
Order Decisions

On papers on file

by Martin Elliott BSc FIPROW

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

Decision date: 15 June 2016

Order Ref: FPS/Y2003/7/24

Order 'A'

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Definitive Map Modification (Restricted Byway 76, Haxey) Order 2015(1).
- The Order is dated 3 June 2015 and proposes to modify the Definitive Map and Statement for the area by adding a restricted byway as shown in the Order plan and described in the Order Schedule.
- There were three objections outstanding when North Lincolnshire Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed subject to modifications.

Order Ref: FPS/Y2003/7/25

Order 'B'

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Definitive Map Modification (Restricted Byway 76, Haxey) Order 2015(2).
- The Order is dated 3 June 2015 and proposes to modify the Definitive Map and Statement for the area by upgrading part of public footpath 76 as shown in the Order plan and described in the Order Schedule.
- There were five objections outstanding when North Lincolnshire Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed subject to modification.

Orders A and B

Procedural Matters

1. Following the making of the Orders objections were received to both. The objections were all subsequently withdrawn. I have therefore made these decisions on the basis of the papers on file. I have not visited the site but am satisfied that I can make my decisions on the information before me.
2. In response to the objections, and in submitting the Orders, the Council requested that they be modified. Order A in respect of the width of the Order route in the vicinity of point A¹ at the south eastern end of the Order route. Order B in respect of the extent of the Order route at its most westerly end at

¹ Points A to C relate to points on the respective Order maps.

point C. It is on this basis that the objections were withdrawn. I consider these modifications further at paragraphs 9 to 13 below.

3. I note that the covering page to each Order identifies the relevant definitive map and statement as 'Parts of Lindsey (Glanford Brigg)'. This conflicts with the definitive map and statement identified in the Order as that for the Isle of Axholme. Correspondence on file indicates that the relevant definitive map and statement is the Isle of Axholme. The reference to Glanford Brigg would appear to be in error. There is no evidence that anyone will have been prejudiced by this error and the Orders, if confirmed, will be modified accordingly.
4. Two of the original objectors to Order B make the point that the Order was not advertised in the local paper, it is also questioned why, as owners of land in the area, they were not notified of the modification order. Whilst I note these queries the Council confirm that the Order has been advertised in accordance with the requirements of the 1981 Act and there is no evidence to suggest that the statutory procedures have not been complied with.

The Main Issues

Order A

5. This Order has been made under section 53(2)(b) of the Wildlife and Countryside Act 1981 in consequence of an event specified in section 53(3)(c)(i). The main issue is whether the discovery by the authority of evidence, when considered with all other relevant evidence, is sufficient to show, on the balance of probabilities, that a right of way which is not shown in the definitive map and statement subsists over land in the area to which the map relates. The Order proposes to add a restricted byway from the A161 road to the junction with public footpath 76.

Order B

6. This Order has been made under section 53(2)(b) of the Wildlife and Countryside Act 1981 in consequence of an event specified in section 53(3)(c)(ii). The main issue is whether the discovery by the authority of evidence, when considered with all other relevant evidence, is sufficient to show, on the balance of probabilities, 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. The Order proposes to upgrade part of public footpath 76 to a restricted byway.

Reasons

Orders A and B

7. The objections do not dispute that the Order routes are restricted byways. The issues raised in the objections relate to the width of the Order route and the effect of the termination point of Order route B on access to other land.
8. I have examined the evidence submitted by the Council and in my view it is just sufficient, in the absence of evidence to the contrary, to support a conclusion that a restricted byway subsists.
9. In seeking confirmation of Order A the Council ask that the initial 75 metres of Order route A is reduced in its recorded width to its current width of 4 metres.

It is suggested that it is open to me to modify the first 110 metres to this width as this was the extent of the ancient lane identified in the inclosure award. The Council argue that on the evidence the width of the route has not changed since inclosure.

10. From the evidence before me the width of the ancient lane, being the first 110 metres of the Order route, has not altered since the time of the inclosure award. As such it is appropriate to modify the Order.
11. As regards the western termination point of Order route B, the Council state that the termination point is unclear but say that point C is coterminous with the western boundary of the proposed railway line as shown on the deposited plan for the Great Northern Railway (Isle of Axholme) extension. However, they add that the centre line on that plan coincides with where the later Axholme Joint Railway was laid out and the junction with public bridleway 119. Nevertheless they accept that the 1910 Finance Act map shows the route uncoloured to the west of this point. The Council say that it might be safer for the western termination point to be at the centre line shown on the railway plan and ask that the Order be modified accordingly.
12. In determining the Order I am required to consider whether, on the evidence, the route is a restricted byway such that the existing footpath should be upgraded. I note the point that the Order route should terminate at the centre line of the railway line as shown on the deposited railway plans. However, the railway plan shows the Order route to be a public highway within the lines of deviation (the dashed lines running parallel to the centre line) therefore extending beyond the centre line shown on the plan to point C. Furthermore, the 1910 Finance Act plans show an uncoloured route extending westwards from this point. In addition the pre-inclosure plan also shows the route extending beyond that point.
13. In my view, although the evidence as to the western point of termination of the public highway is unclear, the evidence points to the route extending to at least point C. I have insufficient evidence before me to conclude that the route extends beyond this point. Given that restricted byway rights extend to point C it is not appropriate to modify the Order so as to show the route terminating at the junction with public bridleway 119. Whilst this will result in the route being recorded as a cul-de-sac this does not preclude public rights from existing up to point C.

Other Matters

14. The objections raise concerns that the termination point of Order route B will lead to path users continuing beyond point C where no public rights exist. Whilst I note these concerns the 1981 Act does not allow for such considerations to be taken into account. As noted above my determination must be based on the evidence as to the existence of public rights.

Conclusions

Order A

15. Having regard to these and all other matters in the written representations and the papers on file I conclude that the Order should be confirmed subject to modifications.

Order B

16. Having regard to these and all other matters raised in the written representations and the papers on file I conclude that the Order should be confirmed subject to modification.

Formal Decision

Order A

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

- At the covering page to the Order delete '*Glanford Brigg*' and insert '*Isle of Axholme*'.
- At Parts 1 and II of the Schedule to the Order at lines 2 and 1 respectively after '*9.144 metres*' insert ', *except for the first 110 metres which has a width of 4 metres,*'.

Order B

18. The Order is confirmed subject to the following modification:

- At the covering page to the Order delete '*Glanford Brigg*' and insert '*Isle of Axholme*'.

Martin Elliott

Inspector



