



Order Decision

On papers on file

by Sue M Arnott FIPROW

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

Decision date: 23 November 2017

Order Ref: ROW/3181552

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as the Norfolk County Council (Swafield) Modification Order 2017.
- The Order is dated 19 April 2017. It proposes to modify the definitive map and statement for the area by recording a restricted byway along the length of Crudshole Lane in Swafield Parish, as shown on the Order map and described in the Order schedule.
- There was one objection outstanding¹ when Norfolk County Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.

Summary of Decision: The Order is confirmed.

Preliminary matters

1. The Order was made by Norfolk County Council (NCC) and subsequently advertised in accordance with the relevant regulations. In response, one objection was submitted, that being on behalf of the Open Spaces Society (OSS). The objector's concern centres on the failure to record in the Order schedule the lack of any 'limitations or conditions' affecting the Order route.
2. To resolve the matter, NCC offered to request a modification to the Order so as to include suitable wording to acknowledge this fact; in response, the objector agreed to withdraw the objection on condition that the Order is modified. NCC has therefore requested that, if confirming the Order, I modify the schedule to include the statement: "Limitations and Conditions: None".
3. Although nothing now turns on this², I regard the objection as still outstanding and I consider the requested modification in full below on that basis.
4. I have not inspected the route in question but, in this instance, I am satisfied I can reach a sound conclusion on the evidence without doing so.

The Main Issues

5. There are two main issues here: the first is whether the evidence shows that a public right of way for vehicles was once in existence along the Order route; the second is whether any such rights still exist today that should be recorded on the definitive map and statement. A third issue concerns the details to be recorded in the definitive statement.
6. The Order was made under the Wildlife and Countryside Act 1981 (the 1981 Act) on the basis of an event specified in Section 53(3)(c)(i). If I am to

¹ See paragraphs 1-3.

² The Order is before the Secretary of State in any event on account of the request to modify it.

confirm it, I must be satisfied that evidence has been discovered which shows, on a balance of probability, that the public right of way intended to be recorded subsists.

7. If confirmed, the Order would record the route in question (shown on the Order map as A-B) as a restricted byway, that is a highway over which the public have a right of way on foot, on horseback or leading a horse, and a right of way in or on vehicles other than those that are mechanically propelled.
8. On the basis of the historical evidence it discovered, NCC concluded that a public vehicular right of way did once exist along the Order route, relying on the legal maxim '*once a highway, always a highway*'. However, NCC also recognised that Section 67 of the Natural Environment and Rural Communities Act 2006 (the 2006 Act) now affects the continued existence of such rights.
9. Sub-section 67(1) of that Act provides that upon commencement on 2 May 2006 any existing public right of way for mechanically propelled vehicles (MPVs) was extinguished if it was over a way which, immediately before that date, was not shown in the definitive map and statement or was shown as either a footpath, bridleway or restricted byway, unless such rights were saved by virtue of falling into one of the categories for exemption.
10. NCC took the view that public MPV rights were extinguished since none of the exemptions apply in this case. Consequently the Order was made to record a restricted byway.

Reasons

Evidence of public vehicular rights

11. NCC made this Order in response to an application made in 2015 by the objector³ and having considered the evidence submitted with it as well as having discovered from its own records evidence to suggest that the route in question was once a public vehicular highway.
12. That evidence falls broadly into four categories: historical maps and mapping records, a tithe map and apportionment, the records prepared under the Finance Act 1910 and the recollections of individuals dating back to the 1950s.
13. The earliest depiction of the Order route appears on a map of Norfolk by Faden in 1797. Later it is shown as a "good cross or driving road" by Bryant on a map of the county published in 1826 and appears on the Ordnance Survey (OS) one inch to one mile map of 1838 (reproduced on Cassini Maps). Whilst none of these maps offer conclusive evidence of the existence of a vehicular highway, they are all consistent with a road of that status.
14. On the Swafield Tithe Map of 1845 and the accompanying Apportionment of 1846, the route is specifically labelled as a public road. It is shown as parcel "199" along with other roads including the present C425 (Bradfield Road) and Swafield-Trunch road. Such records were not compiled with the intention of identifying the status of public highways so, again, this cannot be regarded as conclusive evidence. However it strongly suggests that the route was of the same status as the acknowledged public highways to which it connects at either end.

³ But not on behalf of the OSS

15. The date of the OS 'Object Name Book' is not identified but these were generally prepared from the mid-nineteenth century onwards. In deciding the spelling of names to be included on its maps, the OS was guided primarily by local usage and custom and would make local enquiries in order to establish with as much authority as possible the most suitable name for a feature. In this case the name "*Crudhole Lane*" was endorsed by "*the Rev L. S. Shaw (Rector) of Swafield*" and was described as "*a public road running from its junction 9 chains N. of Swafield House in a E direction till it joins the Trunch road 17 chains N. of St Nicholas's Church ...*". Whilst not conclusive, this is further support for the road's reputation as a public one.
16. The name appears on the first edition OS 25" to 1 mile map of 1886 where the route is clearly shown as a lane connecting with other roads at both ends. The 1905 edition shows a similar picture.
17. The records prepared under the Finance Act of 1910 for taxation purposes included maps identifying individual land holdings (hereditaments). Where (as here) a road was shown excluded from the adjacent land parcels which were valued by the district surveyors, this is generally interpreted as strong evidence that the road was a highway and usually a vehicular one. There is nothing to suggest that was not the case with the Order route.
18. When the Bradfield Hall and Swafield House Estates were sold at auction in 1920, the sale particulars included a plan which showed the Order route uncoloured in a similar manner to other known highways and not as part of the land to be conveyed. Although not evidence that the lane was public rather than private, these details are consistent with the route being a highway.
19. The Ministry of Food National Farm Survey in 1941-2 recorded the lane as being separate from the ownership of farm land at either side inferring that this was regarded as a highway rather than a private farm road.
20. NCC examined all these documents and concluded that, taken together, they lead to the conclusion that despite its present inaccessibility, the road was once a highway. I agree; I find the evidential balance tips clearly in favour of a public road of some antiquity and leans towards an all-purpose highway rather than a bridleway.

Other relevant evidence

21. An aerial photo taken in 1946 shows the lane clear of vegetation; however by 1988, a second aerial photograph shows a great deal more vegetation, especially towards the eastern end.
22. This picture is supported by the statements from individuals provided both by the applicant and by adjacent landowners. Whilst one (Mr Bailey) recalls a journey by cart along the lane in the 1950s, others such as Mr Starling and Mr J Amies, state the route has not been passable since the late 1960s-1970s. It therefore appears that at some time between the dates of these contrasting recollections, use of the lane as a through-route declined significantly leading to the present overgrown nature of the eastern half of the old road.
23. However this does not negate the much earlier evidence which shows the lane was once open and available to the public. Overall I conclude that the balance of probability swings in favour of the Order route historically being established

as a vehicular highway between points A and B on the Order map, at least prior to 2 May 2006.

The effect of the Natural Environment and Rural Communities Act 2006

24. NCC concluded that none of the exemptions offered by sub-sections 67(2) or 67(3) of the 2006 Act are applicable to the Order route A-B and therefore any pre-existing rights for MPVs over this route will have been extinguished. No representations have challenged this and I am satisfied that the evidence supports that conclusion.

Conclusions on the evidence

25. On balance I am satisfied that the evidence points towards the Order route having been a full vehicular highway dating back to the late eighteenth century at least. Records also show this route is not exempt from the statutory extinguishment of rights for mechanically propelled vehicles introduced by sub-section 67(1) of the 2006 Act. It follows from this that the route should be recorded on the definitive map and statement as a restricted byway.

Other matters

26. The objector contends that the words "*No Limitations and Conditions*" should be included in the Order schedule so as to make a clear statement that none exist along the Order route and to avoid disputes in future. This is not NCC's usual practice but it has conceded the point made by the objector in this instance and requested the modification he seeks.
27. I accept that a positive statement that no limitations exist may be helpful where it can be confidently stated. In this case no lawful constraints affecting the public's ability to use this route have been highlighted by any party; neither do any of the more detailed maps submitted suggest that gates have been present across the road, at least not at any time prior to the mid-twentieth century.
28. Whilst I may agree there are no lawful limitations or conditions affecting this route that have been shown subsist on a balance of probability, there is no mechanism by which a modification to record this in the Order at this stage could be advertised for further representations to be made. Since inclusion of such a statement could, potentially, affect the rights of the (unknown) landowner, I am not persuaded that to modify the Order schedule as requested would be equitable.

Conclusion

29. Having regard to the above and all other matters raised in the written representations, I conclude that the Order should be confirmed without the modification requested.

Formal Decision

30. I confirm the Order.

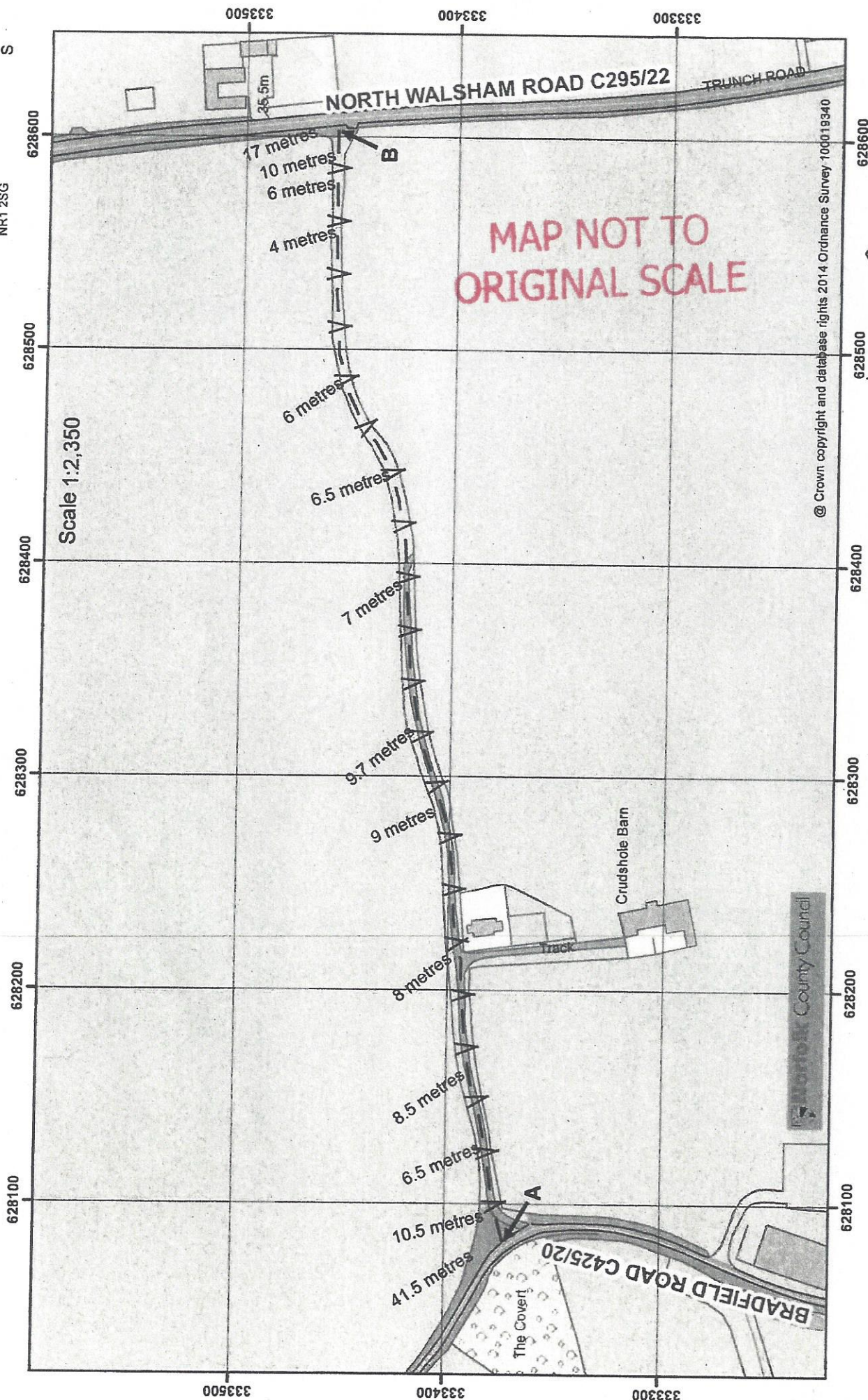
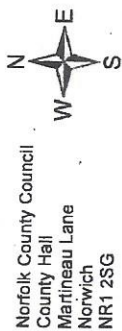
Sue Arnott

Inspector

Section 53 of the Wildlife and Countryside Act 1981, Norfolk County Council (Swafield) Modification Order 2017

Restricted Byway — V — V — V —

Width of Route: metres



Vicki R