
Order Decision

Site visit made on 12 April 2016

by Barney Grimshaw BA DPA MRTPI(Rtd)

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

Decision date: 18 April 2016

Order Ref: FPS/Q2500/7/76

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as the Wildlife and Countryside Act 1981, Lincolnshire County Council (Amendment of Kesteven County Council (Rural District of West Kesteven) Definitive Map and Statement, (Ancaster – addition of Byway Open to All Traffic Number 1097 and Restricted Byway Number 1098)), Definitive Map Modification Order 2014.
- The Order is dated 7 May 2014 and proposes to modify the Definitive Map and Statement for the area by adding a Byway Open to All Traffic (BOAT) and a Restricted Byway running along Heath Lane, Sudbrook, Lincolnshire, as shown on the Order Map and described in the Order Schedule.
- There were 2 objections outstanding when Lincolnshire 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.

Procedural Matters

1. I made a site inspection on 12 April 2016 accompanied by Councillor Ray Wootten (Lincolnshire County Council (LCC)) and Councillor Rosemary Kaberry-Brown (South Kesteven District Council), objectors, Alec Hill, applicant, Alison Bean, Definitive Map Officer, LCC and several local residents.
2. 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

3. The requirement of Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 (the 1981 Act) is that the evidence discovered by the surveying authority, when considered with all other relevant evidence available, should show that a right of way that is not shown on the definitive map and statement subsists along the Order route.
4. Also, as it is proposed that the Order route be recorded as part BOAT and part Restricted Byway, it is necessary to have regard to the provisions of Section 67 of the Natural Environment and Rural Communities Act 2006 (the 2006 Act) which extinguished unrecorded rights of way for mechanically propelled vehicles (MPVs) subject to certain exceptions.

Reasons

5. The evidence in support of the Order consists entirely of historical maps and other documents. A number of these were submitted by the applicant for the Order and others were investigated by LCC, the Order Making Authority (OMA). No user evidence has been put forward.

Inclosure Award

6. The Inclosure Act (Sudbrook) 1769 authorised commissioners to assign and set out public highways, bridleways, horse carriage and drift ways and stated that all such public highways (except bridleways and private horse carriage and drift ways) should be 60 feet (18m) wide. The subsequent Ancaster (Sudbrook) Inclosure Award 1770 included a public horse carriage and drift road with a breadth of 60 feet named Sudbrook Pottergate Road. The award further specified that gates across this road were required to be such as to allow carts and carriages to pass and repass. The accompanying Inclosure Plan clearly shows the Order route named as Sudbrook Pottergate Road.
7. The Order route was thus afforded the highest status of highway included in the award indicating that it was intended to be a public route for all traffic.
8. The Inclosure Plan shows the route narrowing for a short section towards its southern end (roughly between Points A and C on the Order Map) where an adjacent plot is annotated 'D'. The key to the plan describes 'D' as an old inclosure, perhaps suggesting that the southern part of the route was also previously enclosed at a narrower width than 60 feet.

Ordnance Survey (OS) Maps

9. An early (1814) pen and ink drawing submitted by the applicant shows the Order route but towards its northern end it appears to turn to run in a north-easterly direction rather than north-westerly as shown on the Inclosure Plan. The 1824 1" to the mile OS map shows the route on a similar alignment.
10. The 1903 OS Object Names Book has an entry for Heath Lane which is described as "A public road extending from the village of Sudbrook N. to a point 7 chs. N. of Heath Barn & ends". The distance of 7 chains north of Heath Barn suggests that the end of the route described coincided with Point E on the current Order Map. The 1905 OS map shows the route depicted differently north of Point E from the way the rest is shown. This map also shows another route branching north-eastwards from Point E.
11. Later OS maps dated 1912, 1947 and 1963 show the Order route on its present alignment as an unmetalled minor road.
12. OS maps are regarded as providing good evidence of the existence of features on the ground at the time they were surveyed but should not be relied upon to indicate the precise status of routes shown.

Commercial Maps

13. King's map of 1807 shows the route as a public carriage road on a similar alignment to the Inclosure Map. Bryant's map (1828) also shows the route but the northernmost part is slightly differently aligned in a similar manner to the earliest OS map. Greenwood's map of 1830 shows the route as a 'Cross Road' on a slightly different straighter alignment at the northern end.

14. Bartholomew's maps from 1912 to 1951 show the route on its current alignment.
15. The inclusion of the route on these small scale commercial maps suggests that it was regarded as a route of some significance but again they should not be relied upon to indicate its precise status.

The 1910 Finance Act

16. This Act imposed a tax on the incremental value of land which was payable each time it changed hands. In order to levy the tax a comprehensive survey of all land in the UK was undertaken between 1910 and 1920. This survey was carried out by the Board of Inland Revenue under statutory powers and it was a criminal offence for any false statement to be made for the purpose of reducing liability. The existence of public rights of way over land had the effect of reducing the value of the land and hence liability for the tax; they were therefore recorded in the survey.
17. In this case, most of the Order route is shown excluded from taxable hereditaments on the survey map in the way that public roads were normally dealt with. The northernmost section (Points E to F) is shown included within hereditament number 148. This is a large parcel of land and although a deduction from its value is recorded in respect of public rights of way or user it cannot be said with certainty that this relates to the Order route. However, the field book record for hereditament 148 includes an entry under the heading 'Fixed Charges, Easements, Common Rights and Restrictions' which refers to "a public road called Hth Lane running into it, Pottergate Rd. & Occupation Road to land of Mr Jackson". It would appear that 'Hth Lane' is Heath Lane, the Order route, which is named on the accompanying map.
18. Overall, the Finance Act records suggest the existence of public rights for all traffic over the whole of the Order route.

Highway Records

19. In 1929 when responsibility for maintaining some highways passed to county councils, the Handover Map prepared for this area identified the majority of the Order route (Points A to E) as county maintainable highway. It appears to have been numbered D10 indicating that it was regarded as being a lower class public road. The remainder of the Order route was not identified.
20. Minutes of the county highways committee in 1957 record the issue of encroachment on a public carriageway referred to as 'The Old Pottergate Road, Sudbrook'. Officers of the OMA believe this to be a reference to the Order route. It was reported that the County Surveyor had agreed to a reduction in the width of the carriageway from its awarded width of 60ft to 30ft which was considered acceptable for highway purposes. However, there is no record of the remainder of the awarded route having been formally extinguished. Although this decision of the council seems to account for the fact that the Order route now appears on the ground to be less than 60ft wide, it would not have had the effect of taking away public rights over the whole 60ft width.
21. Highways maintenance maps from the 1970s to 1990s included the Order route between Points A and E as being part of the maintained highway network. The LCC List of Streets, which are highways maintainable at the public expense and

which the council is required to keep in accordance with the provisions of the Highways Act 1980, has included the Order route since 1990 at least.

22. In 2005 the owner of the section of the Order route between Points E and F agreed that it could be regarded as a permissive public footpath.
23. The available highway records thus show that the Order route between Points A and E has been regarded as being a publicly maintainable highway since before 1929. It is not clear why the remainder of the route has not been similarly recorded although it has been shown differently on some maps and appears never to have been enclosed on its eastern side.

The Definitive Map and Statement

24. In the 1950s, surveys of rights of way were carried out on a parish basis as the first stage in the process of preparing a definitive map and statement for the area. The survey of Ancaster only included the southernmost section of the Order route which was coloured blue on the survey map. However, the other records of the survey include no reference to the route. It is suggested on behalf of the OMA that this indicates that the route was considered in the survey but was not claimed as a right of way as it was believed to be a highway of a higher status.
25. The route has not subsequently been included in any version of the definitive map and statement.

Other Documents

26. Aerial photographs of the area taken between 1947 and 2005 all show the Order route clearly on the same alignment as the Inclosure Map and most OS maps.

Conclusions regarding the Documentary Evidence

27. The whole of the Order route was awarded as a public horse carriage and drift road in 1770 and there is no evidence that public rights over it have since been extinguished. Despite minor variations in some early maps, a number of other maps and documents consistently show that the route has existed on the ground since the award and are also consistent with the route having been regarded as a public highway for all traffic.
28. Accordingly, it is my view that on the balance of probability the Order route still carries public rights for all traffic.
29. Objections and representations from local people clearly indicate that the main use of the route is by walkers, cyclists and horse riders rather than vehicular traffic. It is therefore appropriate that the route should be recorded as a byway.

The 2006 Act

30. The 2006 Act extinguished public rights of way for MPVs over every highway not already shown on the Definitive Map and Statement as a BOAT, subject to a number of exceptions. One of these exceptions, set out in Section 67(2)(b) of the Act, refers to ways that immediately before commencement (2 May 2006) were not shown on the Definitive Map but included in the List of Streets. This exception applies in this case with regard to the Order route between Points A

and E and therefore MPV rights have not been extinguished on this section of the route which should be recorded as a BOAT.

31. However, the section of the route between Points E and F was not included in the List of Streets and therefore the exception under Section 67(2)(b) of the Act does not apply to this section nor do any of the other exceptions. It is therefore appropriate that this section should be recorded as a Restricted Byway.

Other Matters

32. The Order has attracted a great deal of opposition from local residents including a petition containing 259 signatures. These expressed concern that the designation of most of the Order route as a BOAT would lead to its increased use by MPVs. It is claimed that this would result in danger to other users of the route, particularly children, damage to the surface of the route making it more difficult for walkers and cyclists to use and a detrimental effect on wildlife and the environment. It was also stated that vehicles emerging and joining the route at its southern end would constitute an increased hazard on what is already a dangerous bend.
33. I understand these concerns but as they lie outside the criteria set out in the 1981 Act, I am unable to afford them any weight in reaching my decision. I note however that confirmation of the Order will have little effect on the status of the route, most of which is already available for use by MPVs.
34. The parish council submitted that the route had been included in the List of Streets erroneously and that therefore the exception under Section 67(2)(b) of the 2006 Act should not apply. It was stated that the route had been included as an Unclassified County Road, an obsolete term and that there is no evidence of any maintenance ever having been carried out by the county council. On the other hand, the OMA argues that the route was not included in error in the light of the available evidence that it has had the status of a public highway since the Inclosure Award.
35. I am not in a position to assess the accuracy of the List of Streets but, in any event, the 2006 Act only requires that a route be included in the list immediately before the Act came into force for the exception to apply and it is not disputed that most of the Order route was then included.

Conclusions

36. Having regard to these and all other matters raised, I conclude that the Order should be confirmed.

Formal Decision

37. I confirm the Order.

Barney Grimshaw

Inspector

