
Order Decision

Site visit made on 25 August 2015

by Susan Doran BA Hons MIPROW

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

Decision date: 8 September 2015

Order Ref: FPS/L3055/7/86

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as The Nottinghamshire County Council (Laxton Footpath No. 26) Modification Order 2008.
- The Order is dated 22 February 2008 and proposes to modify the Definitive Map and Statement for the area by adding a footpath as shown in the Order plan and described in the Order Schedule.
- There was one objection outstanding when Nottinghamshire County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is not confirmed

Preliminary Matters

1. This case concerns the addition of a public footpath (No. 26) between Bar Road, Laxton and Footpath No. 7 Laxton. The case relies on the interpretation of historical documentary evidence.

The Main Issues

2. The Order has been made by Nottinghamshire County Council ('the Council') under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 ('the 1981 Act'). I must consider whether, on a balance of probability, the evidence discovered by the Council, when considered with all other relevant evidence available, is sufficient to show that the footpath subsists, and that the Definitive Map and Statement ('DMS') require modification.

Reasons

Tithe records

3. Tithe records were concerned with the identification and apportionment of tithe rent charges. The Laxton Tithe Award Map of 1839 shows the Order route as part of a longer one which the Council says appears to have been an accommodation road to access adjoining fields. However, as a route shown in the same manner as the road running north from Laxton, labelled "From Tuxford" (now known as Bar Road), and without any numbering, it too must have been public, they say: a parish, and thus public, cart road.
4. I note the Order route is defined from the Tuxford road by a pecked line at its western end, and part way along by a solid line, which may represent an obstacle. The remainder is an open feature, or is bounded to one side. The route continues bounded on both sides with tracks leading north and south to

access fields, and itself ending at a field. To the south is a route, also un-numbered, which on later maps (including the Order plan) is labelled "Stony Balk" and which meets the eastern end of the Order route. This is part of the route subsequently recorded in the DMS as part of Footpath No.7.

Ordnance Survey Maps

5. Ordnance Survey ('OS') maps were produced to record topographical features, the practice being to show paths whether or not they were public or private. From 1883, paths were annotated 'FP' on large scale maps, but from 1888 OS maps carried a disclaimer to the effect that the representation of a track or way on the maps was not evidence of the existence of a public right of way.
6. The 1887 OS map depicts the Order route. It is open to Bar Lane at its western end and is shown unobstructed. The Council speculates that together with other ways annotated 'FP' (or footpath) continuing eastwards, the Order route could have been used as part of a longer route on foot linking Laxton with Moorhouse. A Methodist Chapel on Green Lane, Moorhouse could have provided a reason for the public to have wanted to go there on foot.
7. Objecting to the Order, Laxton and Moorhouse Parish Council ('the Parish Council') say the road to Moorhouse actually ran along Footpath Nos. 8 and 8a, as now recorded in the DMS. Footpath No. 8 leaves the junction of Bar Road and the Order route and heads in a generally southerly direction crossing Footpath No. 7 to join with Footpath No. 8a and on to Green Lane, from which both the Chapel and Moorhouse can be accessed. Together, these paths provide access to Moorhouse for Laxton residents, although I consider the Order route combined with the continuation of what is now Footpath No. 7 provides a seemingly more direct route to the same destination, at least from the north-east part of the village. A more direct route is afforded from the centre of the village via Footpath No. 7 and/or Footpath Nos. 7, 8 and 8a.

Finance Act Maps

8. The 1910 Act provided for the levying of a tax on the incremental value of land. In calculating the 'assessable site value' of land it allowed for deductions to cover such things as public rights of way and easements, should the land be sold. These were reflected in the records either by references to public rights of way in the documents forming the evaluation process, or the exclusion of a route from assessable land parcels, or hereditaments, marked on an OS base map. Where a route shown on the OS base map is both uncoloured and unnumbered, and excluded from the hereditaments, there is a strong possibility that it was a public highway, especially if it corresponds to a known public highway (usually vehicular)
9. The Order route crosses three map sheets. The western part (shown on sheet 19.16) from Bar Road to a point just before it turns to the south east, is excluded from land parcels, uncoloured and unnumbered. The same is true of the eastern end of the Order route (shown on sheet 25.1). The section where it turns to the south east (shown on sheet 20.13), is within a land parcel (part of hereditament 44).
10. As it is shown uncoloured in the same way as the Laxton to Tuxford Road appears on sheet 19.16, the Council concludes there is no reason to consider it has been shown incorrectly, as this would be consistent with the Tithe Map.

They conclude the only possible interpretation of the route's depiction on the Finance Act map is as a public highway which must incorporate a public right of way on foot as a minimum, and is consistent with the judgement in *Agombar*¹.

11. The inclusion of part of the route in a hereditament the Council says must be a mistake, as there is no reason why its status would change at this point, and it is shown as public on the Tithe Map. Part of the continuation of the accommodation road shown on the Tithe Map is also excluded on the Finance Act map, and is therefore public. This, they conclude, is further evidence that the section of the route shown on sheet 20.13 is not in private ownership.

Definitive Map records

12. The Order route itself was not claimed by the Parish Council for inclusion in the DMS in 1953/4. The Council does not consider this unusual as only 12 paths were claimed and the subsequent Draft Definitive Map showed several more. They believe the Parish Council did regard it as a public right of way because the Schedule for claimed path 5 (Stony Balk) gives its eastern termination as "Wood Lane", and claimed path 7's description is to "Wood Lane footpath". Wood Lane is the route shown on both the Finance Act maps and Tithe Map and includes the Order route. Therefore, it must have been regarded by the Parish as a public highway otherwise path 5 would have been a dead end terminating on a private road. Further, as there is no claim for a 'Wood Lane footpath' the reference to it, the Council argues, only makes sense if interpreted as a clear acknowledgement by the Parish of a public right of way on foot along the whole of Wood Lane, otherwise path 7 would have been a dead end as well.
13. It is unclear why, if the Council is correct, Wood Lane was not claimed by the Parish Council as a right of way, at least of footpath status. However, it is suggested that as a hedged lane along which there was open access, it was regarded as so uncontestedly public that it was not thought necessary to claim it, unlike paths 5 and 7 which ran over privately owned fields. The Parish Council, however, considers the Order route is an agricultural road that has only ever led to fields. Land to the south formed part of the historic open field system until it was enclosed in 1908. They believe the lane was fenced off from the open field to enable farmers to access their fields following the inclosure process. Yet, no evidence relating to inclosure of the land has been provided by either the Council or Parish Council.
14. The Parish Council disputes the Order route is a public highway as it considers a public highway should lead from one location to another. However, I agree with the Council that it connects with another public highway at both ends, Bar Road to the west and Footpath No. 7 to the east.

Conclusions on the evidence

15. The Tithe Map was produced to identify titheable land rather than to record public rights of way; both public and private roads were capable of reducing the productiveness of land for the purposes of tithe assessment. There is no key to identify how public roads are shown on the map, so I agree with the Council only insofar that the Order route has the appearance of an accommodation access to fields. This is consistent with the Parish Council's belief that, as a whole, it provided access to agricultural land.

¹ *Robinson Webster (Holdings) Ltd v Agombar* [2001] EWHC 510

16. It is possible that the public on foot used the Order route together with its continuation and footpaths marked on OS maps to link Laxton with Moorhouse. However, it does not necessarily follow that it is a public right of way because it links to a route that could provide access between the two settlements. Nor does it follow that any use that may have been made of the Order route by the public was 'as of right'. As the Parish Council remarks, there is another route that links the two villages, from the same western terminus, which they believe to be the old route, now recorded as a public footpath connecting with Green Lane to the south. Indeed there are other more direct routes from the main part of the village to reach Moorhouse.
17. The Finance Act evidence is conflicting as parts of the route are shown excluded from hereditaments and part included within a hereditament. The Council may be correct in suggesting that an error was made, but no evidence has been provided that this was the case: for example there is no indication that the Field Book entry for hereditament 44, which may shed some light on this, has been examined. Furthermore, there may be other reasons for the exclusion of a route on the Finance Act maps, for example where an accommodation road provided access to a number of landholdings in different ownerships. This interpretation is consistent with the Parish Council's view that the route has always provided access to agricultural fields, and that the Order route's continuation terminates at a field. However, there is nothing to prevent a public right of way being acquired, even if a route is an accommodation road.
18. There is some evidence that 'Wood Lane' was regarded by the Parish Council as enjoying public footpath rights in the 1950s, the inference being that there was a public right of way on foot at least between claimed paths 5 and; otherwise each would have been cul-de-sac path. It does not necessarily follow in my view though, that such rights continued along the Order route.
19. I conclude that the evidence to support a finding that the Order route subsists as a public right of way on foot is limited. Whilst it may be sufficient to raise a reasonable allegation that a public right of way subsists, it is insufficient for me to reach the conclusion that the Order should be confirmed.

Other matters

20. The Parish Council says the Parish is already well served with public footpaths; and they are concerned about unlawful use of the Order route by motor vehicles. However, these are not matters that I can take into account in reaching my decision under the 1981 Act, and I have not done so.

Conclusion

21. Having regard to these and all other matters raised in the written representations, I conclude that the Order should not be confirmed.

Formal Decision

22. I do not confirm the Order.

S Doran

Inspector