



Order Decision

Site visit on 19 March 2019

by Paul Freer BA(Hons) LLM PhD MRTPI

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

Decision date: 13 September 2019

Order Ref: ROW/3204488

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981. It is known as the Suffolk County Council (Parish of Moulton) Modification Order 2018.
- The Order is dated 26 March 2018. It proposes to modify the definitive map and statement for the area by adding a footpath from a point at OS grid reference 56999, 26357 to a point at OS grid reference 56941, 26259, in the Parish of Moulton, as shown on the Order map and described in the Order schedule.
- There was one objection outstanding when Suffolk County Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.

Summary of Decision: The Order is confirmed subject to modification.

Main Issue

1. The Order was made under the Wildlife and Countryside Act 1981 on the basis of events specified in sub-section 53(3)(c)(i). The main issue is whether the evidence is sufficient to show that a footpath subsists on the balance of probabilities.
2. Suffolk County Council (SCC) made this Order in response to an application from Mr John Andrews but, because the Order is based upon a reasonable allegation that the claimed route subsists, SCC has adopted a neutral stance at this stage. The case in support is based solely on documentary evidence. It is convenient to first set out that documentary evidence, and then assess that evidence having regard to the points made by the objectors.

Reasons

Background information

3. The principal source of evidence relied upon by the applicant is the Moulton Inclosure Act and Award of 1841 (the 1841 Award). However, before going on to consider the evidence, it is helpful to briefly set out the geography of the area insofar as it is relevant to the claimed route.
 4. The claimed route extends in a straight line in a south-westerly direction from Dalham Road. Two other roads, Moulton Road and Mill Road, lead from Dalham Road, also in a generally south-westerly direction. The claimed route runs parallel to and broadly equidistant between these two roads.
 5. The claimed route crosses some gallops and terminates in the grounds of a building associated with a dwelling nestled in a kink in Mill Road. To the south of this building, and separated from it by a field, a footpath (FP11) runs
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perpendicular to the claimed route and links Moulton Road with Mill Road. In the interest of clarity, it should be noted that the claimed route does not link with FP11 at any point. To the south of where FP11 joins it, Mill Road then leads to the village of Ashley.

6. Some of the features identified above were evident at the time of the 1841 Award. Dalham Road is depicted as being on essentially the same alignment as it is now, as are Moulton Road and Mill Road. The latter are identified as Cheveley Road and Ashley Road respectively on the Inclosure Map that accompanies the 1841 Award (the Inclosure Map). The land between Cheveley Road and Ashley Road is shown on the Inclosure Map as comprising parts of two larger fields: the Lidgate Field and the Market Field.
7. The area to the north-west of the kink in Ashley Road, where the dwelling and associated building are now located, is identified as 'Woodcroft Closes', an area that is likely to have been surrounded by a boundary of some description. A further area at the junction of Dalham Road with Cheveley Road is identified on the Inclosure Map as 'Three Closes'. There is a line shown on the Inclosure Map that zig-zags in a generally north-east/south-west direction between 'Woodcroft Closes' and 'Three Closes', the purpose of which is not identified on the map itself. I shall return to that line below.

Consideration of evidence

8. In a section headed 'Footways', the 1841 Award records the following:

And one other footpath called the Ashley Footpath marked on the map or plan C commencing at the north east corner of woodcroft closes and proceeding in a north -east direction in a straight line over Market and Lidgate Fields till it enters the Dalham Road.

This route, which for convenience I shall refer to as 'The Ashley Footpath', now forms the claimed route.

9. The wording of the 1841 Award is somewhat inconsistent and requires a degree of interpretation. For example, the various carriage roads are prefixed with the word 'public' whereas 'footways' are prefixed with neither 'public' nor 'private'. To further complicate matters, the section of the award relating to stopping-up refers to 'footpaths' rather than 'footways'.
10. It is, however, noteworthy that construction of the award establishes a hierarchy of routes, in which 'Roads' and 'Footways' are set out separately from 'Private Roads'. I recognise that the headings 'Roads' and 'Footways' are not themselves prefixed by the word 'public' but, given that they set out separately from 'private roads', it is reasonable to draw the inference that the reference to 'Roads' and 'Footways' is intended to mean routes available to the public. Given that 'The Ashley Footpath' falls within the routes headed 'Footways', it is in my view reasonable to conclude on the balance of probability that this footpath was intended to be available for public use.
11. This is supported by the section of the 1841 Award that records the stopping up of various routes. The procedure leading up to the 1841 Award required the Commissioner to give notice if a route was proposed to be discontinued and stopped up. Under the heading 'Bridle Ways and Footways stopped up', the list of such routes included, at No 12, a route described as:

One other public footpath called The Ashley footpath commencing nearly at the corner of the Inclosure called Three Closes and proceeding in a south westerley direction across Lidgate Field to and over the Woodcroft Inclosure till it enters the parish of Ashley.

This description correlates closely with the line shown on the Inclosure Map that zig-zags in a generally north-east/south-west direction between points identified as 'Three Closes' and 'Woodcroft Closes'. I therefore consider that, more likely than not, this line on the Inclosure Map depicts a previous route of 'The Ashley Footpath' and which may also have served as the boundary between Lidgate Field and Market Field. It is significant that the previous footpath known as the Ashley Footpath is explicitly stated as being a public footpath in the description of route to be stopped up at No12.

12. The Minutes of a meeting held on 13 February 1840 record that the Commissioner heard objections to the stopping up of some routes but that the objection to the stopping up of footpath No.12 was withdrawn on the understanding that a new footpath was to be set out over Lidgate Field. Despite making no mention of crossing Market Field, that description is consistent with the description in the 1841 Award, and with the route shown and annotated as the 'Ashley Footpath' on the Inclosure Map (i.e. the claimed route).
13. The corollary of the above is that, on the balance of probability, the 1841 Award established a replacement of the previous 'Ashley Footpath' along a more direct route and that this new footpath, like its predecessor, was available for use by the public. However, whereas the previous footpath No 12 is described as extending 'to and over the Woodcroft Closes till it enters the parish of Ashley', whether intentionally or otherwise the replacement Ashley Footpath as shown on the Inclosure Map terminates at Woodcroft Closes. The effect, therefore, was to create a cul-de-sac terminating at Woodcroft Closes.
14. The objectors to the claimed route alight on this fact, contending that the Commissioner was not empowered to set out a cul-de-sac path with no onward passage or terminating at a point to which the public had a right to go. However, I note that, although described as extending over the Woodcroft Closes till it enters the parish of Ashley, the previous footpath No 12 is not depicted on the Inclosure Map as extending over Woodcroft Closes. In the same way as The Ashley Footpath is shown as terminating at Woodcroft Closes, the previous footpath described at No 12 is also shown as abruptly terminating there. I therefore cannot discount the possibility that the Commissioner envisaged The Ashley Footpath to similarly cross the Woodcroft Closes into the parish of Ashley, and then link with what is now FP11 and to the village of Ashley.
15. That does not of course alter the fact that the claimed route does not link with FP11 and, if confirmed, would be a cul-de-sac. It does, nonetheless, provide one possible explanation why The Ashley Footpath was considered to be available for public use at the time of the 1841 Award and to provide a link with the village of Ashley. Indeed, the use of the name 'The Ashley Footpath' in the 1841 Award and on the Inclosure Map lends weight to that possibility. I am also mindful that the fact that the claimed route is a cul-de-sac does not preclude the existence of public rights.

16. The claimed route is shown, albeit only in part, on the first edition of the Ordnance Survey (OS) County Series maps of 1885. The section shown is that from Dalham Road to a point that coincides approximately with the gallops that are now in place. The objectors point out that the route as shown on this map has no onward path and has the characteristics of a farm track to provide field access. The truncation of the route as shown on the OS County Series maps of 1885 would tend to suggest that the route did not have the appearance of a route used on foot on that date but does not rule out the possibility that the route was used by the public as a footpath in the years immediately following the 1841 Award.
17. SCC explain that the claimed route does not appear on any of the subsequent OS maps although I note that a route closely approximating to the full length of the claimed route is shown on the location plan submitted as part of its evidence, and which appears to be based on an OS map of unspecified date. As is normal with OS maps, on neither of the above maps is the status of the route recorded. In any event, the absence of a path on an OS map does not necessarily mean that the path was not there, only that there was no feature which the OS surveyor was required to show.
18. The Order route was not claimed during the production of the first definitive map but, in 1979, SCC embarked upon a review. The Order route was claimed as part of that review and, notwithstanding an objection by Moulton Manor Farm Ltd, the recommendation to the review panel was that the route be added as a footpath. In the event, the 1979 review was abandoned and the recommendation to add the claimed route as a footpath was not actioned. It is not possible to reach any firm conclusions on the limited information available to me but such information as there is tends to suggest that SCC were aware of evidence in relation to the claimed route. I therefore consider that this matter can still be given some weight, albeit limited.

Conclusions on evidence

19. In considering the above evidence in the round, I am mindful that the inclusion of the claimed route in the 1841 Award is a legal event. Notwithstanding that the claimed route does not appear consistently in subsequent OS maps, I therefore consider that the inclusion of the claimed route in the 1841 Award is very strong evidence of the legal status of that route as a public footpath. The presumption of regularity dictates that, at this distance of time and in the absence of any clear evidence to the contrary, any questions over the procedures leading up to that award should be set aside as not impeaching the validity of the award.
20. In my view, this principle extends to any uncertainty over the setting out of the footpath, either in terms of any requirement under the 1841 Award for a public footpath to be set out or whether it was actually set out. In that context, the applicant has explained in some detail the procedures to be followed at that time in terms of setting out. In relation to footpaths, there was no requirement to physically lay down a path surface, it being sufficient to show on a map the route of the proposed footpath. The right of the public to use the new footpath was then confirmed by the signing and sealing of the Award. At this distance in time, and again applying the presumption of regularity, it is reasonable to conclude that the Award was properly made and that right of the public to use the new footpath was brought conclusively into existence.

21. Similarly, whilst there is no evidence of the public using the footpath, there is nothing to indicate that the claimed route was subsequently stopped up or extinguished. Consequently, I conclude that although the evidence is limited it is just sufficient, on a balance of probability, to show that a public footpath has been established along this route.
22. The objector also considers the width of the footpath specified in the Order, varying between a minimum of 4 metres and a maximum of 5 metres, is excessive. There is no reference to the width of The Ashely footpath in the 1841 Award or on the accompanying Inclosure Map. It therefore seems likely to me that the width of the footpath specified in the Order has been derived from the dimensions as they presently exist on the ground or the OS map rather than from any historical evidence. I therefore prefer to specify a width that is reasonable based upon allowing two people to pass. This would equate to a width of approximately 1.5 metres.

Conclusion

23. Having regard to the above and all other matters raised in the written representations, I conclude that the Order should be confirmed with the modification referred to in paragraph 22 above.

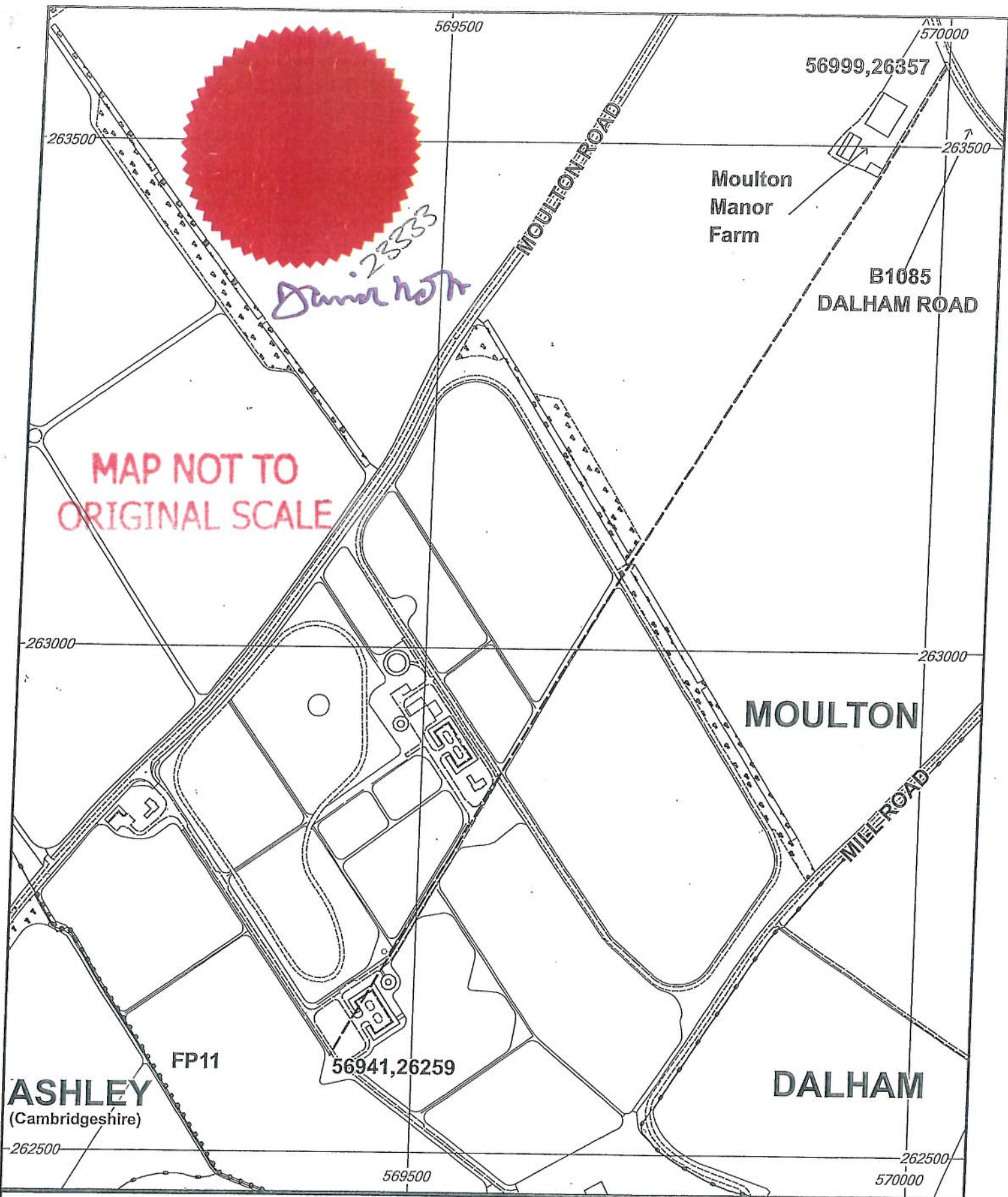
Formal Decision

24. I confirm the Order with the following modification:

- In Part II of the Order Schedule, delete "Width: Varying between a minimum of 4 metres and a maximum of 5 metres" and (As depicted between the boundaries for section shown, on the OS 1st County Series map, 1:2500 scale dated 1885 sheet 42/8), and replace with "Width: 1.5 metres throughout"

Paul Freer

INSPECTOR






MAP NOT TO ORIGINAL SCALE

Daniel North

PROPOSED PUBLIC FOOTPATH 15 - MOULTON



Director of Growth, Highways and Infrastructure
 Endeavour House, 8 Russell Road, Ipswich, Suffolk. IP1 2BX

-  Proposed Public Footpath
-  Existing Public Footpath
-  Definitive Map Parish Boundary

Scale 1:5000



Ordnance Survey MasterMap

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