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## Order Decision

Site visit made on 13 October 2015

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

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

**Decision date: 18 February 2016**

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### **Order Ref: FPS/L3055/7/90M**

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as The Nottinghamshire County Council (Owthorpe Footpath Nos. 11, 12, 13, 14 & 15 and Kinoulton Footpath No. 22) Modification Order 2005.
- The Order is dated 15 July 2005 and proposes to modify the Definitive Map and Statement for the area by adding 5 footpaths, as shown on the Order Maps 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 reduce the length of one of the footpaths.

**Summary of Decision: The Order is confirmed subject to the modifications I proposed previously.**

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### **Procedural Matters**

1. I made an unaccompanied site inspection on Tuesday 13 October 2015 when I was not able to walk most of the Order routes but was able to view them adequately from various points.
2. I attach copies of the Order maps to which I have added a number of points.
3. The effect of this Order, if confirmed subject to the modifications I proposed in paragraph 44 of my interim decision issued on 30 October 2015, would be to add 5 footpaths to the definitive map. Four of the footpaths would be added as described in the Order as made but the fifth, Footpath 13, would be reduced in length, as shown on the attached map.
4. Following advertisement of the notice and deposit of the associated documents relating to the proposed modifications, three objections were received within the statutory period specified.

### **The Main Issues**

5. With regard to the modifications proposed in my interim decision dated 30 October 2015, 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.

## Reasons

6. The modifications proposed in my interim decision related only to Footpath 13. No objection was received regarding these modifications. The objections received all relate to Footpath 12.
7. My conclusion that Footpath 12 should be recorded as a public right of way was based primarily on evidence of its existence on Ordnance Survey (OS) maps of 1891 and 1920 and that contained in the survey carried out in connection with the 1910 Finance Act between those dates which suggested it was subject to public rights.
8. One objection questioned my statement in paragraph 18 of my interim decision to the effect that the claimed route crossed the hereditament numbered 96 in the Finance Act survey. I have now reviewed the evidence and understand how some misunderstanding may have occurred. Hereditament 96 is divided into 3 separate parts on the extracts of the survey maps I have seen. The largest section lies to the north of the property 'Keeper's Cottage' and does not appear to be crossed by any paths. However, another section lies immediately to the north of the Owthorpe to Cotgrave road and is crossed by the claimed route which appears to be the only path across any part of the hereditament.
9. Other objections relate to the fact that the line of the claimed route is not evident on the ground and would pass through or very close to properties. It is argued that any attempt to reinstate it would have a serious detrimental effect on the properties. This may well be true but, as I stated in paragraph 42 of my interim decision, is not a matter I can give weight to in my decision. I also accepted (paragraph 20) that the path may well have been disused for a long time but there is no evidence of it having been formally extinguished. There are means by which public rights of way can now be extinguished or diverted but this would need to be the subject of separate procedures and would be a matter for the highway authority to pursue, if considered appropriate with regard to Footpath 12.
10. One objection suggests that my proposal to reduce the length of Footpath 13 was made to avoid it running through a sewage works, however, this was not the case. Although I noted that this would be a consequence of the modifications, my proposal was made because only the reduced length of the path was shown on the map used for the survey under the 1910 Finance Act and later maps.
11. It is my view that as no objection has been received regarding my proposed modifications and no substantive new evidence has been adduced regarding other parts of the Order, it should now be confirmed subject to the modifications proposed in my interim decision.

## Overall Conclusion

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

## Formal Decision

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

- In the Schedule to the Order, Part I, modify the description of Footpath No. 13 to read "*Commencing from a point SK 66973301 at the junction with Kinoulton Lane and proceeding for a distance of approximately 400 metres in a generally southerly direction to a point SK 67013260 at the junction with Kinoulton Lane*".
- In the Schedule to the Order, Part II, Modify the description of Footpath No. 13 to read "*Commencing from a point SK 66973301 at the junction with Kinoulton Lane and proceeding for a distance of approximately 400 metres in a generally southerly direction on an earth surface across fields to a point SK 67013260 at the junction with Kinoulton Lane and having a minimum width of 1 metre throughout the whole of its length*".
- Amend the Order Map accordingly.

*Barney Grimshaw*

**Inspector**





