
Order Decision

Site visit made on 30 June 2015

by Martin Elliott BSc FIPROW

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

Decision date: 12 November 2015

Order Ref: FPS/L3055/7/81M

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as The Nottinghamshire County Council (Askham Footpath Nos. 10, 11 and 12) Modification Order 2010.
- The Order is dated 26 March 2010 and proposes to modify the Definitive Map and Statement for the area by adding three public footpaths as shown in the Order plan and described in the Order Schedule.
- In accordance with Paragraph 8(2) of Schedule 15 to the 1981 Act notice of the proposal to confirm the Order subject to modifications has been given.

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

Preliminary Matters

1. In my interim decision dated 24 July 2015 I proposed confirmation of the Order subject to modifications to delete footpath 11 from the Order. One objection was received following the notice of the proposal to modify the Order. The objection did not raise any new evidence.
2. Numbers in square brackets in this decision refer to paragraphs in my interim decision.
3. The objector contends that public rights have not been proven beyond reasonable doubt. This is not the test to be applied. The relevant tests are set out in my interim decision [2 and 3].

Reasons

4. The objector makes the point that Ordnance Survey maps do not confirm the existence of a public path and that any path shown thereon could have been a track worn by animals or the farmer walking a regular route. In response to this I revert to my comments in my interim decision [7]. Ordnance Survey maps were produced to record topographical features and not to record public rights of way. The maps provide evidence as to a route on the ground but provide no evidence as to public status.
5. As regards the minute of the annual parish meeting for Askham [13], the parish meeting clearly acknowledged the existence of both footpaths 10 and 12. If they did not exist as public paths there would have been no need to seek their deletion. I do not accept therefore that the minute indicates that there was no path in existence. I again revert to the observations in my interim decision [13, 29 and 30]

6. The objector refers to the lack of clarity as to the existence of a footpath in the adjoining field on East Croft Lane. Again I refer to my observations in my interim decision [27].
7. Although I note the submissions from the objector they raise no new evidence. When the evidence before me is considered as a whole it demonstrates, on the balance of probabilities, that public rights subsist on footpaths 10 and 12 [30]. The Order should be confirmed subject to the modifications previously proposed.

Other Matters

8. The objector refers to section 118 of the Highways Act 1980 and draft Government guidance discussed in Parliament during the passage of the De-Regulation Bill. The Order has been made under the 1981 Act and these matters are not relevant to my determination. The issue before me is whether the rights subsist on the balance of probabilities.
9. Concerns are also raised as to the effects on privacy. As noted in my interim decision [35] matters relating to suitability, desirability and need are not matters which can be taken into account in determining an order made under the 1981 Act.

Conclusion

10. Bearing in mind the above I conclude that the Order should be confirmed subject to the modifications previously proposed.

Formal Decision

11. The Order is confirmed subject to the following modifications:
 - Delete from the title of the Order in the header and at paragraph 3 of the preamble to the Order and the Order map ', 11'.
 - At Parts I and II of the Schedule to the Order delete the sections relating to footpath 11.
 - Delete from the Order map the route of footpath 11, the annotation 'Askham Footpath No. 11' and the grid reference SK 7460 7508.

Martin Elliott

Inspector