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## Order Decision

Site visit made on 25 January 2017

**by Barney Grimshaw BA DPA MRTPI(Rtd)**

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

**Decision date: 08 February 2017**

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### **Order Ref: FPS/V3500/7/322**

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Suffolk County Council (Parish of Cavendish) Modification Order 2016.
- The Order is dated 10 February 2016 and proposes to modify the Definitive Map and Statement for the area by deleting two footpaths and adding one at Cavendish, Suffolk, as shown on the Order Map 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: I propose to confirm the Order subject to modifications that require advertising.**

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### **Procedural Matters**

1. I made an unaccompanied site inspection on Wednesday 25 January 2017 when I was able to walk the whole of the Order routes.
2. In writing this decision I have found it convenient to refer to the Order Map. I therefore attach a copy of this map on which I have annotated a number of points.

### **The Main Issues**

3. The requirements of Sections 53(3)(c)(i) and 53(3)(c)(iii) of the Wildlife and Countryside Act 1981 (the 1981 Act) are that the evidence discovered by the surveying authority, when considered with all other relevant evidence available, should show that the right of way proposed to be added that is not shown on the definitive map and statement subsists along the Order route and that there are no rights of way over the routes proposed to be deleted.

### **Reasons**

#### *The Application*

4. The application was made in order to rectify a perceived discrepancy between the way the relevant paths are shown on the definitive map and described in the definitive statement. The map shows Footpath 5 running across a field on the north side of the River Stour by way of Points A, D and C1. However the statement describes this section of Footpath 5 as running "...in a S.E. direction to the north bank of the River Stour (where there was formerly a footbridge) then in a north-easterly direction to the County road..." The statement also states that a footbridge over the River Stour now non-existent is a limitation on the footpath. This description corresponds to the route running by way of

Points A, B and C and possibly including a link to the county boundary by way of the footbridge. Footpath 26 is shown on the map running from Point D on Footpath 5 to Point E on the north bank of the river. In the statement it is described as running between Footpath 5 and the Essex County boundary "From N. of the Mill in a S. direction to the River Stour and the County Boundary". The county boundary in this area runs along the centre of the river.

5. The application was made for an order modifying the definitive map by adding:

*'a footpath in the parish of Cavendish as described in the Definitive Statement of Footpath No. 5, i.e. continuing from the former railway embankment "in a S.E. direction to the north bank of the River Stour (where there was formerly a footbridge) then in a north-easterly direction to the County road"*

*and branching from the same path where it meets the north bank of the river largely as described in the Definitive Statement of Footpath No. 26, i.e. in a southerly direction across the River Stour to the County boundary.'*

#### *The Order*

6. The Order is made as a result of a direction issued to Suffolk County Council on behalf of the Secretary of State for Environment, Food and Rural Affairs in January 2016. This stated that an order should be made to modify the definitive map and statement in respect of Footpath 5 (part) and Footpath 26, Cavendish as proposed in the application dated 25 November 1995.
7. The Order as made also makes provision for the deletion from the definitive map of Footpath 26 and that part of Footpath 5 which would be replaced by the proposed new route but does not include a branch from the north bank of the River Stour to the county boundary which at this point runs along the centre of the river.
8. The Order has attracted only one objection which is made by the applicant for the modification on the grounds that it fails to include a link to the centre of the River Stour.
9. Suffolk County Council, the Order making Authority (OMA), has chosen to adopt a neutral stance with regard to the confirmation of the Order. Essex County Council supports the confirmation of the Order as made but has stated that it would object to any modification extending the length of the route across the river.

#### *Background*

10. On my visit to the site I found that there were stiles at Points A and C but no discernible path between these points.
11. A plan and Book of Reference prepared in connection with proposals to construct the Sudbury Melford & Clare & Bury St Edmunds Railway in 1860 show a footpath running roughly from A to B which is described as being in private ownership.
12. Ordnance Survey (OS) maps from 1892 onwards consistently show a path running A-B-C and a footbridge across the River Stour south of B. Some OS maps from 1905 onwards also show another path running more directly between A and C.

13. A footpath in Essex (Footpath 28) provides a link to the site of the footbridge from the south and is described in the relevant definitive statement as running to the county boundary of Suffolk.
14. There is evidence that the footbridge south of B was subject to flood damage and not always available. In 1933, there was correspondence between Essex County Council and West Suffolk County Council regarding the bad condition of the bridge which the Essex County Surveyor considered to be a public right of way and it was agreed that a new bridge be constructed with Essex paying half the cost. It is also known that the bridge was subsequently washed away in a flood in 1947 and has since not been replaced.
15. On behalf of Essex County Council it has been suggested on the basis of old photographs that a footbridge might have existed at some times at another location than immediately south of Point B or that there may have been more than one bridge. One photograph said to be taken in 1949 appears to show a footbridge somewhat to the west of Pentlow Mill although probably not immediately south of Point E. However, the photographs do not in my view indicate that there was not a bridge immediately south of B prior to 1947 and, on the basis of the consistent depiction of the bridge on OS maps, it is my view that on the balance of probability there was usually a bridge in place south of Point B between 1892 and 1947.
16. Essex County Council has also indicated that it may have evidence to suggest that Footpath 28 linking to the footbridge from the south is not a public right of way. However, I have seen no clear evidence to substantiate this suggestion.

#### *The Definitive Map and Statement*

17. Before the first definitive map was prepared following the passage of the National Parks and Access to the Countryside Act 1949, surveys were undertaken to identify rights of way. Cavendish Parish Council carried out the survey for their area and, after having completed it, the parish clerk wrote to Clare Rural District Council drawing attention to one particular right of way in the following terms:

*"One right of way was very much in the foreground. This was the one leading from Cavendish High Street over the Railway to Pentlow Mill. A footbridge was fixed over the river a few years ago by W.C.C. and the Essex C. Council, this has since been washed away by floods and nothing has been done the matter since. Could you give me any information on this."*
18. This request clearly relates to the Order route from A to B. A reply was subsequently received from the County Surveyor to the effect that no funds were available to provide a new footbridge but as the path was little used and an alternative route was available little hardship was being suffered.
19. The Parish Survey Map shows a route marked in red and annotated '4' which corresponds to the route A-B-C and also continues across the river into Essex, where it is also annotated '4'. The section in Essex is additionally highlighted in yellow which is said to indicate that it should not be included in the definitive map (presumably because it lay outside the county).
20. The Parish Survey Statement describes the route as a footpath running;

*"From Village Street crossing OS240, crossing railway + OS238 to river Bridge washed away some years ago, not replaced. Branch from Suffolk side of river to Cavendish Station. Path diverted to N (?) side of OS238."*

21. The draft definitive map was drawn at a smaller scale than the survey but shows Footpath 4 on an alignment which does not appear to go up to the river bank and certainly does not lead across the river.
22. Essex County Council objected to the omission of 4 paths from the draft definitive map including one linking across the river at Pentlow Mill and a Hearing was held to consider the objections in 1953. The Hearing was informed that the omission of this link was the result of a 'draughtsman's error' and it was decided that a length of footpath should be added to the definitive map and statement leading *"From Path No.4 north of the Mill southward to the River Stour and the County Boundary."*
23. What appears to be a revised version of the Definitive Statement then describes Footpath 4 as *"...continuing in a S.E. direction to the north bank of the River Stour (where there was formerly a footbridge), then in a north-easterly direction to the County road..."* In addition, this statement includes as a limitation to this path *"Footbridge over the River Stour now non-existent."* This would appear to describe the route A-B-C fairly clearly but is somewhat inconsistent with regard to whether it continued to the county boundary in the centre of the river.
24. The first definitive map (relevant date 1953) included a route (Footpath 5) running A-C with a spur (Footpath 26) running southwards from it to the river. No change was made to the recording of the routes on the 1973 West Suffolk Definitive Map. When the definitive map was reviewed in 1979 it was claimed that Footpath 5 should be diverted on to the route A-B-C and that Footpath 26 should be extinguished but no such changes were made as they were considered to be outside the terms of the review.
25. On the current definitive map (relevant date 1986) the routes are shown in the same way as on the first map. However, the definitive statement is similar to that referred to earlier describing the route of Footpath 5 as A-B-C and noting the non-existent footbridge as a limitation. Footpath 26 is described as *"From (Path No.5) north of the Mill in a S. direction to the River Stour and the County Boundary."* This statement thus does not match the depiction of the routes on the map.
26. When the definitive map is re-drawn at a larger scale, Footpath 26 would appear to be aligned on a route not indicated by any of the historical evidence and to reach the north bank of the River Stour at a point where there is no substantive evidence of there ever having been a bridge nor any linking path on the south side of the river.

## Conclusions

27. The evidence suggests that when the first definitive map was being prepared there was no footbridge to the south of B and an alternative route between A and C was being used by the public. It is accordingly perhaps unsurprising that there was some confusion as to the manner in which the paths should be depicted and described. Also the map was produced at a very small scale which makes it difficult to be precise about the detailed alignment of routes.

28. Nevertheless, it seems clear from the parish survey map, the decision of the Hearing into Essex County Council's objections and the wording of the definitive statement that there was an intention to record a public footpath A-B-C with a spur running from it to the centre of the River Stour where it would link with a footpath in Essex.
29. There is no substantive historic evidence of a public right of way on the alignment D-E.
30. In the *Norfolk* case<sup>1</sup> it was stated that where there is a conflict between the definitive map and statement there is no presumption that the map is correct and the statement not but that *"Each should be accorded the weight that analysis of the documents themselves and the extrinsic evidence including the situation on the ground at the relevant date, demonstrates is appropriate"*. In this case, it is my view that such an analysis leads on the balance of probability to a conclusion that it is more likely that the definitive statement is correct and the map not.
31. Having regard to these and all other matters raised, I conclude that the Order should be confirmed subject to modifications to add a link to the county boundary.

### **Formal Decision**

32. I propose to confirm the Order subject to the following modifications:

In the Schedule to the Order, Part I, add to the description of the path to be added after 'OSGR 58106,24641' the words *"and branching from the same path where it meets the north bank of the river at OSGR 58097,24638 in a southerly direction across the River Stour to the County boundary"*.

In the Schedule to the Order, Part II, delete the words *"The particulars of footpath 5 are to be unchanged."* And add:

*"Particulars of footpath to be modified"*

*Add at the end of the Definitive Statement for Highway No.5 the words 'and branching from the same path where it meets the north bank of the river in a southerly direction across the River Stour to the County boundary'."*

Amend the Order Map accordingly.

33. The proposed modifications would affect land not otherwise affected by the Order. This means that I am required by virtue of Paragraph 8(2) of Schedule 15 to the 1981 Act to give notice of the proposal to modify the Order and to give an opportunity for objections and representations to be made regarding the proposed modifications. A letter will be sent in connection with the advertisement of the notice and the deposit of the associated documents to all persons to whom this Order Decision has been sent.

*Barney Grimshaw*

Inspector

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<sup>1</sup> R[Norfolk CC] v SSE (2005)

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