
Order Decision

Hearing held on 20 December 2016

Site visit made on 19 December 2016

by Alan Beckett BA MSc MIPROW

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

Decision date: 18 January 2017

Order Ref: FPS/Y2003/7/26

- 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 (Public Footpath 193, Bottesford) Order 2015 (1).
- The Order is dated 11 September 2015 and proposes to modify the Definitive Map and Statement for the area by recording the width of the Order route as 9.14 metres (30 feet) as shown in the Order plan and described in the Order Schedule.
- There was 1 objection outstanding at the commencement of the hearing.

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

Procedural Matters

1. I held a public local hearing into the Order at the Civic Hall, Bottesford on Tuesday 20 December having made an unaccompanied visit to the footpath at issue the evening before. I made a further inspection of the footpath in the company of the objectors and representatives of North Lincolnshire Council following the close of the hearing.
2. At the hearing, North Lincolnshire Council ('the Council') adopted a neutral stance with regard to the Order; the Planning Committee of the Council having taken the view that the available evidence was too finely balanced for the Council to lend further support to the Order. At the hearing, no other party was prepared to make a case in support of the confirmation of the Order.
3. The Council submitted that the Order, as drafted, contained a typographical error with regard to the width proposed to be recorded. In the Schedule, Part II a width of 30 metres is set out; this was incorrect and should have read 30 feet (9.14 metres), that being the width at which Croft Lane had been awarded in the Bottesford and Yaddlethorpe Inclosure Award of 1797. If the Order were to be confirmed the Council requested the modification of Part II of the Schedule.

The Main issues

4. The Order was made by the Council in consequence of an event specified in the second part of Section 53 (3) (c) (iii) of the 1981 Act, namely that other particulars contained in the map and statement require modification.
 5. There is no dispute between the parties as to the existence of a public right of way on foot over that part of Croft Lane which provides access to the objectors' fields at Southfields Farm, nor is there any dispute about the ownership of the land crossed by that part of footpath 193 at issue. The dispute concerns the
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position and width of the footpath between the southern end of the adopted part of Croft Lane (point A on the Order plan) and point B, near to where footpath 193 makes a junction with footpath 192.

6. The definitive statement of public rights of way is extremely short on detail and there is no reference to footpath 193 within that document. The Council submits that those responsible for compiling the map and statement under the provisions of the National Parks and Access to the Countryside Act 1949 appeared to have adopted a policy of using the statement as sparingly as possible. Consequently there is no record of the width of footpath 193 or its position.
7. The question of the width of that part of footpath 193 at issue appears to have arisen following the erection in 2014 of a fence between points A and B which segregated pedestrians from the remainder of the track that provides access to the objectors' hay store and other outbuildings. The Council submitted that this action caused a 'furore' locally and the complaints made alerted the Council to the fact that the path had no recorded width. In making the Order, the Council sought to determine the position and width of the footpath to provide certainty for all parties.
8. It was the objectors' contention that pedestrians had not used the whole width of the track between the hedges. The objectors' evidence was that the entrance to the farm had been securely gated since at least 1995 and a stile to facilitate access along the footpath had been present on the west side of the gates; pedestrians making their way along the path had used a single route from the stile which had resulted in a visible wear line in the ground.
9. The main issue in this case is the width of footpath 193. The Council submitted a number of documentary sources which it had consulted as part of its investigation of this matter. The standard of proof to be applied in this case is the civil standard, namely, the balance of probabilities.

Documentary evidence

10. The Bottesford and Yaddlethorpe Inclosure Award of 1797 set out what is now Croft Lane as a "*private carriage driving and bridle road for the use of Margaret Walker Spinster beginning at Yaddlethorpe Common Lane end and extending on the West side of the Old Inclosure to the allotment of the said Margaret Walker*". The award also stipulated that the private roads awarded were to be of the width of 30 feet between fences and ditches.
11. Croft Lane was set out as a private means of access to a specific allotment which would otherwise have been landlocked; the award did not make provision for a public right of way over this private road. Although the inclosure award specifies that the awarded road was to have a width of 30 feet, no conclusions can be drawn from the award with regard to the width of a public footpath which subsequently came into existence over the awarded private road.
12. Croft Lane is shown uncoloured on the valuation plans prepared under the provisions of the Finance Act 1910 ('the Finance Act'). The Finance Act provided for the levying of tax on the increase in site value of land between its valuation as at 30 April 1909 and, broadly speaking, its subsequent sale or other transfer. All land holdings (or hereditaments) in England and Wales were

- to be valued, although under section 35 (1), land belong to a rating authority was exempt from the provisions of the Finance Act. Land which belonged to a rating authority included public carriageways within the rating authority's area.
13. If a route in dispute is external to any hereditament, it is therefore possible that it was considered by the valuer to be a public highway normally but not necessarily vehicular, since the existence of footpaths and bridleways over land were usually dealt with by way of deductions from site value in the valuer's Field or Valuation Book entries. Section 11 of the 'Consistency Guidelines' published by the Planning Inspectorate provides guidance on the interpretation that can be placed on the exclusion of a route from adjacent land. Paragraph 11.7 of the Consistency Guidelines states "*however, there may be other reasons to explain its exclusion. It has been noted, for example, that there are some cases of a private road set out in an inclosure award for the use of a number of people but without its ownership being assigned to any individual, being shown excluded from hereditaments; however this has not been a consistent approach*".
 14. The Council's view of the Finance Act evidence as set out in its 'Statement of Grounds' was that the exclusion of Croft Lane from adjacent hereditaments was evidence of the lane being a public highway. Whilst this may be one explanation of the exclusion of this particular route, that conclusion appears to discount or ignore the origins of Croft Lane as an awarded private road to provide a private means of access to an otherwise landlocked allotment.
 15. In my view, the circumstances identified in paragraph 11.7 of the Consistency Guidelines are not dissimilar to those at Croft Lane. In addition, the base map on which the Finance Act information is recorded shows Croft Lane to be gated at its northern end (just short of Moorwell Road) and to the south of that gate is a structure or building which takes up approximately half the width of the lane. The valuation map also shows that Croft Lane served four separate hereditaments, each of which may have used the lane for access.
 16. The fact that the lane was gated at its northern end, that it provided access for multiple owners or occupiers and that there was a building within the lane are all factors which sit in the balance against this being a public road at the time of the survey. The Finance Act material before the hearing provides no evidence of the existence of a public right of way being in existence over Croft Lane at the time the survey was undertaken, and provides no evidence of the width of any way which subsequently came into existence.
 17. The conveyance plans submitted by Mrs Holmes show that in 1909 the land of Southfields Farm including the land crossed by that part of footpath 193 at issue was conveyed to one Helena Beatrice Clarke. This document is contemporaneous to the Finance Act survey and whilst the conveyance plans do not assist with the question of whether a footpath subsisted at the date the land was conveyed, these documents cast further doubt on the reliability of the Finance Act valuation plans as showing that the land crossed by footpath 193 was excluded from private ownership.
 18. Ordnance Survey maps published between 1887 and 1945 all show Croft Lane as having a uniform width running between boundaries. However, the depiction of a way on Ordnance Survey maps does not provide evidence of the public status of that way nor of the width habitually used by the public.

19. I conclude that none of the documentary sources considered assists with a determination of the width of the footpath 193.
20. Public Footpath 193 is shown in the definitive map of public rights of way and it is not disputed that the footpath was in existence at the relevant date of the definitive map; that is 21 September 1953. The Council was of the view that the hedge to hedge presumption could be applied in this case; as the public footpath ran over the access track to Southfields Farm it could be presumed that the public had used the whole width available and that the public right of way was therefore the full width which had been set out at inclosure. However, the Council had either not adduced any user evidence to support that contention, or if such user evidence had been collected, it had not been submitted.
21. The only evidence of use of the path that I heard was that put forward by those in attendance at the hearing; that evidence was that whereas the access track had not been divided before 2014, there had been a stile on the west side of the gates and a worn line in the surface of the track had been visible leading away from the stile. When the parish council had contacted the Council regarding clearing the path of vegetation, a strip of ground had been cleared but not the full width. Although the full width between the hedges may have been available for use by the public, the impression I gained was that what had been walked was a seemingly direct line from the stile towards the junction with footpath 192.
22. Whilst the alignment of the used path may have differed from that which is currently available, the evidence of use that I heard had more in common with the path currently available than a path which is claimed to be 9.14 metres in width. Although the full width between the hedges may have notionally have been open to the public to use, there is no evidence that such use occurred which would have given rise to a footpath of the width specified in the Order.
23. In the light of the evidence given at the hearing from those who have used the path at issue, I consider that the public has made use of a lesser width than that set out in the Order and a width which is likely to be not dissimilar to that which is currently available.
24. There is a width of 1.97 metres between the objectors' fence and the hedge and ditch on the western side of the track. I consider that what is currently available would not be dissimilar in terms of width and position to that which was in use prior to the dividing fence being erected. Having given consideration to the documentary and oral evidence presented to me, I conclude that the width which should be recorded in the definitive statement is 1.97 metres measured from the hedge on the western side of the track.

Conclusions

25. Having regard to these and all other matters raised at the hearing and in the written representations, I conclude that the Order should be confirmed with modifications.

Formal Decision

26. I confirm the Order subject to the following modifications:

(a) the modification of the Schedule, Part II, to read "A 61-metre-long footpath of a width of 1.97 metres throughout measured from the western boundary hedge and running in a generally south-south-westerly direction along the non-tarmacked section of Croft Lane between point A at grid reference SE 8840 0677 and point B at grid reference SE 8838 0671."

(b) in the Order map delete the broken black line shown running along the centre of the track and insert a bold broken red line adjacent to the western boundary of the track.

Alan Beckett

Inspector

APPEARANCES

For North Lincolnshire Council:

Mr C Wilkinson Senior Public Rights of Way Officer

Objectors:

Mrs D Holmes Owner

Mrs M Biddle Owner

Mrs P Murphy

Mr A Oliver

Mr J Carney

Interested Parties

Mr G Williams Bottesford Town Councillor

Mr R Urry

Hearing documents

1. Statement and appendices from Mr Carney.

Seal No 7931



0m

25m

h. Bey
Authorised
Signatory

MAP NOT TO
ORIGINAL SCALE

Croft Lane

A

Track

Drain

B

Site of Southfield Farm

FP192

FP193

Title: Public Footpath 193, Bottesford

Drawing No:

Version: 1

Drawn by:

Date: 04/09/2015

Scale @A4 1:400



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Ordnance Survey 0100023560



Director of Places
Peter Williams
BSc,DMS,CEng,MEI,MCMI,AMIMechE