The Planning Inspectorate

Order Decision

Inquiry opened on 24 February 2015

by Barney Grimshaw BA DPA MRTPI(Rtd)

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

Decision date: 12 January 2016

Order Ref: FPS/X2600/7/109M

- This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Norfolk County Council (Woodbastwick) Modification Order 2013.
- The Order is dated 2 September 2013 and proposes to modify the Definitive Map and Statement for the area by adding two footpaths as shown on the Order Map and described in the Order Schedule.
- 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 to alter the alignment of part of one of the footpaths.

Summary of Decision: The Order is confirmed subject to the modifications that I proposed previously and one further modification which does not require advertising.

Procedural Matters

1. I held a public inquiry into this Order on Tuesday 24, Wednesday 25 and Thursday 26 February 2015 at Woodbastwick Village Hall. I made an unaccompanied site inspection on Monday 23 February when I was able to walk most of the Order routes. It was agreed by all parties at the inquiry that a further accompanied visit was not necessary but I made a further unaccompanied visit to a part of one route after the inquiry on Thursday 26 February.

2. The effect of this Order, if confirmed subject to the modifications I proposed in paragraph 55 of my interim decision issued on 12 May 2015, would be to add 2 footpaths to the definitive map. One would run between South Walsham Road, Panxworth (Point F) and Norton Hill, Ranworth (Point L) and for convenience I refer to this as route 1. The other would run between route 1 at Point E and Panxworth Church Road (Point A). I refer to this as route 2.

3. Following advertisement of the notice and deposit of the associated documents relating to the proposed modifications, three objections were received within the statutory period specified.

4. In writing this decision I have found it convenient to refer to points marked on the Order Map. I therefore attach a copy of this map to which I have added an additional point, Point X.

The Main Issues

5. With regard to the modifications proposed in my interim decision dated 12 May 2015, the main issues that now require consideration are:

   i) whether the modifications proposed were justified, and;

   ii) whether there is any new evidence that has a bearing on the proposed modifications to the Order as submitted.

Reasons

6. Two of the objections received were made by parties that supported the confirmation of the Order and the proposed modifications in principle but considered one of the distances referred to in the proposed modifications was not accurate. I deal with these objections later.

7. The third objection was made on behalf of owners of land crossed by the Order routes. This objection, although referring specifically to the proposed modifications, effectively opposes the confirmation of the Order in general.

General Objection

8. In my interim decision I concluded that the documentary evidence that was available did not in itself provide a sufficient basis on which to conclude that the Order routes are public rights of way. I also concluded that, although there was evidence of public use of the Order routes in the 20 year period before such use was called into question in 2011, this was not sufficient to raise the presumption that the routes were dedicated as public footpaths. However, I then went on to conclude that the available evidence when considered in total was such as to make it reasonable to infer that the routes had been dedicated as public footpaths under common law before any actions were taken by landowners which might have indicated a lack of intention to dedicate them.

9. It is now contested on behalf of objectors that the evidence was not in fact sufficient to give rise to such an inference of dedication, particularly with regard to Order route 2 (Points A-B-X-D-E). A number of specific points are made which I propose to consider in turn.

Access to All Saints Church

10. It is pointed out that Order route 2 does not currently link with a public highway at its southern end (Point E) and that even if used in conjunction with part of route 1 (E-F) it does not offer a shorter route for most residents of Panxworth to the church, which was in any event declared redundant in the 1970s and was unused for some time before then. It is therefore suggested that it is more likely to be a private route linking the farmyard of Cotenham Farm to Panxworth Church Road.

11. On behalf of supporters of the Order it is stated that although the church was declared redundant, the church yard remained open and is still visited. It is also stated that the route offers a quieter and safer route than the alternative which would involve walking along roads with limited footways or verges and also that there is evidence of people actually having used it (not just to access the church or church yard).

12. The southern end of Order route 2 (Point E) lies on Order route 1. In my interim decision I concluded that this route is a public footpath.

Access between Panxworth and Ranworth

13. Objectors argue that it is unlikely that children from Panxworth walking to school in Ranworth would have used Order route 2 as this would have involved a longer journey given the location of most houses in Panxworth. Similarly Panxworth residents wishing to visit the church or pub at Ranworth would also have been unlikely to use this route. Supporters general accept this but point out that there is nevertheless some evidence of use of this route by school children and also that some use of the route would have been for pleasure and such users would not necessarily wish to follow the shortest route.

Stiles/gates

14. On behalf of objectors attention is drawn to the written evidence of Charles Cator which states that a metal gate was erected across Order route 2 in the 1970s and was locked. It is further stated that anyone using the route after the gate was locked would have been forced to find a route around the gate and would not have been on the Order route. However, Mr Cator also stated that the gate was only locked after around 1999 and other witnesses suggested that the barrier may have been erected somewhat later than the 1970s and not locked until after 2003 when there was an incident involving a car being burnt out.

15. It is also said that my statement (in para. 49 of my interim decision) that the presence of stiles and a sign *"could be interpreted as indicating landowners' acceptance of public use of the routes"* is contrary to evidence given at the inquiry that stiles were only installed to facilitate authorised access. The stiles referred to were in fact situated on Order route 1 and I had also referred to this evidence in my interim decision (para. 40).

Capacity to dedicate rights of way

16. It is stated on behalf of objectors that tenants of land crossed by the Order routes would not have had the capacity to dedicate them as public rights of way and that the beliefs and actions of tenants cannot be relied upon to indicate the landowner's intentions. This is true and I did not suggest otherwise in my interim decision. However, the perception of people familiar with and indeed occupying the land crossed by the routes is in my view evidence of the reputation of the routes.

Other evidence

17. I referred in my interim decision to a publication and newspaper articles which included parts of the Order routes in descriptions of walks. On behalf of objectors it is pointed out that these only represent an apparent belief by certain individuals that the routes were public and that there is no evidence that landowners were aware of them. Again, this is true but such publications provide further evidence of the reputation of the routes.

18. It is stated that the sales particulars referred to in my interim decision (paras. 18 and 51) relate only to section F-E of Order route 1. I have looked again at this evidence and cannot accept this assertion; the particulars appear to me to refer to both Order routes as explained in para. 18 of my interim decision.

However, I note that the particulars also contain a more specific reference to the existence of a public footpath over part of section F-E of Order route 1, crossing land included in the proposed sale and over which the vendor was also to retain a private right for all purposes.

Conclusions regarding General Objection

Order route 2

19. It is reasonable to suggest that this route is unlikely to have been used to a large extent by residents of Panxworth to gain access to the school, church, pub or other facilities in Ranworth as it would entail a longer journey for most of them. However, it may still have been seen as an attractive route to get to All Saints Church and church yard avoiding the need to walk along roads. It also seems to have been used for recreational walks.

20. The route existed for a long time before it was obstructed and partially diverted in the mid 1980s and there is evidence that it has been used by members of the public since the 1940s and earlier. There is also evidence that the route had the reputation of being a public footpath and little evidence of actions by landowners to discourage public use before the 1990s at least.

21. It also seems to me to be unlikely that landowners would have been unaware that the route was in public use. Tenants who occupied the land crossed by the route considered it to be a public right of way, as apparently did the owner's agent when drawing up sales particulars. Also local people considered it to be public and it was described as part of a walk published in the local paper.

22. In these circumstances it remains my view that, on the balance of probability, it can be inferred that the route has been dedicated as a public footpath under common law.

Route 1

23. No substantive new evidence has been put forward relating to this route which in my view is likely to have been used by the public to a greater extent than route 2 since it provides a link between two villages. Accordingly, it remains my view that, on the balance of probability, it can be inferred that this route has been dedicated as a public footpath under common law.

Distances

24. Two objectors pointed out that the proposed description of the distance between Points B and X as being 45 metres is inaccurate. This has now been re-measured and found to be approximately 90 metres. The Order should therefore be further modified accordingly.

25. I do not consider that any party will have been misled or had their interests prejudiced as a result of this error as the interim decision made the proposed modification of the route quite clear, nor will the proposed further modification affect any land not otherwise affected by the Order as previously proposed to be modified.

Conclusions

26. Having regard to these and all other matters raised, I conclude that the Order should be confirmed subject to the modifications I proposed previously and the further modification referred to above.

Formal Decision

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

In the descriptions of the footpath from Panxworth Church Road to Cotenham Barns in the Schedule to the Order, Part I:

After the words ' 4 metres for a further', delete ' 20 metres before turning to run in a generally southerly direction for approximately 90 metres to map reference TG 3488 1328 (point C on annexed map)'' and substitute *"approximately 90 metres (to Point X)"*;

After the words 'The path then turns' delete the words 'to run easterly for approximately 25 metres with a width of 3 metres to map reference TG3490 1328 (point D on annexed map) before turning';

Delete '47 metres' and substitute *"approximately 90 metres"*;

In the Schedule to the Order, Part II:

After the words ' 4 metres for a further', delete ' 20 metres before turning to run in a generally southerly direction for approximately 90 metres to map reference TG 3488 1328'' and substitute *"approximately 90 metres"*;

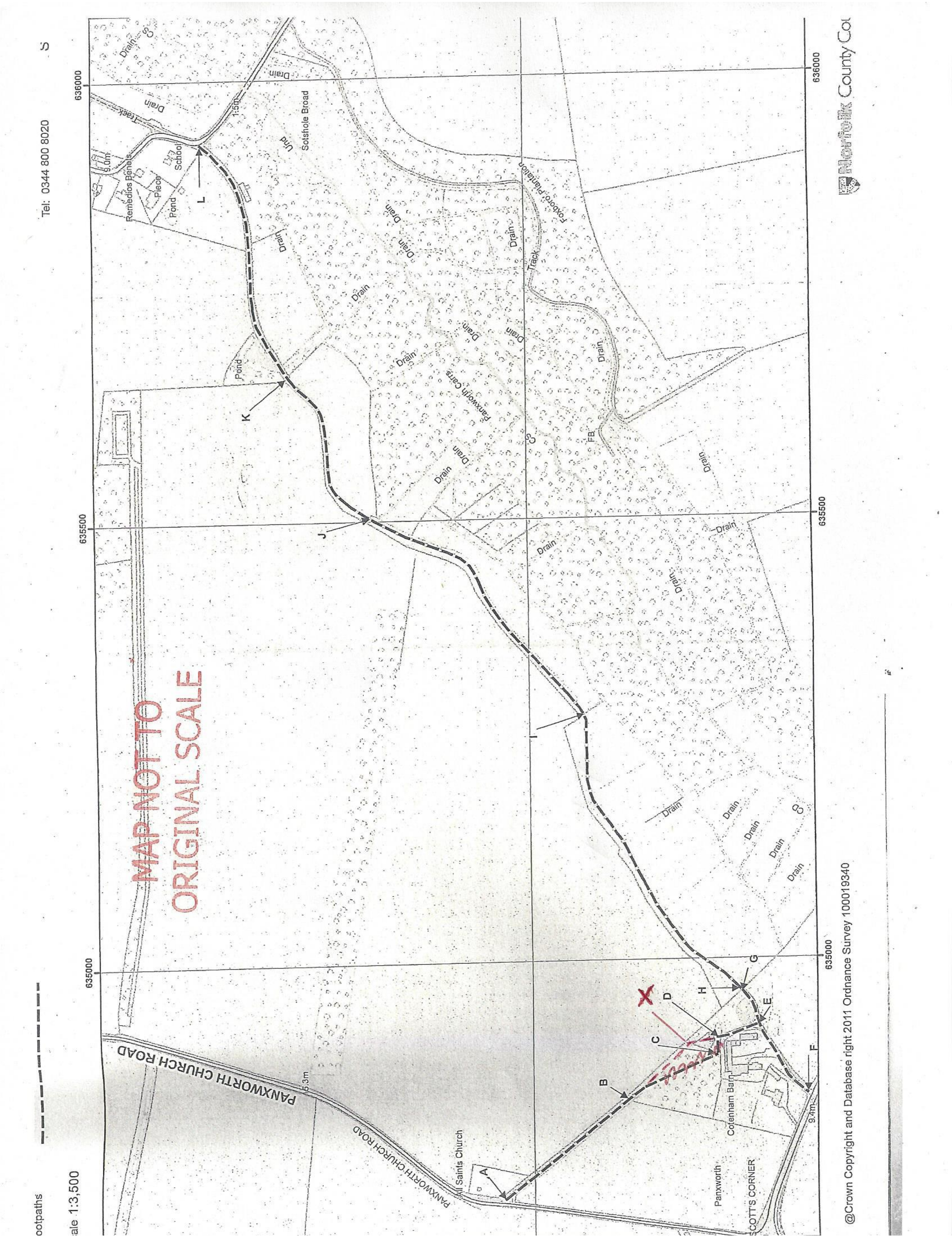
After the words 'The path then turns' delete the words 'to run easterly for approximately 25 metres with a width of 3 metres to map reference TG3490 1328 before turning';

Delete '47 metres' and substitute *"approximately 90 metres"*;

Amend the Order Map accordingly.

Barney Grimshaw

Inspector


MAP NOT TO ORIGINAL SCALE
PANXWORTH CHURCH ROAD
All Saints Church
Cotenham Barn
Panxworth
SCOTT'S CORNER
Panxworth Carrs
Sotshole Broad
School
Pond
Drain
Track
Tel: 0344 800 8020
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