The Planning Inspectorate

Order Decision

Site visit made on 16 November 2015

by Alison Lea MA (Cantab) Solicitor

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

Decision date: 17 December 2015

Order Ref: FPS/U1050/7/94

- This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Derbyshire County Council (Footpath along Rowfields Lane between the B5035 and the Parish Boundary – Parish of Kniveton) Modification Order 2014.
- The Order is dated 27 March 2014 and proposes to modify the Definitive Map and Statement for the area by adding a footpath as shown on the Order plan and described in the Order Schedule.
- There was one objection outstanding when Derbyshire County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is proposed for confirmation subject to modifications as set out below in the Formal Decision

Preliminary and Procedural Matters

1. The Order relates to a route known as Rowfields Lane which leads from the B5035 road, close to the Ketch Inn (previously known as Ketchams' Inn), towards the parish boundary between Kniveton and Fenny Bentley. It has a bitumen surface with grass verges either side as far as Rowfields Hall Farm, after which it is unsurfaced and crosses pasture land. Shortly before the parish boundary FP 12 branches off to the east, and at the parish boundary, FPS 16, 17 and 19 lead, initially across pasture land, to eventually meet the B5056.

2. The Order claims the route as far as the parish boundary, which is marked as Point B on the Order plan. Mr Kind, the objector, points out that part of the claimed route is in fact part of FP12. The Council now accepts that the last 29 metres of the Order route towards Point B is already recorded on the definitive map and statement as a public footpath and ought not to have been included in the Order as made. The Council has suggested that the Order be modified to remove this section and to insert a new Point C, 29 metres closer to Point A than Point B. I agree that this modification should be made if I conclude that the Order should be confirmed.

3. Part I of the Schedule to the Order contains no reference to width whereas Part II of the Schedule includes the heading "Approx width". Mr Kind states that the Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993 SI 1993 No. 12 (the Regulations) require Part 1 of the Order to describe the "position, length and width" of a path to be added. He submits that it is insufficient to specify width only in Part II as Part II should take the description of the path from Part I. This is because Part II operates to modify the

definitive statement but does not add the path to the definitive map. He also states that the width specified should not be approximate.

4. The Council submits that the Order as made is in "a form substantially to the like effect" to the form set out in the Regulations. However it is content for the Order to be modified to include a reference to width in Part I and I consider that such a modification would be appropriate. Furthermore, although I note the Council's submission that, as widths are normally rounded up or down to the nearest 0.1m, all widths are approximate, I consider the use of the word "approximate" could signify a greater variation than suggested by the Council. In the interests of recording width as accurately as possible, I consider that the Order should be modified to delete the word "Approx" from the heading in Part II of the Order.

The Main Issues

5. The Order has been made under Section 53(2) (b) of the 1981 Act relying on the occurrence of an event under section 53(3)(c)(i). The main issue is therefore whether the discovery of evidence when considered with all other relevant evidence available is sufficient to show, on the balance of probabilities, that a footpath subsists over the land.

6. The Council's statement of case relies primarily on documentary evidence. Although some user evidence has been provided the Council concluded that there was insufficient evidence to enable it to come to a view on whether a public right of way had been dedicated through user and I agree. However, the evidence is useful insofar as it provides support or otherwise for conclusions which may be drawn from the documentary evidence.

7. None of those consulted or who made representations suggests that the Order route is not a public right of way of some description. The objector, Mr Kind, submits that there is no evidence to show that the Order route was and is a public bridleway but that, on balance, the evidence shows the Order route to be a public vehicular road. For this reason he states that the Order should not be confirmed as made.

Reasons

Commercial maps and land survey

8. The earliest documentation is a survey of the lands of Sir Philip Gell in 1710 with a sketch plan. This shows a plot labelled "Rowfields" crossed by a single dotted line labelled "foot way to Bentley". The dotted line extends beyond the boundaries of "Rowfields" and appears to correspond with current Kniveton FP 12.

9. Burdett's map of Derbyshire, the survey for which was begun in 1762 and completed in 1767, does not show the Order route or any of the footpaths which currently connect with it. It does however show the turnpike road which is now the B5035 with a line indicating a toll bar just north of the 2 mile marker from Ashbourne. This appears to correspond to a point just north of Point A on the Order plan. Greenwood's map of Derbyshire 1825 also shows the two mile marker on the turnpike road but no routes corresponding to the Order route or connecting footpaths.

10. Sanderson's 1836 map of Derbyshire shows a route which corresponds with the Order route, proceeding from the turnpike road and terminating at the parish boundary. The map shows 2 types of roads: turnpike roads and cross roads. The Order route is shown a "cross road" with the lower half depicted with solid lines and the upper section partly solid and partly dashed. No routes corresponding to any of the footpaths which now branch off Rowfields Lane are shown. The fact that it is marked as a "cross road" does not necessarily imply public vehicular rights, or indeed any public rights. In any event it cannot be assumed that the mapmaker would have been aware of the correct status of a route.

11. Bartholomew's 1952 "half inch" Map Vale of Trent does not show the Order route, although the location "Rowfield" is marked.

Ordnance Survey

12. Ordnance Survey (OS) maps are generally regarded as an accurate guide to what existed on the ground at the time they were surveyed. However, they specifically did not indicate the status of routes in so far as public rights are concerned.

13. The OS First Edition map of c1840 shows a route from Ketchams' Inn, close to Point A, heading to Bank Top Farm in Fenny Bentley. It roughly corresponds with the Order route and FP 16. The Order route is depicted by means of a pair of solid black lines whereas the continuation along FP 16 is represented predominantly by a pair of dotted lines. The route connects with what are now the B5035 and B5056 and shows the two mile marker on the B5035 and a line running across the road representing a toll bar.

14. The 1880 1st ed 1;2500 shows the Order route depicted by a pair of dashed lines which in part pass between or alongside solid boundaries and in part are unenclosed. A short section in the middle appears to be defined solely by solid lines. Routes corresponding to FPS 16, 17 and 19 connect to the Order route and are shown by pairs of dashed lines. A route through to Fenny Bentley via Bank Top is apparent, depicted mainly by a pair of dashed lines, but in part by a single dashed line. The 1898 2nd edition is similar.

15. The 1921 Popular Edition shows the Order route as an uncoloured route falling into the Roads under 14' wide category, which category would clearly have included public carriage roads. However, I agree with the Council that the categorisation does not exclude the possibility of the Order route being a private road. It terminates where it meets a route categorised under Bridle and Footpaths at the parish boundary. The 1962 OS Map "Buxton & Matlock" shows the Order route as an uncoloured road falling into either the "untarred road with under 14' of metalling" or "Minor Roads in Town, Drives and Unmetalled Roads" categories. The categorisation extends to the parish boundary where it meets a group of routes identified as "Paths and Tracks".

Tithe maps

16. Tithe documents were drawn up under statutory procedures laid down in the Tithe Commutation Act 1836. They had the sole purpose of identifying titheable or productive land and were not produced to identify public rights of way. However, they can sometimes be helpful in determining the existence and status of routes.

17. The Order Route is shown coloured sepia on the Kniveton Tithe Plan. Some routes with this colouring are shown with plot numbers and are described in the Schedule as "road" or "public road". The Order route is not numbered and there is no reference to it in the schedule.

Sales Particulars

18. Documentation relating to the sale of "Row Fields" in 1866 shows 18 plots of land. The Order route passes through Plots 6 and 7. Plot 7 is linear and identified in the sale particulars as "Lane"; Plot 6 is larger and identified as "Back Pasture". Where the route leaves the scope of the plan to the west it is labelled "From Fenny Bentley". Mr Kind suggests that this labelling is indicative of a "lane" connecting Fenny Bentley with the turnpike road.

19. I agree that the labelling suggests a through route. However it gives no indication as to status. Only part of the Order route is described as a "Lane" and I note that plot 18, which is today part of a track with no public right of way and which leads to a farm, is also described as "Lane" in the sale details. Other plots are named in a manner which reflects their physical description, for example, "Plantation", "Top Corn Field" and "Big Meadow" and it seems to me likely that the word "Lane" is a physical description of the plots so named rather than identifying that public rights exist.

20. The Council suggests that it is likely that the existence of a public carriage road across "Row Fields", through a plot described as "Back Pasture" and continuing through to Fenny Bentley would be likely to be of interest to a potential purchaser and therefore made apparent in the sales particulars. Ms Mallinson notes in her representations that what is now Kniveton FP 12 is labelled on the sale plan as Foot Road and suggests that if the vendors had wanted to show that higher public rights existed on part, or all, of the Order route they could have described it as a "cart road".

21. Taking into account all of these matters I do not accept that the description of part, but not all, of the Order route as a "Lane" suggests that public vehicular rights exist over the whole, or indeed any part, of the Order Route.

Finance Act documentation

22. Under the Finance (1909-1910) Act 1910 (the Finance Act) all land in England and Wales was valued. The boundaries of taxable parcels of land, called hereditaments, were shown on large scale OS maps. The value of a hereditament could be reduced if the landowner admitted to the presence of a right of way across it, and if so, this was recorded in the appropriate valuation and Field Books. In general, routes known to be public vehicular roads were excluded from the hereditaments and left uncoloured.

23. The Finance Act plan shows the Order route passing through 3 hereditaments, all of which have claimed deductions for public rights of way or user. In respect of hereditament 1451 there is a £5 deduction for a right of way, and the Order route is the only route shown passing through it. What is now FP 12 passes through the other 2 hereditaments. In respect of hereditament 1448 there are deductions of £20 for a right of way and £15 for "footpaths". In respect of 1492 there is a deduction of £29 in respect of a footpath and right of way. Given that the plan shows what is now FP 12 marked as F.P it is likely that the deduction in all 3 hereditaments for a "Right of way" refers to the

Order route. There are no deductions for any "public right of way or user" over the hereditament to which the Order route leads

24. Mr Kind suggests that if the Order route was considered to be only a footpath then all the deductions would have been for footpaths and I accept the logic of this. However, the fact that the Order route was not excluded from the hereditaments indicates that the valuer did not consider that it had public vehicular rights. It may be that the deduction was made in respect of a right of way of unspecified status as the valuer was unsure as to status.

1929/30 Handing Over Schedule and Map for Ashbourne Rural District

25. The handing over schedule was produced by Ashbourne Rural District Council (RDC) to record the highways maintainable at public expense in the area of the RDC, responsibility for maintenance of which was being handed over from the RDC to the County Council under the provisions of the Local Government Act 1929. The Order route is recorded in the Schedule together with a route on the opposite side of the B5035 under the reference "9c". This documentation shows that the Council accepted maintenance responsibility for the Order route, which is a commitment that would not be undertaken lightly, and clearly weighs in favour of the existence of public rights. However, the documents were principally for internal administrative use, were not readily available to the public and did not purport to be a record of rights.

26. The Council states that the handing over schedule and map includes a number of routes which like the Order route are depicted as dead-end routes and suggests that a number of these were private carriage roads with public rights on foot or horseback. As an example, the observations of the Ashbourne RDC Surveyor have been provided in relation to schedule entry No 28c which is a dead end route south west of Brassington described as going to Clips Head Farm.

27. The route is described in 3 sections. The first section, from Brassington, enclosed until it reaches a gate at the boundary of the farm is described as "an occupation road for the convenience of farmers to get to their land" and "this length is repaired by the Council and is metalled throughout". The second section from the gate through fields to Clips Head Farm has a "difference in construction and condition" and the surveyor concluded "it has never been repaired at the public expense but at the expense of the owners and occupiers of Clips Head Farm for their convenience only". The third section has "no clearly defined road beyond a footpath" and "no evidence of its ever being used by the public in general only as a footpath". His recommendation was to "accept no liability beyond the gate at the Brassington end of the enclosed length referred to".

28. The handover documents show 28c ending some distance from Clipshead Farm and shows the first section as publicly maintainable. The second and third sections are not shown on the handover map. I accept therefore that this is an example of the Council accepting maintenance responsibilities for a route described as "an occupation road for the convenience of farmers".

29. Mr Kind appears to suggest that the Council is contending that the Order route and other similar routes could not be public roads due to the fact that they appear to be dead –ends in the middle of nowhere. He asserts that they may

have served hamlets. However, there is no evidence of this and in any event it does not appear to me to be the basis of the Council's argument.

Current Highway Maintenance Record

30. The Order route is currently recorded on the Council's List of Streets as a cul-de-sac non-classified highway. The Council's stance regarding what level of rights can be presumed to exist over a route simply by virtue of it being recorded on the list of streets as a non-classified highway was the subject of a report dated 21 May 2012. The report concluded that although maintenance of a way and inclusion on the list of streets was strong evidence of the route being a highway of some description, it was not proof of the existence of public vehicular rights, because other routes that did not carry those rights were also included in it. The report advises that all other available evidence needs to be examined, on a case by case basis, before a decision can be reached regarding the likely highway status. I agree with this advice.

Surveys under the National Parks and Access to the Countryside Act 1949

31. The Order route was not claimed as a right of way when parish surveys were carried out following the provisions of the National Parks and Access to the Countryside Act 1949. Kniveton FP12, which connects with the Order route, was claimed and the surveyor stated that it finished on Rowfields Lane.

32. The Council states that the maps used for the surveys were supplied by the County Council and that maintainable highways were already marked up by the Council in green. It is suggested that there was a belief by the Council that it was not necessary for a route that was already on the Council's record of maintainable highways to be also recorded on the definitive map and statement.

33. Mr Kind points out that the Act and the Memorandum prepared by the Commons, Open Spaces and Footpaths Preservation Society in collaboration with the Ramblers' Association; recommended by the County Councils Association and approved by the Ministry of Town and Country Planning, January 1950, provided that all public footpaths, bridleways and RUPPs should be recorded. He submits that in the absence of persuasive evidence to the contrary it should be presumed that the work was done in accordance with the Act and Memorandum.

34. In response the Council has submitted evidence of a right of way initially claimed by the neighbouring parish of Offcote and Underwood as a footpath. On the original claim form the words "Delete. County Road" have been written in red and the numbering on the accompanying map has been erased. The Council states that there are other examples of the County Council drawing a line through original parish claim forms and adding the words "County Road" or "County maintained road".

35. In this case the map sent to Kniveton Parish Council by the County Council had the Order route already marked in green. Although the instruction in the memorandum was to mark on the sheets the ways which appear to be public, it does not seem unlikely that the parish council would only mark on those routes which were not already coloured on the sheets.

Evidence of use

36. 8 user evidence forms were submitted in 2011 claiming use of the Order route plus other routes leading from the Order route. 7 claimed footpath use and 3 also claimed vehicular use. One of those claiming vehicular use was in respect of the section between the B5035 and Rowfields Hall Farm only and the user makes reference to seeing other vehicular use on that section only. The other 2 people claiming vehicular use were resident at Ravenscliffe Farm and referred specifically to use by tractor and trailer.

37. In response to consultation a number of other representations were submitted. Mr and Mrs Cresswell state that they bought Rowfields Hall Farm in 1963 and since that date have exercised vehicular rights as far Rowfields Hall Farm. They also state that from the farm to Point B has always been permanent pasture with a footpath across it. Mrs Cresswell refers to witnessing many walkers using the Order route in both directions including a group of teenagers participating in the Duke of Edinburgh's Award Scheme and a Parish Boundary walk. She also refers to it being mentioned in pub guides and I note that a walk in "Pub Strolls in Derbyshire" includes the Order route.

38. Jane Webster states that she has lived near the Order route for 51 years and that Rowfields Farm has been in her family for several generations. She states that she has never known Rowfields Lane used as anything other than a footpath.

39. Unsigned statements by Barbara Webster and Richard Webster have been provided. Richard Webster has also submitted a representation dated 26 September 2015. He states that his grandfather and great grandfather farmed both Rowfields Farm and Rowfields Hall until 1934 and transported cattle from Fenny Bentley to Rowfields Hall where they had a slaughter house. Subsequently his father used the route to deliver pigs and he recalls being taken by Mr Travis, who lived on Rowfields Lane, in a pony and trap and in a car from Rowfields Farm to Bank Top Farm. He states that this route was gated throughout and without obstruction, at least prior to 1970 and that although there were stiles on the route, they were in addition to and alongside gates. He adds that "perhaps the gates were tied up with string".

40. It is unclear whether Mr Webster considers the vehicular use by his family and other residents of Rowfields Lane to be pursuant to a public or private right. I note however that in his letter dated 26 September 2015 he does not claim public vehicular rights but concludes that "there is clearly a footpath from the B5035 by the Ketch to Fenny Bentley along Rowfields Lane. I have used this footpath several times a year for well over 50 years. By rights this should also be a public bridleway and cycle route".

41. In a letter dated 1973 John Travis states that he has used the Order route and a continuation of it to Fenny Bentley both on horseback and in horse drawn vehicles for over 25 years and E Webster in a letter also of that year states that her husband's family lived at Rowfields Farm and used a route through to Fenny Bentley with horses and tractors.

42. Mrs Joanne Beeston states that she has lived in the vicinity for over 60 years. She has written 3 letters from which her evidence seems to be that Rowfields Lane is only used by people who live along the lane or visit the properties on the lane and that after Rowfields Hall Farm the route has never been used for

motorised vehicles other than tractors. However, she also states that it is common knowledge that centuries ago it was a highway for horse and carriage.

43. The user evidence in relation to the status of the rights which may exist over the Order route is contradictory, with some people who have been resident on Rowfields Lane for decades clearly stating that the only use by the public has been on foot and others claiming that they have used Rowfields Lane as a through route to Fenny Bentley by vehicle, including horse and cart and more recently, motorised vehicles. However, much of this use appears to have been farm related and it is unclear to what extent this use may have been in the exercise of private rights. Some of the user evidence suggests that historically the Order route was part of a vehicular short cut which connected 2 inns but this appears to be mainly hearsay rather than personal recollection.

Conclusions on the evidence

44. It is clear that the Order route has been in physical existence since at least the early part of the 19th century and its depiction on some maps and its description in the 1866 Sales particulars as a "lane" suggest that it may have been capable of carrying vehicular traffic since that time.

45. The documentation, in particular the Finance Act deductions and the fact that the Council accepted maintenance responsibility, provides strong evidence of the existence of public rights. This is supported by the user evidence and indeed no-one has suggested that public rights do not exist. However, Mr Kind submits that the documentation shows that vehicular rights exist. He also suggests that the Order route formed part of a through route to Fenny Bentley.

46. With regard to the latter point, I agree that the documentary evidence supports the existence of a through route. However, the early commercial maps, when they show the Order route, do not show any connecting routes, perhaps because such maps, whilst sometimes showing private access roads, often do not show footpaths. The depiction of the Order route on various maps is consistent with there being a distinction in terms of appearance between Rowfields Lane, which is generally depicted as a road, and the routes which radiate from it, which are shown as more minor paths or tracks. The 1866 Sales particulars suggest the existence of a through route but do not provide evidence of a through vehicular route.

47. It is clear from the user evidence that it has at times been possible to travel from the turnpike road to Fenny Bentley via the Order route by vehicle. However, such use appears to have been mainly in connection with local farming and by people who may have been exercising private rights. In conclusion I consider that the evidence available to me does not show that the Order route forms, or at any time in the past formed, part of a public vehicular route connecting to Fenny Bentley.

48. This does not exclude the possibility of the existence of public vehicular rights over the Order route, albeit that it is a dead end. The fact that Rowfields Lane is included in the Council's List of Streets and is maintained by the Council suggests that this may be the case. However, I accept that it is not proof of the existence of public vehicular rights as it is clear that some routes that do not carry those rights were handed over and have been included in the List of Streets. I also accept that it may well be the case that the route was not claimed when parish surveys were carried out due to it already being marked

on the map by the Council. It is therefore necessary to look at all the other evidence available.

49. Mr Kind relies primarily on the 1866 Sales particulars and the Finance Act documentation to support his view that public vehicular rights exist. However, for the reasons given I do not find the 1866 Sales particulars supportive of this view. I also consider that, in relation to the Finance Act documentation, if the route was known to carry public vehicular rights, it would be more likely that the route would be excluded from the hereditaments, than a deduction made for a "right of way".

50. Both the documentary and user evidence available to me is consistent with the Order route being a private vehicular access road or lane and a public footpath which leads to a number other public footpaths. The evidence before me is insufficient to lead me to conclude, on the balance of probabilities, that higher rights exist.

Conclusions

51. Accordingly, having regard to these and all other matters raised in the written representations, I conclude that the Order should be confirmed with modifications.

Formal Decision

52. I propose to confirm the Order subject to the modifications set out below:

- In the title to and paragraph 3 of the Order and in the annotation on the Plan to the Order delete the words "THE PARISH BOUNDARY" after "BETWEEN THE B5035 AND" and insert "KNIVETON PUBLIC FOOTPATH No 12"
- In Part I of the Schedule to the Order delete the words "the parish boundary with Fenny Bentley at Point B (GR SK 1912 4974) a distance of 730 metres or thereabouts" and insert "Kniveton Public Footpath No 12 at Point C (GR SK 1914 4972) a distance of 701 metres or thereabouts and a width varying between 2 and 3.2 metres"
- In Part II of the Schedule to the Order delete the word "Approx." from the heading "Approx. Width"
- In Part II of the Schedule to the Order, under Status and Description of Route, delete the words "the parish boundary with Fenny Bentley (GR SK 1913 4974) and insert "Kniveton Public Footpath No 12 (GR SK 1914 4972)
- In Part II of the Schedule to the Order, under Approx. Length delete the figure "730" and insert "701"
- In Part II of the Schedule to the Order, under Width, delete "GR SK 1913 4974" and insert GR SK 1914 4972"
- On the plan to the Order insert Point C as shown in red and delete the route between Points B and C

53. Since the confirmed Order would not show part of the way shown in the Order as submitted, 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 to the proposed modifications. A letter will be sent to interested persons about the advertisement procedure.

Alison Lea

Inspector