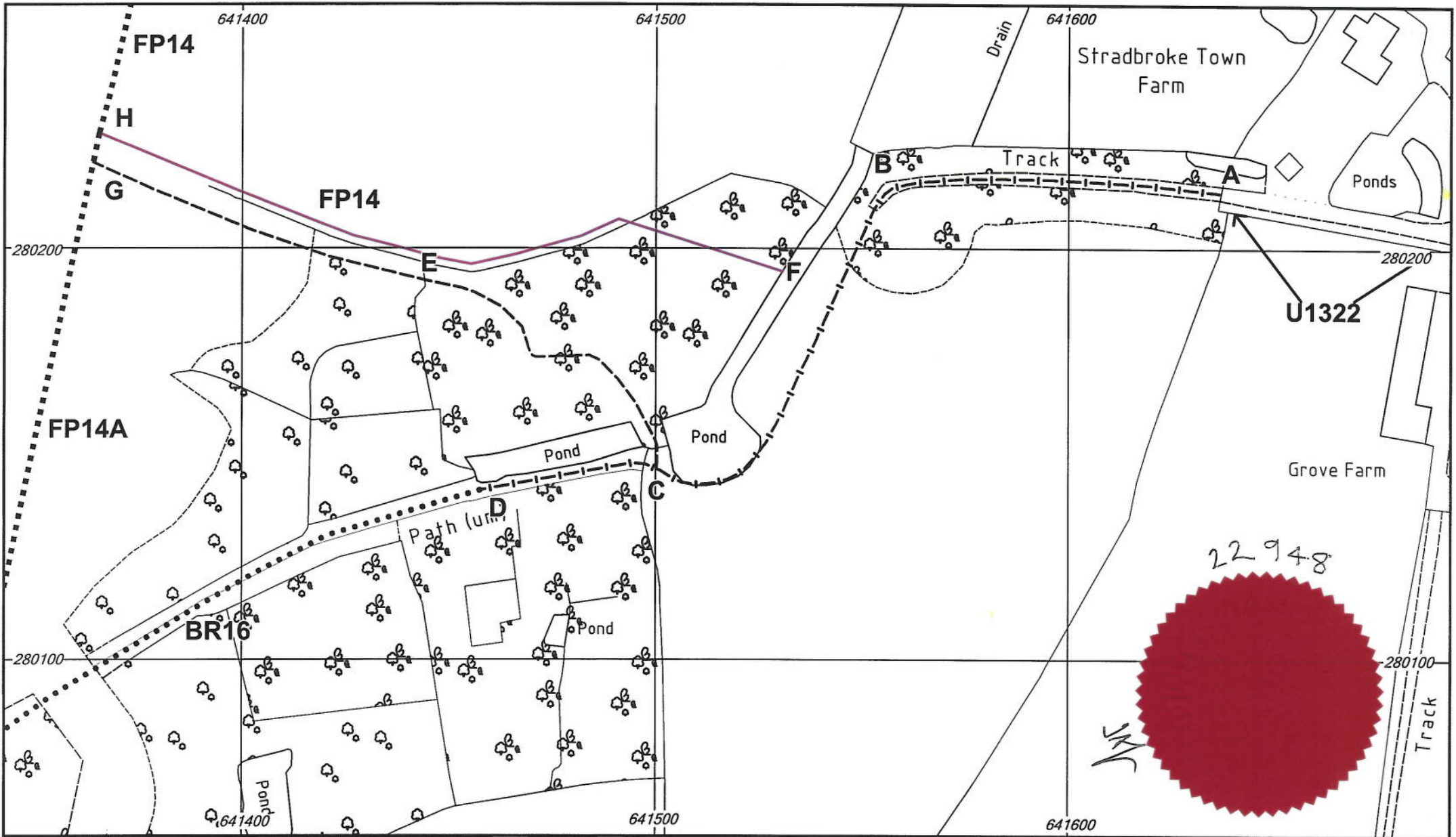
21. On the balance of probabilities, and considering the evidence as a whole, I am satisfied, that the Order routes should be recorded on the DMS. Having regard to these and all other matters raised I conclude that the Order should be confirmed.

### **Formal Decision**

22. The Order is confirmed.

*D. M. Young*

**Inspector**



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- Proposed Footpath (C-E-G)
- · - · - · - Proposed Bridleway (A-B-C-D)
- Footpath to be deleted (H-F)
- ..... Existing Footpaths
- ..... Existing Bridleway

**PROPOSED FP14  
 RE-ALIGNMENT AND  
 BR16 ADDITION IN  
 WESTHALL**

Filed at: