



## Order Decision

Site visit made on 1 August 2017

**by Heidi Cruickshank BSc (Hons), MSc, MIPROW**

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

**Decision date: 13 June 2018**

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### **Order Ref: FPS/Y3940/7/20M1**

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as The Wiltshire Council Great Hinton Path No 34 Rights of Way Modification Order 2016.
- The Order is dated 25 August 2016 and proposes to modify the Definitive Statement, recording a width for the route of the bridleway, Great Hinton Path No 34. Full details of the route are given in the Order Map and Schedule.
- In accordance with paragraph 8(2) of Schedule 15 to the Wildlife and Countryside Act 1981 I have given notice of my proposal to confirm the Order subject to modifications.
- One objection was received in response to the notice.

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

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### **Procedural Matters**

1. The Interim Order Decision ("the IOD"), issued on 9 August 2017, was made following my unaccompanied site visit, taking account of the written representations submitted. In the IOD I proposed a modification to the width to be recorded by the Order for Bridleway No 34 in the Parish of Great Hinton ("BR34"), known locally as Bleet Lane.
2. Following notice of the proposed modification, an objection was duly made by a potentially affected owner of land at the northern end of the route. There was no request to be heard and I proceeded by way of written representations.

### **Main issues**

3. The objector supplied information in relation to accuracy and reliability of the Ordnance Survey ("OS") mapping. It was argued that it was not appropriate to rely on OS mapping to set out the width of BR34. Some additional photographs and a Report<sup>1</sup> were also submitted. The main issue is whether the new evidence, taken in conjunction with the evidence as a whole, indicates that the proposed modification should be amended or removed or any alternative modification should be made or proposed, on the balance of probabilities.

### **Reasons**

4. As discussed in the IOD, Bleet Lane appears to have been set out as a private road under the Steeple Ashton Inclosure Act and Award, 1813/18. The public rights over the route were first recorded on the Definitive Map and Statement ("the DMS") with a relevant date 1 May 1953. The IOD sets out that the closest dated evidence available was the 1924 OS map, which I was satisfied shows no

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<sup>1</sup> Report produced by Britton Le Bihan Limited, 10<sup>th</sup> October 2017

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- change from the 1901 OS map. The objector has now submitted an aerial photograph dated 1940, along with overlays of the OS mapping.
5. Dealing firstly with the aerial photograph, I must agree with the interested party to the Order that it is of insufficient clarity to be relied upon to any great extent. Viewing it as well as I am able, concentrating on the land at the northern end of the route, it appears to show the general area as seen in the 1924 OS.
  6. The Report includes an overlay of the existing OS plan and this aerial photograph<sup>2</sup>. I agree there is some distortion of the photograph to the north-east, due to apparent jointing of the original photographic patchwork. I agree that the current line of the bridleway was not much different in general terms. However, I consider that the overlay demonstrates that the route to the north-east was wider in the 1940 photograph than seen in the present day.
  7. Turning then to the overlay drawing number 17028-103, I am unclear how an overlay, apparently of the hedges shown in the 1940 aerial photograph, assists; simply overlaying the map and photograph, as in the drawing discussed above, is sufficient.
  8. No overlay was provided of the aerial photograph with the 1901 OS mapping. However, I agree with Wiltshire County Council, the Order making authority ("the OMA") that the width of the lane in this photograph, including any verges and taken to the centre of any hedge line, appears substantially the same as seen in the OS mapping from the late nineteenth century onwards. Although I accept the point that the public could not travel in ditches the evidence, as discussed in the IOD and now agreed by the OMA, shows that these were transient features.
  9. With reference to the photographs demonstrating current widths, I understand the concern and desire of the landowner to record the width now available and apparently sufficient for use, given that no complaints have been raised by users. However, as set out in the IOD, I must determine the width recorded in relation to public rights at the relevant date, which is now some sixty-five years ago. The 1960 conveyance post-dates this and so does not assist, although suggests a very similar alignment to that seen in the 1901 OS mapping.
  10. I do not consider that any new evidence has been provided to alter the finding in the IOD that the public route was within the lane, hedge to hedge. I remain satisfied that the 1901 OS map is the most appropriate to identify those boundaries. I turn then to the question raised with regard to OS accuracy.
  11. I accept that OS identify that each map scale has its own level of absolute and relative accuracy. However, as noted by the OMA, these figures do not relate to the County Series mapping, proposed to be referred to in this Order. OS has previously informed the OMA that the accuracy of scaling in the nineteenth century tended to have no formal processes. There was a maximum permissible error of 3 metres but they were likely to be more accurate than this. I also accept that there are limitations in alignment of routes due to changes in surveying techniques and potential distortions arising from copying and altering scales.

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<sup>2</sup> Report drawing reference number 17028-102

12. The OMA referred to *Fortune and others v Wiltshire Council and Taylor Wimpey (2010)*<sup>3</sup> in the High Court regarding the accuracy of the County Series mapping. Looking at the entirety of the section referred to, the judge accepted that the survey undertaken and compared with the OS mapping demonstrated that the configuration of the lane in question had remained broadly the same. I consider that I am able to similarly place reliance on the historic OS mapping in relation to the boundaries of the Order route at that time.
13. It will be noted that the width proposed to be recorded by the Order has not been set out at any specific metre width, whether 6.1 or any other figure. The specification follows the current advice as to how such widths should be recorded.<sup>4</sup> It is recognised that it may not be appropriate to scale off precise measurements from the OS maps. However they provide a valuable indication of where the width varies significantly. As referred to in the IOD, a surveyor would be able to set out the width, if necessary to do so, by reference to the mapped features on the ground.
14. Whilst I note the concern that the balance of probabilities may not be appropriate, it is the civil test which is correct relation to these matters.

### **Other matters**

15. I understand that the adjacent landowners believe that they have not altered the widths they understood to be correct since purchasing their land. I also understand that they have carried out works to maintain and improve the route over the years for users of the public bridleway. It is unfortunate, but not at all unusual, that the DMS did not set out a width at the time of recording the route, which may have avoided any misunderstanding. However, I am unable to take account of the potential lack of need for the formerly available route width for current users in relation to this decision, or to record what exists now. Such matters would need to be dealt with through a separate legal procedure.

### **Conclusion**

16. Having regard to these, and all other matters raised in the written representations, I conclude that the Order should be confirmed, subject to modifications with regard to the recording of width as proposed in the IOD.

### **Formal Decision**

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

- Within Parts 1 and 2 of the Schedule:
  - after text "...Width..." replace text "6.1 metres (20 feet)" with text "...shown by red hatching taken from the Second Edition 1885 survey, 1899 revision, 1901 publication Ordnance Survey map";
  - attach the map outlined above to the Order.

*Heidi Cruickshank*

**Inspector**

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<sup>3</sup> [2010] EWHC B33 (Ch) [2012] EWCA Civ334

<sup>4</sup> Rights of way advice note 16, 6<sup>th</sup> revision, April 2016 & defra Non Statutory Guidance on the recording of widths on public path, rail crossing and definitive map modification orders, 12 February 2007

