

## Order Decision

Site visit made on 1 March 2017

**by Barney Grimshaw BA DPA MRTPI(Rtd)**

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

**Decision date: 20 March 2017**

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### **Order Ref: FPS/X2600/7/115**

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as the Norfolk County Council (Bridgham) Modification Order 2016.
- The Order is dated 8 January 2016 and proposes to modify the Definitive Map and Statement for the area by adding a footpath running from High Bridgham Road to The Paddocks, Bridgham, as shown on the Order Map and described in the Order Schedule.
- There was 1 objection outstanding when Norfolk County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

### **Summary of Decision: The Order is confirmed.**

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#### **Procedural Matters**

1. I made an unaccompanied site inspection on 1 March 2017 when I was able to walk the whole of the Order route.
2. 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.

#### **The Main Issues**

3. The requirement of Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 (the 1981 Act) is that the evidence discovered by the surveying authority, when considered with all other relevant evidence available, should show that a right of way that is not shown on the definitive map and statement subsists along the Order route.
4. Most of the evidence in this case relates to usage of the route. In respect of this, the requirements of Section 31 of the Highways Act 1980 (the 1980 Act) are relevant. This states that where it can be shown that a way over land has been enjoyed by the public as of right and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The period of 20 years is to be calculated retrospectively from the date when the right of the public to use the way was brought into question.
5. Common law also requires me to consider whether the use of the path and the actions of the landowners have been of such a nature that the dedication of the path by the landowners can be inferred.

## **Reasons**

6. Norfolk County Council, the Order Making Authority (OMA), investigated various historic documents but found no evidence of the Order route prior to an aerial photograph taken in 1946. Accordingly, the question of whether the Order should be confirmed depends entirely on consideration of the available evidence of public use of the Order route in this case.

## **Statutory Dedication**

7. There is no substantive evidence of public use of the Order route having been brought into question prior to an application being made for the addition of the route to the definitive map in September 2014. The relevant 20 year period of public use which would raise a presumption that the route had been dedicated as a public right of way in accordance with the provisions of the 1980 Act therefore runs from September 1994 to September 2014 in this case.
8. Twenty-four user Evidence Forms (UEFs) were submitted in support of the application describing use of the route from 1947 to 2014. Nine people claimed to have used the route throughout the 20 year period from 1994-2014 and 14 for part of that period. One person had only used the route before 1994. The frequency of use claimed was typically about once per month although a few people said they had used it more frequently. Almost all the use described was on foot.
9. All users reported occasionally having seen others on the route and no users had encountered any obstruction or signs discouraging their use before 2014. None reported ever having been challenged or given permission to use the route. There is currently a sign in place close to Point C reading "*PRIVATE PROPERTY KEEP OUT*" but the applicant has stated that this was erected after the application had been made in September 2014. Landowners' evidence also confirms that signs were not erected before September 2014.
10. In their evidence landowners generally reported that they did not accept that the route was public although they had been aware of some use of it by members of the public. It was stated that some users had been informed that the route was not a public right of way but no details were provided. Landowners also reported having turned a 'blind eye' to public use of the route.
11. Overall, it is my view that on the balance of probability, the available evidence of public use of the Order route between 1994 and 2014 is such as to raise the presumption that the route has been dedicated as a public footpath and there is not sufficient evidence of action taken by landowners during that period to indicate their lack of intent dedicate the route as a public right of way.

## **Common Law**

12. An inference that a way has been dedicated for public use may be drawn at common law where the actions of landowners (or lack of action) indicate that they intended a way to be dedicated as a highway and where the public have accepted it.
13. In this case, there is evidence that the public have used the Order route and some indication that such use has been accepted by landowners. However, in view of my conclusion regarding the dedication of the route as a public footpath in accordance with the provisions of the 1980 Act, it is not necessary to

consider further the possibility that similar dedication might also be inferred at common law.

### **Other Matters**

14. The only objection to the Order is made on the grounds that it does not include a positive statement that there are no limitations or conditions affecting public use of the Order route. However, it is the OMA's usual practice only to include a reference to limitations and conditions where they are known to exist and to my knowledge no relevant regulation or guidance requires or advises that a statement to the effect that no limitations exist should be included in orders of this sort. In these circumstances it would not be appropriate for me to modify the Order to add such a statement.

### **Conclusions**

15. Having regard to these and all other matters raised, I conclude that the Order should be confirmed.

### **Formal Decision**

16. I confirm the Order.

*Barney Grimshaw*

**Inspector**

Modification Order plan for the addition  
of a public footpath in the Parish of  
Bridgham

Norfolk County Council  
County Hall  
Martineau Lane  
Norwich  
NR1 2SG



Public Footpath ————

Scale 1:8,000

