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## Order Decision

Site visit carried out on 29 July 2015

by **Peter Millman BA**

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

Decision date: 5 August 2015

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### Order Ref: **FPS/Z1585/7/83**

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as the Essex County Council Definitive Map Modification No. 588 (Footpath 52 Frinton and Walton, Tendring District) Order 2014.
- The Order is dated 1 August 2014 and proposes to modify the Definitive Map and Statement for the area as shown on the Order map and described in the Order schedule.
- There were three statutory objections outstanding when Essex County Council ("ECC") submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

**Summary of Decision: I have confirmed the Order with a modification.**

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### Procedural matters

1. I carried out the site visit accompanied by Mr J Robinson and Mr D Oxley of Frinton and Walton Town Council, Mrs M Liles, the Clerk of the Town Council, Mrs L Williams of Essex County Council ("ECC"), and Mrs M Denton, Mr and Mrs D Carter and Mr R Jacobi, adjacent landowners and objectors to the Order.

### Main issue

2. The Order states that it is made in consequence of an event specified in Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981, i.e. *the discovery of evidence which... shows that a right of way which is not shown in the [Definitive] map and statement subsists...* For the Order to be confirmed the evidence must show, on the balance of probabilities, that the owner of the land over which the Order route passes (who in this case appears to be unknown) has dedicated a right of way to the public, and that the public has accepted the dedication by using the route.

### Reasons

#### *The evidence*

3. The Order route (see copy of the plan below) is in an urban area of Walton-on-the-Naze. It is about 40 metres long and 3 metres wide and would, if not obstructed by a fence about half way along, link New Pier Street with Newgate Street.
4. ECC's account of what is known of the history of the Order route is not disputed. It was first shown as a through route on a large-scale Ordnance Survey plan of 1896. It was shown open at the Newgate Street (then Newgate Lane) end, but with a line across it at the New Pier Street (then Newpier Road) end. Martello Cottage and no. 5 Newgate Street existed then, but there were

- no properties immediately to the north of the route. By the date of the next large-scale Ordnance Survey plan of 1923 the route was shown open at both ends, and there were properties to its north.
5. ECC discovered a large-scale plan in the Essex Record Office, amongst the records of Walton-on-the-Naze Urban District Council. It had been compiled in about 1913, based on an Ordnance Survey plan, and appears to be connected with rating records. It shows properties numbered and coloured, while roads are left uncoloured. The Order route was not coloured.
  6. The next relevant piece of documentary evidence is a plan forming part of a conveyance, dated 1945, of no. 5 Newgate Street, which is immediately south of the Order route. It shows the Order route from Newgate Street to about half way along Martello Cottage, and labels it 'Public Right of Way'.
  7. The owner of no. 7 Newgate Street, immediately north of the Order route, completed a statutory declaration in 1997, around the time the property was sold to the current owners. The declaration was made because, although the eastern half of the Order route was used for access to a garage behind no. 7, it did not form part of the land conveyed. The declaration read in part: *The land coloured yellow [part of the Order route] was used as an accessway to a garage which existed in the back garden of Olive Villa [no. 7]. During the whole ownership of the property... we have treated the way as a parking area for vehicles owned by ourselves. The right of way and the parking of vehicles over the land coloured yellow has been without the consent of any person, without payment of any kind to any person whatsoever and without interruption.*
  8. In fact none of the four properties which abut the Order route includes any part of the Order route within its boundary, although some may have acquired easements over parts of it. The Land Registry entries for no. 7 Newgate Street, for example, shows that it was conveyed with a right of way over part of the Order route *so far only as the Vendors can grant the same*. The owners of three of these four properties object to the Order. ECC tried to identify the owner or owners of the land over which the Order route runs, but failed to do so.
  9. A fence was erected across the route in around 2001 by the owners of no. 7 Newgate Street. Two of the objectors to the Order referred, in correspondence, to use of the route by people when it had previously been available, although no dates were specified. They expressed relief that anti-social behaviour by people using the route no longer occurred.
  10. The application for the Order, by Frinton and Walton Town Council, apparently arose from a dispute between the owners of nos. 5 and 7 Newgate Street over use of the Order route.
  11. Thirty eight people completed user evidence forms describing their use of the Order route. A few described use from as early as the 1940s onwards.

#### *Consideration of the evidence*

12. Although there is no recorded owner of the Order route, it must belong to someone, and it seems likely that it is in the ownership of the successor or successors of whoever developed the area of land between New Pier Street and Newgate Street. That it was left open at the ends and not conveyed with any

of the individual properties that were developed suggests that the owner had no intention other than that it could be used by members of the public.

13. The rating document from 1913 and the annotation 'public right of way' on the 1945 conveyance plan provide strong support for this view. I concur with ECC's view that the Order route had probably been dedicated as a public footpath by 1913. Other conveyancing documents purport to grant private rights, but do not, in my view, support a conclusion that only private rights exist over the Order route.
14. Evidence of the acceptance of the dedication by the public (see paragraph 2 above) comes from completed user evidence forms (paragraph 11), and from comments from two of the objectors (paragraph 9 above) which refer to previous use. One objector commented adversely on the general veracity of the accounts given in the user evidence forms. ECC accepts that around a third of those who completed the forms were related in some way to the owner of no. 5 Newgate Street, with whom the owner of no. 7 is in dispute (paragraph 10 above). In my view, even if only a fraction of the user evidence was truthfully given, it would amount, together with the comments of adjacent owners, to sufficient evidence that the public had accepted the dedication of the Order route as a public footpath.
15. The documentary evidence, and the evidence of use of the route, leads to a clear conclusion that the Order route is a public right of way for pedestrians.

#### **Other matters**

16. When ECC measured the width of the Order route on the ground, it was 3 metres. However, subsequent to making the Order, it discovered a document held by the owner of no. 8 New Pier Street, referring to a width of 9 feet which was to be kept clear. ECC requests that the Order be modified to show a right of way of this width.

#### **Conclusion**

17. Having regard to these and all other matters raised in written representations I conclude that the Order should be confirmed with a modification.

#### **Formal Decision**

18. I confirm the Order with the following modification:

- In parts I and II of the Schedule to the Order, delete '3 metres' and '3m' and in each case insert in their place '9 feet'.

*Peter Millman*

**Inspector**

