
Order Decision

Site visit made on 25 January 2017

by Barney Grimshaw BA DPA MRTPI(Rtd)

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

Decision date: 22 September 2017

Order Ref: FPS/V3500/7/322M

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Suffolk County Council (Parish of Cavendish) Modification Order 2016.
- The Order is dated 10 February 2016 and proposes to modify the Definitive Map and Statement for the area by deleting two footpaths and adding one at Cavendish, Suffolk, 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 add a link to the county boundary.

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

Procedural Matters

1. I made an unaccompanied site inspection on Wednesday 25 January 2017 when I was able to walk the whole of the Order routes except for the spur to the county boundary.
2. The effect of this Order, if confirmed subject to the modifications I proposed in paragraph 32 of my interim decision issued on 8 February 2017, would be to delete part of existing Footpath 5 Cavendish and the whole of Footpath 26 Cavendish as shown on the definitive map and to add a new section of Footpath 5 as described in the definitive statement plus the addition of a spur running to the county boundary with Essex in the centre of the River Stour.
3. Following advertisement of the notice and deposit of the associated documents relating to the proposed modifications, two objections were received within the statutory period specified.
4. In writing this decision I have found it convenient to refer to the Order Map. I therefore attach a copy of this map on which I have annotated a number of points.

The Main Issues

5. With regard to the modifications proposed in my interim decision dated 8 February 2017, 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

The Order

6. The Order was made in order to rectify a perceived discrepancy between the way the relevant paths are shown on the definitive map and described in the definitive statement. The map shows Footpath 5 running across a field on the north side of the River Stour by way of Points A, D and C1. However the statement describes this section of Footpath 5 as running *"...in a S.E. direction to the north bank of the River Stour (where there was formerly a footbridge) then in a north-easterly direction to the County road..."* The statement also states that a footbridge over the River Stour now non-existent is a limitation on the footpath. This description corresponds to the route running by way of Points A, B and C and possibly including a link to the county boundary by way of the footbridge. Footpath 26 is shown on the map running from Point D on Footpath 5 to Point E on the north bank of the river. In the statement it is described as running between Footpath 5 and the Essex County boundary *"From N. of the Mill in a S. direction to the River Stour and the County Boundary"*. The county boundary in this area runs along the centre of the river.
7. The Order was made as a result of a direction issued to Suffolk County Council on behalf of the Secretary of State for Environment, Food and Rural Affairs in January 2016. This stated that an order should be made to modify the definitive map and statement in respect of Footpath 5 (part) and Footpath 26, Cavendish as proposed in the application dated 25 November 1995, which included a link to the county boundary.
8. The Order as made makes provision for the deletion from the definitive map of Footpath 26 and that part of Footpath 5 which would be replaced by the proposed new route but does not include a branch from the north bank of the River Stour to the county boundary which runs along the centre of the river.
9. Suffolk County Council, the Order making Authority (OMA), chose to adopt a neutral stance with regard to the confirmation of the Order and has maintained that stance with regard to the Order as proposed to be modified. Essex County Council supported the confirmation of the Order as made but stated that it would object to any modification extending the length of the route across the river. However, no objection has in fact been lodged by Essex County Council to the proposed modifications.

Objections to the proposed modifications

10. One objector states that ongoing research has revealed that Suffolk County Council, Essex County Council and Cavendish Parish Council had accepted that no public rights of way existed in the location. This statement is not in my view consistent with the evidence that I have seen.
11. In 1933, the County Surveyor of Essex wrote to West Suffolk County Council (WSCC) following complaints that the footbridge over the river by Pentlow Mill was in poor repair. He stated that the bridge was a public right of way and asked if WSCC was willing to contribute to the cost of repairing it. Subsequently, WSCC agreed and a new footbridge was constructed. It would

- have been inappropriate for the two councils to have spent public money on this bridge if they had not believed it to be a public right of way.
12. Although it is known that this bridge disappeared in 1947, the parish council drew attention to the missing bridge in a letter about public rights of way in 1951 and the parish survey of rights of way carried out around the same time included footpaths as shown in the current Order and a link across the river at Point B to a path in Essex.
 13. When this link did not appear on the draft definitive map, Essex County Council lodged an objection and at a subsequent hearing it was decided that the omission was a draughtsman's error and that a link to the county boundary (the centre of the river) should be added to the map and statement.
 14. The objector now draws attention to correspondence in 1955 when Mr Hillier, then owner of Pentlow Mill, objected to the inclusion of the path in Essex running past his property to the site of the bridge over the river. He claimed that the clerk of Halstead Rural District Council had told him that he had been informed by both Essex and WSCC that the path was not a public right of way. However, this information cannot be substantiated as no trace could be found in the records of any of the three councils of such an assurance having been given to Mr Hillier. The path was subsequently included in the definitive map for Essex and is still recorded as a public footpath.
 15. The other objector comments that the addition of a footpath extending to the middle of the river does not reflect reasonable usage. This is clearly the case as no bridge has existed since 1947. He also states that someone who had worked at the mill in the 1920s had told him that the footbridge was never used by the public but only by mill workers. This information cannot now be substantiated but is to some extent at odds with information provided by the other objector to the effect that the mill ceased to be used in 1910.
 16. In any event, the purpose of the Order is to resolve the discrepancy between the definitive map and statement by making modifications so that they make clear which routes are public rights of way and properly reflect what was intended when they were drawn up. As I concluded in my interim decision, it appears from the evidence available, particularly the parish survey map, the hearing into Essex County Council's objection and the wording of the definitive statement, that on the balance of probabilities there was an intention to record a public footpath A-B-C with a spur to the county boundary to link with a footpath in Essex.
 17. Even though the link across the River Stour to Essex cannot have been used since 1947 and it may well be that as a result walkers on the north side of the river have followed routes other than A-B-C this does not mean that rights of way have ceased to exist. There is to my knowledge no record of the routes having been extinguished or altered since that time by any formal process and accordingly they are still public rights of way.
 18. Overall, the limited amount of new evidence that has been submitted is not sufficient in my view to outweigh my previous conclusion and accordingly the modifications proposed in my interim decision were justified.

Other Matters

19. One objector points out that common otters have returned to this stretch of the River Stour and that the realignment of paths to allow uncontrolled access to the river would contravene UK and European legislation designed to protect species such as the otter. However, this Order does not seek to alter or add to the network of public rights of way in the area but simply to ensure that those that already exist are correctly recorded in the definitive map and statement. In these circumstances it would not be appropriate to afford any weight to the return of otters in the determination of the Order.

Conclusions

20. Having regard to these and all other matters raised, I conclude that the Order should be confirmed subject to the modifications I proposed previously.

Formal Decision

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

In the Schedule to the Order, Part I, add to the description of the path to be added after 'OSGR 58106,24641' the words "*and branching from the same path where it meets the north bank of the river at OSGR 58097,24638 in a southerly direction across the River Stour to the County boundary*".

In the Schedule to the Order, Part II, delete the words "*The particulars of footpath 5 are to be unchanged.*" And add:

"Particulars of footpath to be modified

Add at the end of the Definitive Statement for Highway No.5 the words 'and branching from the same path where it meets the north bank of the river in a southerly direction across the River Stour to the County boundary'."

Amend the Order Map accordingly.

Barney Grimshaw

Inspector

Order Decision FPS/V3500/7/322

