



Order Decision

Inquiry held on 22 October 2015

Hearing held on 2 November 2016

by Mark Yates BA(Hons) MIPROW

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

Decision date: 08 December 2016

Order Ref: FPS/M1900/7/82M

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the 1981 Act") and is known as the Hertfordshire County Council (Widford 13, 18, 26 and Wareside 84) Modification Order 2011.
- The Order was made by Hertfordshire County Council ("the Council") on 1 July 2011 and proposed to modify the definitive map and statement in respect of rights of way in the parishes of Widford and Wareside, as originally detailed in the Order Map and Schedule.
- The Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.
- 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.

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

Procedural Matters

1. My interim decision, dated 14 December 2015, was issued following a public inquiry held on 22 October 2015. I proposed to make modifications to the Order, most notably in relation to the extent of the route to be recorded. This decision should be read in conjunction with my interim decision with the numbers in square brackets representing particular paragraphs in the interim decision. References to the 'claimed route' and particular points should be taken to correspond to the revised route put forward by the Council at the inquiry [9].
2. The Council and the applicant for the Order (Mr Westley) objected to my proposed modification to the extent of the route to be added to the definitive map and statement. I proposed that the route should terminate at point E rather than point I. The representations from Mr Brickwood, Mr Buck and Mr Colloff¹ generally supported the modified route.
3. A hearing was held on 2 November 2016 at County Hall, Hertford to consider the evidence and submissions in relation to my proposal to remove a section of the claimed route from the Order. The hearing reconvened in the afternoon within the local Archives Office to enable the parties present to inspect the original documents. There was considered to be no need for me to make a further visit to the site.

Main Issues

4. I outlined the relevant matters in relation to the Order, as made, in the interim decision [3-6]. The main issue now is whether the evidence as a whole is

¹ On behalf of Thames Water Utilities Limited

sufficient to indicate that the proposed modification to the extent of the claimed route should not be pursued.

Reasons

Consideration of the evidence

5. The Council has provided enlarged copies of the early commercial maps relied upon at the inquiry. I am not convinced that much more can be gleaned in terms of the Dury and Andrews' map of 1766 [13]. Nonetheless, I accept it is possible that the feature shown on the northern bank of the river by way of a dotted line could correspond to the route depicted on the later Bryant map. Although there is no indication of a crossing of the river near Pegs Lane. From looking at the map key, I can only conclude that the dotted line may be representative of a road.
6. I find the enlarged 1822 Bryant map to be more useful than the copy provided at the inquiry in terms of identifying the features shown. The Council has also provided a copy of the map key. One of the '*Lanes & Bridle Ways*' is represented between Wareside and Hadham Mill via Blakesware. This route proceeds predominantly on the northern side of the river and a section is coexistent with the parish boundary and includes part of the claimed route. The section which links with Pegs Lane follows a straight alignment. I note the point made by Mr Brickwood regarding the depiction of particular features on the earlier maps. This issue means that there may be some lack of precision in the depiction of the position of particular features. However, I do not consider that this issue significantly diminishes the evidential weight of the maps concerned. I accept that a lane may encompass a route used by vehicular traffic.
7. Mr Westley has provided copies of two additional Ordnance Survey ("OS") maps. The first of these is a recent enlarged reprint of the First Edition OS map of 1805 (surveyed 1799-1805). This map generally shows the route described above by way of a pair of solid lines. The route is also shown on a later version of the First Edition map, which includes additional detail such as the railway line.
8. The above maps provide no confirmation regarding the status of the route between Wareside and Hadham Mill. However, it is a feature of some note which links with other highways in the area and provides a means of access between particular settlements. This suggests that the longer route and the spur to Pegs Lane were part of the local highway network.
9. The Widford and Ware tithe maps show the historical route from Wareside generally as far as point E [18]. However, the route is depicted as being open ended where it proceeds slightly into Little Westney Common. This suggests that it continued further. Whilst the Council says the field boundaries shown in this locality on the Widford tithe map correspond to the route shown on later maps, it cannot be determined that the route continued initially over a particular alignment from looking at this tithe map. However, the G-H-I section does appear to be shown.
10. A section of the claimed route through Little Westney Common is shown on an inclosure map of 1856 [19]. I accept that it is supportive of the existence of this section after the inclosure of the land. Nonetheless, it was evident from an inspection of this map that the claimed route continues over a short section of

an awarded private road. Whilst this would not point to the recognition of a highway, there is nothing to indicate that any pre-existing public rights were stopped up during the inclosure process. It is possible that the relevant section was part of a pre-existing highway over the common.

11. It is clear that the historical route shown on the earlier maps, as far as point E, is represented on the 1860 plan produced in relation to the Ware, Hadham and Buntingford Railway. This route is annotated as parcel 23a in Widford and parcel 25 in the parish of Ware. Both of these parcels were recorded in the accompanying book of reference as a public road in the ownership of the surveyors of the highways. A cross-section plan reveals that the road was proposed to cross the railway on the level in the locality of Crackney Cottage. The Council refers to the annotation on a second cross-section plan which states "*From Wareside*" and "*To Hadham*" in respect of this road.
12. The claimed route is generally depicted beyond point E on the railway plan by way of pecked and solid lines through parcel 5 to link with Pegs Lane. A further route continues northwards from Pegs Lane towards Hadham. However, no road is recorded through parcel 5 in the book of reference.
13. I accept that a significant amount of weight should be given to the railway documents in relation to the route through parcels 25 and 23a. This evidence is clearly supportive of the existence of a public road. The reference on the relevant cross-section plan is indicative of this road continuing to Hadham. In this respect, the likely explanation from looking at the railway plan is that this road continued over the claimed route beyond point E. Further, I agree with the Council that there is no reason why the road should have terminated at point E, given that the common would not have been available to the public at large. However, the fact that no road is recorded through parcel 5 must limit the evidential weight of the railway documents in relation to the section towards point H.
14. I addressed the Quarter Sessions evidence in the interim decision [23-25]. The information supplied by Mr Westley points to the making of four Orders to stop up and divert highways in the area. It remains my view that the absence of the relevant Order will impact upon the weight of this evidence to some extent. However, the evidence provided and inspected at the hearing indicates that the process was subjected to a high degree of scrutiny and the relevant diversion was implemented.
15. Mr Westley has discovered an 1876 plan within the vestry minutes. This shows the road continuing from point E to just beyond point G. It indicates that the road described in the notice of the diversion as proceeding through to the "*existing roadway leading to Widford Village*" continued over the claimed route and Pegs Lane.

Conclusions

16. The Bryant map and the early OS maps are supportive of the existence of a historical route between Wareside and Hadham Mill, which incorporated a section of the claimed route. There is a spur leading off this route to Pegs Lane and the village of Widford. The fact that the route provided a link between particular settlements and linked with highways in the locality is suggestive of it also being a highway. A proportion of the historical route is clearly evident on the tithe maps as far as point E.

17. I consider that when determining the alignment of the route greater weight should be given to the later large scale maps. In terms of the route to the north of point E, the later plans show a feature that broadly corresponds to the claimed route. A short section of which appears to have been set out in the inclosure award as a private road. Further, the railway book of reference does not record the section beyond point E as a highway. Nonetheless, the railway and Quarter Sessions documents are supportive of the existence of a public road continuing to locations beyond point E. They are suggestive of the road continuing to these locations via Pegs Lane. On this issue, I place particular reliance on the plan within the vestry papers. This shows the road continuing slightly beyond point G over an alignment that is consistent with the feature shown on other large scale plans and the claimed route.
18. The railway documents and Quarter Sessions documents are clearly supportive of the historical route, including a section of the claimed route, being a public road. It is apparent from subsequent maps [26-28] that not long after the completion of the diversion the road fell out of favour as a through route. However, there is nothing to suggest that it has been legally extinguished.
19. I do not find the evidence in support of a historical public road continuing over the actual claimed route beyond point E to be substantive. However, having regard to the evidence as a whole and the submissions of the parties, I now consider it more likely that a public road continued over the claimed route. Therefore, I find on the balance of probabilities that a restricted byway also subsists between points E-H and a section of Footpath 13 ought to be recorded as a restricted byway (points H-I). In light of my conclusion in the interim decision regarding the width of the C-E section [37], I consider that a width of 3 metres would be appropriate for the remainder of the claimed route beyond point E.
20. As there is a need to modify the original Order in relation to the revised route between points E-F-G-H, these modifications will need to be advertised for the reason outlined in paragraph 23 below.

Overall Conclusion

21. Having regard to these and all other matters raised I conclude that the Order should be confirmed with modifications.

Formal Decision

22. I propose to confirm the Order subject to the following modifications:

- Delete “,and” from the end of paragraph (i) in the first page of the Order and insert “;(ii) *that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description; and*”.
- Delete lines two to five of the first description in Part I of the Order Schedule and insert “*TL4131 1616 (Point C on parts 1 and 2 of the Order Plan), for a length of approximately 185 metres, to TL4146 1625 (Point C1 on parts 1 and 2 of the Order Plan)*”.
- Delete the remainder of the text after “*Order Plan).*” in the sixth line of the second description in Part I of the Order Schedule and insert “*Then generally east through the sewage works for a distance of approximately 150 metres to TL 4169 1640 (Point F on part 2 of the Order Plan), then*

generally north east for a distance of approximately 90 metres to TL 4174 1648 (Point G on part 2 of the Order Plan), then generally south east for a distance of approximately 160 metres to the junction with Widford 13 at TL 4184 1637 (Point H on part 2 of the Order Plan).

Width 3 metres between TL4131 1616 (Point C on part 1 of the Order Plan) and TL 4184 1637 (Point H on part 2 of the Order Plan).

Limitations: None".

- Delete "20 feet (6 metres)" from the sixth line of the third description in Part I of the Order Schedule and insert "3 metres".
 - Delete "10 feet (3 metres)" from the seventh line of the first description in Part II of the Order Schedule and insert "1.5 metres".
 - Delete the text in the third to sixth lines of the second description in Part II of the Order Schedule and insert "100 metres parallel with Wareside RB 84 to TL 4156 1635, then E through the sewage works for approx. 150m to TL 4169 1640, then NE for approx. 90m to TL 4174 1648, then SE for approx. 160m to the junction with Widford 13 at TL 4184 1637.
 - Delete "20 feet (6 metres)" from the seventh line of the second description in Part II of the Order Schedule and insert "3 metres".
 - Delete "10 feet (3 metres)" from the eighth line of the second description in Part II of the Order Schedule and insert "1.5 metres".
 - Delete "10 feet (3 metres)" from the ninth line of the third description in Part II of the Order Schedule and insert "1.5 metres".
 - Insert "C1" at TL4146 1625 on parts 1 and 2 of the Order Plan.
 - Delete the section of the claimed route between points E-F-G-H from the relevant parts of the Order Plan and replace it with the revised route delineated by red notation.
23. Since the confirmed Order would affect land not affected by 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.

Mark Yates

Inspector

APPEARANCES

For the Council:

Ms H. Denton

Definitive Map Officer

Additional Objector:

Mr M. Westley

Applicant

Supporters:

Mr C. Colloff

For Savills on behalf of Thames Water Utilities Limited

Mr R. Brickwood

Mr M. Buck

DOCUMENTS

- 1 Extract from plan with the vestry minutes and OS Mastermap overlay
- 2 Statement of Mr Buck
- 3 Letter of 1 November 2016 from the Easneye Estate
- 4 Enlarged OS map
- 5 Additional extract from the railway book of reference