



Order Decision

Site visit carried out on 14 March 2017

by Peter Millman BA

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

Decision date: 22 March 2017

Order Ref: FPS/V3500/7/323

- 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 (Thingoe Rural District Definitive Map and Statement)(Parish of Great Barton) Modification Order 2016.
- The Order is dated 4 July 2016 and proposes to modify the Definitive Map and Statement for the area as shown on the Order plan and described in the Order schedule.
- There were three statutory objections outstanding when Suffolk County Council ("the County Council") submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: I have not confirmed the Order.

Preliminary matters

1. The application was for an order to add a footpath to the County Council's Definitive Map running from A to D via B and C (see map appended at the end of this Decision) and then continuing from D in an easterly direction to the U6320 road. The Order made by the County Council would add a footpath only from A to D. One of the objections was from the applicant, Mr John Andrews, who argued that the Order route should have continued from D to the U6320 in line with his application. The other two objections were from the owners of land across which the footpath would run, who contended that the Order should not be confirmed.

Main issue

2. The main issue is whether the evidence shows that a public right of way on foot exists on the route shown on the Order map between A and D, and in addition whether any public rights extend from D as far as the U6320 road. There is one particular and primary source of evidence on which Mr Andrews and the County Council rely. This source consists of documents relating to the statutory inclosure of land in Great Barton in the first few years of the 19th century.

Reasons

3. The first stage in the statutory inclosure process was the promotion of a private Act of Parliament. In this case it is said that such an Act for the inclosure of land in Great Barton was passed in 1802. Neither Mr Andrews, nor the County Council, has produced a copy of this Act. The Act would (or may not) have empowered the appointment of inclosure commissioners and the production of an award which permitted the commissioners, among other things, to set out public and private rights of way in Great Barton. Without a copy of the Act it is
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not possible to be reasonably clear what powers it gave the commissioners, although it may be presumed that it incorporated the provisions of the General Inclosure Act of 1801, because that was the undisputed basis on which *R v Secretary of State for the Environment, ex parte Andrews* [1993] (which concerned this route) was argued. I shall proceed to consider the evidence on the assumption that the 1802 Act empowered the commissioners to set out public footpaths in the manner argued for by Mr Andrews and the County Council.

4. The Award made under the 1802 Act in 1805, of which I have seen extracts and the relevant part of the accompanying map, set out a number of public footpaths. The relevant entry reads as follows: *One other foot or Church Path of the breadth of four feet beginning at the Shrub Gate* [this was at or very close to point D on the map below] *and proceeding in a direct line across the fifth Allotment made to Charles Lanchester to the seventeenth Allotment made to Sir Thomas Charles Bunbury Baronet on the East side and at the distance of* [here there is a gap in the manuscript] *yards from the old Church path and crossing the fence dividing the said Allotments and proceeding in the same direction* [my underlining] *across the said seventeenth Allotment made to the said Sir Thomas Charles Bunbury till it joins the thirdly above described Public Road* [this is what is now the U6318] *nearly opposite to the Church* [part of the church is just visible above the figure 266000 at the left-hand edge of the Order map below].
5. Comparison of this description with the Inclosure Map of 1805 reveals that the path is not shown as continuing in 'the same direction' at the allotment boundary [which ran along the line B-C], but turns through roughly 270° from north-west to south for about 65 metres before returning to a roughly north-westerly direction. The Order map depicts the route shown on the Inclosure Map.
6. Mr Andrews' transcription of the relevant part of the Award in his statement of case omits, whether deliberately or not, the words 'in the same direction'. It seems to me, however, that these words are crucial. They suggest strongly that the path described in the Award continued or was intended to continue in a straight, or at least straightish, line from its start at the Shrub Gate to its termination at the road nearly opposite the church. The words 'in the same direction' are not consistent with the 65 metre dog-leg shown on the Inclosure Map.
7. In 1818 or 19 the Ordnance Survey ("OS") made preparatory drawings for the subsequent OS one inch to the mile maps of this part of Suffolk. Mr Andrews argues that the route shown on the Inclosure map was shown on the manuscript drawing for this area. He wrote to one of the affected landowners in 1998 that it *shows the line of the path as it was "set out" by the Inclosure Commissioners and thus demonstrates that, regardless of the decision of the judge in our High Court case* [see paragraph 3 above], *a path did in fact either come into being or continue in being in the period shortly after the completion of the inclosure procedures*. I have looked carefully at the OS drawing and the subsequent 1" map of 1837. Both show a path approximately on the line A-D, but neither map shows a dog-leg in it. 65 metres on the ground would be represented by a distance of just over 1 millimetre on a map at a scale of 1 inch to the mile, so the offset between A-B and C-D should be apparent on these maps if it existed in 1818, but it is not. It seems to me that part of the

- path shown on the 1818/19 drawing and the 1837 map could be coincident with section C-D of the Order route, but probably not with A-B, not just because these maps do not show a dog-leg but also because the path is shown meeting what is now the U6318 road too far to the east. It is more likely, it seems to me, that the path shown on the OS maps is coincident with a route continuing north-westwards from C, south of the hedge line which is shown on the 1837 map.
8. The OS began to produce large-scale plans, at 6 and 25 inches to the mile, in the second half of the 19th century. The 1892 6 inch and 1904 25 inch plans of Great Barton show a footpath running from D to C and then continuing, without a dog-leg, immediately south of the hedge line, which exists today and which can be seen on the Order map below, to the U6318 road. It seems likely that this is the same hedge line depicted on the 1819 drawing and 1837 map. No map that I have seen depicts a hedge line on A-B.
 9. There is, it seems to me from the evidence, a clear discrepancy between what was described in the Inclosure Award, i.e. a straight path from Shrub Gate to a point on the road 'nearly opposite to the Church' and what the Inclosure Map shows, i.e. a path from Shrub Gate to the road nearly opposite the Church but with a 65 metre dog-leg. Confusion is compounded somewhat by the gap in the wording (paragraph 4 above) in the Award. It is impossible to guess what wording or figure might have been intended to fill the gap, but the gap itself does suggest that the position of the route intended to be set out may not have been finally determined. Had any subsequent map shown a footpath on the same route as shown on the Inclosure Map, it might have been possible to conclude that the position of the route set out by the Award did coincide with what was shown on the Map despite this discrepancy, but no subsequent map showed this route.
 10. In conclusion, it is not possible to determine with reasonable accuracy, from the words of the Award, the position of the route it set out; it is not possible, from those words taken together with what was depicted on the Inclosure Map, to determine what route was set out as a public footpath; and it is not possible, taking the inclosure evidence together with subsequent mapping evidence, to determine the position of the public footpath rights that were intended to have been created by the Award between Barton Shrub and the road by the church. In particular, it is not possible to conclude, on the balance of probabilities, that the Inclosure Award for Great Barton set out a public footpath which followed the line A-B-C-D.
 11. The Inclosure Award set out a private vehicular road which led from what is now the U6320 road nearly opposite the end of Restricted Byway 3 (see map below) to Barton Shrub at point D. Mr Andrews argued that the private road must also have carried public footpath rights, otherwise the public footpath set out by the Award would have ended in a cul-de-sac at D. In view of my conclusions about the footpath, there is no need for me to draw any conclusions about whether the private road carried public footpath rights.

Conclusion

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

Formal Decision

13. I do not confirm the Order.

Peter Millman

Inspector

Quashed

