
Order Decision

Site visit made on 25 August 2015

by Susan Doran BA Hons MIPROW

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

Decision date: 19 July 2016

Order Ref: FPS/L3055/7/89M1

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as The Nottinghamshire County Council (Tuxford Bridleway No.8 and Byway No.12 and West Markham Footpath Nos.8 and 9, Bridleway No.10 and Byway Nos.11 and 12) Modification Order 2005.
- Nottinghamshire County Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.
- The Order is dated 14 October 2005.
- The Order proposes to modify the Definitive Map and Statement for the area by adding two footpaths, a bridleway and three byways open to all traffic, and upgrading two lengths of footpath to bridleway as shown in the Order plan and described in the Order Schedule.
- In accordance with paragraph 8(2) of Schedule 15 to the Wildlife and Countryside Act 1981 notice has been given of my proposal to confirm the Order with modifications.
- One objection was received in response to the notice.

Summary of Decision: The Order is confirmed subject to the modifications set out below in the Formal Decision

Procedural Matters

1. The effect of the Order if confirmed with the modifications that I previously proposed¹ would be to record the routes described in the Order and shown on the plan attached to the Order as Byways Open to All Traffic (Byways) as Bridleways; to address an administrative error by including in the Order and Order plan references to West Markham Footpath 7 where appropriate; and with regard to the widths quoted in the Order, to delete the word 'minimum' so as to record the actual widths of the ways.
2. The objection was made on behalf of Messrs J Oliver and R & S Clough and concerns what I described as 'Route C' in my interim decision (at paragraphs 44-63), a Bridleway from West Markham Byway 11 (Back Lane) to the A6075 Ollerton Road, comprising West Markham Bridleway 10 and Tuxford Bridleway 8 (the latter section formed by the upgrading of Tuxford Footpath 8 and part of West Markham Footpath 7), and forming a generally north-south route.
3. No objections or representations have been raised in connection with the routes described as Routes A, B and D in my interim decision.
4. The matter is being dealt with by the written representations procedure. In reaching my decision I have taken into account the submissions made following my interim decision together with all other evidence available to me.

¹ In my interim decision dated 19 October 2015

The Main Issues

5. The main issues are whether there is any new evidence or argument which might cause me to reconsider my findings in respect of the unmodified part of the Order; and whether there is any evidence or argument which has a bearing on the modifications I proposed, and which might indicate that those modifications should be amended or not pursued. As stated above, the objection concerns Route C and I have considered the main issues in this context.

Reasons

West Markham Bridleway 10 and Tuxford Bridleway 8 (Route C)

Inclosure Records

6. It is not disputed that the Tuxford Inclosure Award set out a bridleway over that part of Route C corresponding to Tuxford Bridleway 8. However, the Objectors submit that it provided a link with an existing bridleway over Bevercotes Wood Lane running west from Tuxford Bridleway 8.
7. The 1804 Tuxford Inclosure Award set out a public bridle road over Bevercotes Wood Road². It was described in the Award as branching out from the Kirton Road at the south east corner of the West Markham Allotment, thereby linking with Tuxford Bridleway 8. 'Kirton Road' was described as leaving the West Markham Road (to the north), running over the West Markham Allotment and south, between lands allotted to Trinity College, to the Mansfield Road³. I concur with Nottinghamshire County Council (the Council) that this describes Route C. It follows that Tuxford Bridleway 8 linked with both routes (Bevercotes Wood Road and the continuation north of Kirton Road). However, it was set out and described by the Inclosure Commissioners as forming part of the continuous north-south route, rather than described and set out as a short north-south route which then continued as an east-west route.
8. As regards West Markham Bridleway 10, it is argued there is no documentary evidence that a bridleway was awarded by the West Markham Inclosure Commissioners, and there were no powers for the Tuxford Inclosure Commissioners to make an award in a neighbouring parish. In my interim decision I agreed that the Tuxford Inclosure Commissioners would not have been empowered to award a route other than within the parish of Tuxford⁴. That conclusion is unaltered. However, my examination of the documentary evidence revealed that the Tuxford Parish boundary had changed over the years: the boundary as it exists today is not the same as it was when the Inclosure records were drawn up⁵. The Council agrees that the Inclosure Commissioners were setting out a public bridleway within the extent of the parish of Tuxford as it was at the time, as later shown on the 1887 Ordnance Survey (OS) map. It follows, in my view, that Route C was, for the most part, set out and awarded by virtue of the 1804 Tuxford Inclosure Award. Furthermore, both the Tuxford and West Markham Inclosure Award plans show a route corresponding to the alignment of Route C, thus confirming its location.

² Paragraph 48 of my interim decision

³ Paragraph 45 of my interim decision

⁴ Paragraph 46 of my interim decision

⁵ Paragraphs 47 and 50 of my interim decision

9. Reference is made to extant deeds and maps (though no new evidence has been provided) and to local knowledge that point to the greater part of the route falling within the parish of West Markham. Whilst that may be the case, both the Inclosure plan and the 1887 OS map indicate that, historically, the parish boundary followed a different course to that recorded latterly.
10. The Inclosure records carry significant evidential weight, and on balance I am not persuaded by the arguments put forward by the Objectors to depart from my original findings in this regard.

Occupation Road

11. The Objectors contend there is substantial evidence to support West Markham Bridleway 10 as an occupation road. A hedge boundary on the north side of Bevercotes Wood Road separated the bridleway from the occupation road that served to access Far Leys; and such status would have been consistent with access to Church owned fields at either end of the route and/or to land held by other major landowners.
12. I considered a broad range of documents in my interim decision. Of these I found that the Finance Act evidence⁶, lane letting records (if referring to the Order route) including an 1839 list of roads and highways in the parish of Tuxford⁷, and documents relating to the Duke of Newcastle's landownership⁸ tended towards such a conclusion, although this in my view does not preclude the existence of public rights on foot or horseback.
13. OS mapping⁹ depicts a solid line crossing the Order route at various points, most likely representing a gate. It seems to me unlikely that any solid line represented a physical barrier that could not be negotiated as this would have rendered the route a cul-de-sac preventing access to lands alongside, or destinations beyond. Indeed, a cul-de-sac would be contrary to a view expressed by the Objectors that the route accessed Church and other lands along it. The solid lines are seen in the vicinity of Farleys House and just north of the Ollerton Road. A boundary may well have come into existence at the junction with Bevercotes Wood Road after the date these maps were surveyed. Nevertheless, I do not consider this would have had the effect of negating any public rights that already existed, but may have served to prevent use as a through route, or may have reflected that the route had fallen out of use.
14. I do not share the Objectors' assertion that gates shown on the 1887 OS map are indicative of it being an occupation road. The map shows two features which I interpret to be gates near to Farleys House where, unlike along the rest of the route, Route C is bounded to the east side but is unenclosed to the west side. The presence of gates is consistent with preventing stock from straying to or from the remainder of the route. Further support for such a view is contained in the Inclosure Award with regard to maintenance¹⁰. Moreover, it is not uncommon for public highways to be gated.
15. In weighing the evidence as a whole, and on the balance of probability I concluded in my interim decision that public bridleway rights subsist, the

⁶ Paragraphs 53 and 54 of my interim decision

⁷ Paragraph 56 of my interim decision

⁸ Paragraph 60 of my interim decision

⁹ Paragraph 52 of my interim decision

¹⁰ Paragraph 46 of my interim decision

Inclosure evidence attracting greatest weight¹¹ having awarded a public bridle road and private carriage road. The Objectors, however, believe the Finance Act evidence should have been accorded as much weight as the Inclosure evidence. The Finance Act Map showed part of the route was excluded from land parcels and part included within land parcels¹². I found this inconsistent as regards the possible existence of public vehicular rights as claimed by the Council (paragraph 23 below). Nevertheless, on the available information it was not inconsistent with an occupation road with lesser public rights, that is, on foot and/or on horseback, albeit no evidence was provided as to whether or not deductions had been claimed for public rights of way where relevant.

16. Lane letting records for 1839 did not list this route and as occupation roads were not listed, suggests this is the status it was considered to enjoy at that time. As a whole these records appear inconsistent, with differing route names in use and lack of clarity as to whether or when this route was let over time. In any event neither these nor the Finance Act records are conclusive, nor do they preclude the existence of bridleway rights. There is no evidence that the public rights awarded by the Inclosure process have been legally stopped up.
17. Having re-examined the evidence there is nothing in the submissions that causes me to reach a different conclusion in this regard.

The proposed modification: West Markham Footpath 7

18. At paragraph 3 of my interim decision I noted the Order referred to West Markham Footpath 7, a short section of which (1.5 metres¹³) was proposed to be upgraded to a Bridleway. Notwithstanding this, no further mention of the path was made in the Order or on the Order plan. I therefore proposed a modification. The Council confirms the omission of this short section of path from the remainder of the Order was a clerical error made when drafting it.
19. The Objectors consider references to West Markham Footpath/Bridleway 7 are necessary to complete Route C, prevent Tuxford Bridleway 8 and West Markham Bridleway 10 from being culs-de-sac paths, and provide a continuous through route from Ollerton Road north to Back Lane. Further, they maintain the length of the path described in the Order is equivalent to what a hedge and ditch might have covered, forming a physical barrier between Tuxford Bridleway 8 and the remainder of the route they say is an occupation road (paragraph 11 above). I believe therefore, that the Objectors have misunderstood the effect of my proposed modification, which was to rectify an administrative error.
20. I am satisfied that the 1.5 metres to be upgraded refers to the path crossed by Route C rather than to any hedge and ditch. If West Markham Footpath 7 did not exist then, the Council explains, the proposed West Markham Bridleway 10 would link directly to the proposed upgrade of Tuxford Footpath 8 to bridleway.
21. It follows that I am not persuaded by the Objector's view that the upgrading of a short section of Footpath 7 to bridleway serves to provide a new link to what would otherwise be a discontinuous route. Evidence for the whole of Route C was therefore considered in my interim decision.

¹¹ Paragraphs 61-63 of my interim decision

¹² Paragraphs 53 and 54 of my interim decision

¹³ Both the Council and Objectors refer to 1.8 metres in their submissions, however the Order states 1.5 metres

Conclusions on the submissions

22. No new documentary evidence has been adduced, and any new argument put forward does not, when considered with the evidence as a whole, lead me to conclude that I should amend my findings in respect of the unmodified or modified Order as regards Route C. In considering Route C I have had the opportunity to revisit my findings with regard to Routes A, B and D. However, nothing has caused me to depart from the conclusions I previously reached.

Other matters

23. My assessment of the evidence as regards the existence or otherwise of public vehicular rights over Route C was queried. The Council requested that the Order be modified so as to record West Markham Bridleway 10 and Tuxford Bridleway 8 as Byways¹⁴. I therefore considered whether or not the Order should be so modified on the evidence available to me.

Conclusion

24. Having regard to these and all other matters raised in the written representations, I conclude that the Order should be confirmed with the modifications previously proposed.

Formal Decision

25. The Order is confirmed subject to the following modifications:

- Delete the word 'Byway' wherever it occurs and replace with 'Bridleway'
- In the title of the Order, after 'Bridleway No.10', insert "and No.7 (part)"
- On page 3 of the Order, under 'Description of the Paths or Ways to be upgraded', for Tuxford Footpath No.8, delete '10' in line 2 and replace with "7 (part)", and again on page 5, under 'Description of Path or Way to be modified' for Tuxford Bridleway No.8, delete '10' in line 2 and replace with "7 (part)", and add a new paragraph as follows,

"West Markham Bridleway No.7 (part)"

Commencing from a point SK70707033 at the junction with West Markham Bridleway No.10 and proceeding for a distance of approximately 1.5 metres in a south-south-westerly direction to a point SK70707033, at the junction with Tuxford Bridleway No.8 and having a width of 3 metres throughout the whole of its length."

- In the Schedules to the Order, delete the word "minimum" where it occurs
- On the Order plan, delete 'Proposed Byway' from the key and amend the notation of the routes currently marked as Byways, to Bridleways and insert "& No.7 (part)" after 'Bridleway 10', and "BW7" at 'SK70707033'

S Doran

Inspector

¹⁴ At paragraph 4.6 of the Council's Statement of Case and paragraph 4 of my interim decision

This map is reproduced from Ordnance Survey materials with the permission of the Controller of Her Majesty's Stationery Office © Crown copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. (Nottinghamshire County Council) (100019713) (2005)



Scale 1:10000
Sheet No.: SK77SW
Grid ref: See Plan

Proposed Modification Order

Parish and Path No.'s affected:

TUXFORD AND WEST MARKHAM

TUXFORD BRIDLEWAY 2 / Byway 12
WEST MARKHAM FOOTPATHS 8 & 9, BRIDLEWAY 10 & 11 & 12

Key:

--- PROPOSED FOOTPATH
--- PROPOSED BRIDLEWAY
--- PROPOSED BYWAY

N
1

Nottinghamshire
County Council
Environment
Countryside Access,
Trent Bridge House, Fox Road,
West Bridgford, Nottingham,
NG2 6BJ

EAST

