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# Order Decision

Inquiry held on 10 May 2016

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

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

**Decision date: 20 May 2016**

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## **Order Ref: FPS/Z1585/7/81M**

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Essex County Council Definitive Map Modification No.557 (Footpaths 271, 272 & 273 Basildon Borough) Order 2013.
- The Order is dated 16 August 2013 and proposes to modify the Definitive Map and Statement for the area by adding footpaths linking Lee Chapel Lane and Dry Street, Basildon, as shown in the Order Map and described in the Order Schedule.
- In accordance with Paragraph 8(2) of Schedule 15 to the 1981 Act I have given notice of my proposal to confirm the Order with modifications to alter the status of the Order route from footpath to bridleway and to reduce its width.

**Summary of Decision: The Order is confirmed subject to the modifications proposed previously and further minor modifications which do not require advertising.**

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## **Procedural Matters**

1. I held a public inquiry into this Order on Wednesday 11 and Thursday 12 February 2015 at the Wat Tyler Centre, Pitsea. I made an unaccompanied site inspection on Tuesday 10 February when I was able to walk the whole of the Order routes. I also made a further unaccompanied visit on Thursday 12 February after the close of the inquiry.
2. Following advertisement of the notice and deposit of the associated documents relating to the proposed modifications, 4 objections were received within the statutory period specified. I therefore held a second inquiry on Tuesday 10 May 2016 at the Wickford Collaborative Learning Centre, Basildon. This inquiry was solely to consider evidence relating to the proposed modifications. I made a further unaccompanied site inspection on Monday 9 May. At the inquiry the parties agreed that a further accompanied inspection was not necessary.
3. Essex County Council, the Order Making Authority, adopted a neutral stance with regard to the proposed modifications.
4. In writing this decision I have found it convenient to refer to points marked on the Order Map. I therefore attach a copy of this map.

## **The Main Issues**

5. With regard to the modifications proposed in my interim decision dated 28 August 2008, the main issues that now require consideration are:

- i) whether the modifications proposed were justified, and;
  - ii) whether there is any new evidence that has a bearing on the proposed modifications to the Order as submitted.
6. Much of the evidence in this case, including the new evidence now submitted, relates to usage of the routes. In respect of this, the requirements of Section 31 of the Highways Act 1980 (the 1980 Act) are relevant. This states that where it can be shown that a way over land, other than a way that could not give rise to such a presumption at common law, has been enjoyed by the public as of right and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The period of 20 years is to be calculated retrospectively from the date when the right of the public to use the way was brought into question.

### **Reasons**

7. In written objections, objectors sought to cast doubt on some of the user evidence that had been presented previously and to give further new evidence regarding actions taken by landowners to discourage bridleway use of the Order route. Little specific detail was contained in the objections themselves and accordingly the second inquiry was arranged to provide an opportunity for any new evidence to be tested. Unfortunately no further statements of case or proofs of evidence were submitted and only one objector attended the inquiry. Nevertheless, I have carefully reviewed all the available evidence before reaching my final conclusions.

### *User Evidence*

8. One objector sought to cast doubt on the user evidence submitted stating that some people who claimed never to have been challenged with regard to their use of the Order route on horseback before 2004 had in fact been challenged. However, although this objector attended the first inquiry he did not take the opportunity then to challenge the evidence of use presented by 12 people who claimed to have used the route without challenge and appeared at that inquiry prepared to be cross-examined on their evidence. He has subsequently provided no details of the challenges with regard to when and where challenges had been made or who had been challenged and he did not attend the second inquiry. In these circumstances it would not be appropriate for me to discount the evidence of any of the 40 people who provided details of their use of the Order route during the relevant 20 year period. Accordingly, I now concentrate on evidence of actions by landowners to prevent use of the Order route as a public bridleway.
9. I note that the ownership of some of the Order route is not in fact clear, particularly with regard to the southern section of the route. No ownership is registered by the Land Registry and it may be that adjoining owners on each side own the land as far as the centre line of the road. This being the case, a substantial part of the route may be owned by the Essex Wildlife Trust which has raised no objection to the Order or the proposed modifications.

### *Signs*

10. In my interim decision, I accepted that signs stating 'No Horse Riding' had been erected in around May 2004. These were situated close to Points A and D and

are still in place. Mr Gray who erected these signs now states that they were put up in 2003 although other objectors still state that this occurred in May 2004. I have looked again at the user evidence submitted and it would appear that, if public bridleway use was in fact brought into question in 2003 by the erection of these signs and the relevant 20 year period was then 1983-2003, it would not affect my conclusions, there would still be 40 people claiming to have used the route on horseback or cycle during the period.

11. Two objectors state that the current signs were erected to replace previous signs that had been in place since around 1971. These signs were believed to have been erected by Dr Martin, who lived at Westley Hall from 1971 until 2008. However, at the first inquiry, Dr Martin gave evidence to the effect that his original signs had been on card and were put up in around 1973 and that wooden signs had been erected in around 1976/77. However, the signs had not survived for long and he gave up replacing them after a few years. It therefore seemed quite possible that the signs were not in place during the relevant 20 year period, especially in the light of the evidence of users of the route who said they saw no signs during this period.
12. Mr Gladwell referred to a 'No Through Road' sign that he said had been in place close to Point H in 1984 but was subsequently knocked down. It is therefore possible that this sign was in place during at least part of the relevant period. However, it is not known by whom this sign was erected and from the evidence of users it did not bring public bridleway use into question. The sign was of a type commonly used by councils which are normally taken to be aimed at vehicle users and it could be argued that the presence of this sign suggests that it was thought that at least part of the Order route was subject to public vehicular rights.

#### *Gates*

13. It was accepted by parties at the first inquiry that a gate was erected across the Order route close to Point H in 2004 and that this, along with the signs put up towards the northern end of the Order route around the same time, brought public use of the route into question.
14. Mr Gray has also stated that there were gates close to Points A and D in 1971 which were capable of being closed and locked. However, I have seen no evidence to suggest that gates at these points ever prevented use of the Order route during the relevant 20 year period.

#### *Challenges*

15. Mr Gray states that he has challenged numerous users of the Order route since 1990 and Mr and Mrs McArdell state that they have challenged people since 2003. At the first inquiry, Dr Martin also said that he challenged some horse riders. No specific details of challenges were presented. Nevertheless, this evidence would appear to conflict with that of 40 users of the route who state that they were never challenged during the relevant 20 year period.
16. Mr Gladwell also referred to challenges made by himself and neighbours but these may have taken place after 2004 and one specific challenge appeared to relate to the parking of a vehicle and horse box rather than riding on the route.
17. Dr Martin accepted at the first inquiry that he had not challenged walkers and cyclists or horse riders known to himself or his daughter who was herself a

rider and that his work as a GP meant he was not present at his property much of the time.

18. Overall, the limited amount of new evidence regarding challenges made to users of the Order route that is now available is not specific and adds little to that already considered.

### *Conclusions*

19. The relevant 20 year period in this case is between 12 and 32 years ago and neither users of the Order route nor landowners kept detailed records of their activities regarding the route which is not unreasonable but it does make the assessment of potentially conflicting evidence difficult. However, in the absence of significant substantive new evidence, it remains my view that, on the balance of probability, the use of the Order route by horse riders, cyclists and walkers in the period from 1983/84 to 2003/04 was such as to raise the presumption that it had been dedicated as a public bridleway and the actions taken by landowners was not sufficient to negate this presumption.

### **Other Matters**

20. Several objectors expressed dissatisfaction that the Order had referred only to the Order route being recorded as a public footpath rather than a bridleway as had the notices published before the first inquiry and yet much of that inquiry had been devoted to the consideration of evidence of bridleway use of the route. This had in turn led to my proposed modifications which proposed that the route should in fact be recorded as a public bridleway. This was perceived as having been unfair, misleading and possibly improper.
21. I explained at the second inquiry that all the legal requirements for the publication of the Order, the proposed modifications and the inquiries had been properly carried out. The publication of the order prior to its confirmation was required specifically to give members of the public the opportunity to object and the legislation did not restrict the nature of objections that could be made. In this case, 22 of the 24 objections that were made to the Order and were still outstanding at the start of the first inquiry were made on the grounds that the route was a bridleway rather than a footpath. It was then my duty to consider all objections that had been made as well as all the other evidence that was presented to me. However, the legislation also provides that, if modifications affecting the proposed status of the route are proposed, as in this case, a further opportunity for objections to be made must be provided before the Order can be confirmed. This is what has happened and led to the second inquiry being arranged.
22. Mr Gray questioned in his written objection the reference in my interim decision to a letter sent in 1987 by Mr KS Buick, who gave his address as Westley Hall, to Essex County Council. He stated that Mr Buick did not live at Westley Hall and this would seem to be the case as Dr Martin lived there at that time. However, the main reason this letter was referred to was because it resulted in a comment from the County Surveyor stating that there were public rights of way over Homestead Drive and Southway (parts of which may also be known as Kingston Hill and Little Kingston) and that any road humps in these roads must meet the Highways (Road Humps) Regulations 1986. It was argued that this suggested that the route might carry public vehicular rights although I did not subsequently conclude that such rights subsisted.

23. Objectors also expressed a number of other concerns regarding the possibility of the Order route being recorded as a public bridleway. These included:

- The possible danger to walkers, horse riders and cyclists from sharing the route with an increasing number of vehicles;
- Damage to the road surface from horses hooves resulting in additional expenditure on maintenance being necessary;
- Fly tipping and litter;
- Danger to users of the route emerging on to Dry Street at Point H where visibility is restricted;
- Unauthorised parking of vehicles including horse boxes.

I understand these concerns but as they lie outside the criteria set out in the relevant legislation I am not able to give them any weight in reaching my decision.

24. There is an alternative way in which horse riders and others could gain access from the Order route to Dry Street by way of Bridleway 254. However I was advised on behalf of the Essex Bridleways Association (EBA) that few riders would choose this route as it was often very muddy and for most would necessitate riding for a greater distance along Dry Street which is narrow and dangerous.

25. Some landowners have a private right to use the Order route referred to in their deeds. They suggested that the inclusion of such rights would not have been necessary if there were public rights over the route. However, as no public rights have yet been recorded over the route it would in fact have been essential that private access was ensured.

26. Some objectors emphasised the fact that landowners have never given permission for horse riders (or others) to use the route. This may well be the case but does not prevent public rights being established under the provisions of the 1980 Act. Indeed, if permission had been explicitly granted it might have prevented public rights being acquired.

27. Although maintaining a neutral stance at this stage, the OMA has suggested, in response to my request, minor changes to be made to the Order if it was to be confirmed subject to the proposed modifications. The aim of these is to clarify the description of the way and to ensure consistent numbering of it to avoid future confusion. The changes suggested are sensible and I intend to incorporate them in my decision.

## **Conclusions**

28. Having regard to these and all other matters raised, I conclude that the Order should be confirmed subject to the modifications proposed previously with further minor modifications.

## **Formal Decision**

29. I confirm the Order subject to the following modifications:

In the Schedule to the Order, Part I modify the description of paths or ways to be added to specify:

- a bridleway from Lee Chapel Lane along Beeleigh Avenue and Homestead Drive (Points A to C) with a width of 3m.
- a bridleway from the northern end of Kingston Hill to existing Bridleway 253 (Points D to E) with a width of 3m.
- a bridleway from the southern end of existing Bridleway 253 along Little Kingston and Southway to Dry Street (Points F to H) with a width of 3m.

In the Schedule to the Order, Part I, add the description of a section of Footpath 176 to be upgraded to bridleway status running along Homestead Drive (Points C to D) with a width of 3m.

In the Schedule to the Order, Part II, modify the particulars of paths or ways to reflect the changes described in Part I.

Amend the Order Map accordingly.

*Barney Grimshaw*

**Inspector**

## **APPEARANCES**

### **For the OMA**

Lesley Williams

Paralegal, Essex County Council

### **Supporters**

Alan Kind

Representing the Essex Bridleways  
Association

### **Objectors**

George Gladwell

Local resident

## **DOCUMENTS**

1. Copy of a letter dated 08/05/2016 from Christine Rogers.
2. EBA analysis of objections to the Interim Decision.

