
Order Decision

Inquiry held on 14 August 2018

by Barney Grimshaw BA DPA MRTPI(Rtd)

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

Decision date: 25 October 2018

Order Ref: ROW/3174602

- 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 Hepworth) Modification Order 2017.
- The Order is dated 13 February 2017 and proposes to modify the Definitive Map and Statement for the area by adding two footpaths as shown on the Order Map and described in the Order Schedule.
- There were three objections outstanding at the commencement of the inquiry.

Summary of Decision: I propose to confirm the Order subject to modifications that require advertising.

Procedural Matters

1. I held a public inquiry into this Order on 14 August 2018 at Hepworth Pavilion. I made an unaccompanied site inspection on Monday 13 August when I was able to view but not walk the Order routes. It was agreed by all parties at the inquiry that a further accompanied visit was not necessary
2. 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 (A-G).

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 rights of way that are not shown on the definitive map and statement subsist along the Order routes.

Reasons

4. No evidence of usage of the Order routes is available. The determination of the Order therefore depends on the documentary evidence that is available.
5. The most important documents in this case are those prepared in connection with an Inclosure Award made in 1817. In a case considered by the High Court in 1993¹ it was determined that the Inclosure Consolidation Act 1801, on which

¹ R v Secretary of State for the Environment, ex parte Andrews (1993)

subsequent local acts were based, did not give inclosure commissioners the power to award public bridleways and footpaths. A previous Order made in 1992 relating to the current Order routes was determined in 1994 in the light of the 1993 judgement and not confirmed. However, that judgement was reversed by the Court of Appeal in another judgement in 2015². This later judgement by a higher court effectively resulted in Suffolk County Council, the Order Making Authority (OMA), making the current Order.

The Hepworth Inclosure Award 1817

6. This Award included provision for the setting out of a path crossing the land to be enclosed as follows:

"No.4 One public foot path commencing at the end of the present foot path at the North East Corner of the Great Common Field and proceeding in a Southwardly direction by the fence to the North West Corner of Bury Wood thence in a South West direction and straight line to the North West Corner of the ten acres where it enters the present foot path that leads to the Church"

This would appear to relate to the Order route between Points D, F and E (or G).

7. One objector has suggested that the wording of the Award reproduced above indicates that the southern termination point of the route between Points F and E should in fact be Point G immediately opposite FP6 which is the footpath that leads to the church. However, the difficulty of reconciling the Award with modern mapping is considered later and the method adopted by the OMA in this case is considered to provide the best fit that can be achieved.
8. There are two plans associated with the Award, both of which were prepared by the same surveyor, R Payne. The first, titled *"Plan of the Parish of Hepworth as refers to the annexed Award"* (Plan 1), shows a route similar to the Order route D-F-E (or G) coloured yellow as a new footpath.
9. The route B-D is also shown coloured yellow and annotated as 2nd public footpath diverted. A curving route across the same field is also shown uncoloured and annotated stopped. This route crossed land not subject to the Award but the 1815 Act which authorised the Award included a specific provision to allow such a diversion:
- (The commissioners) "...are hereby authorized...to divert or turn, and to stop up or discontinue any of the old or accustomed Roads or Ways passing or leading through or over any Inclosures, or any other part of the said Parish not hereby authorized to be divided ..."*
10. The plan also shows routes corresponding to C-D and A-B coloured red as old roads or footpaths that remain. These routes cross land not subject to the Award.
11. The second plan, titled *"A Plan of the Public Carriage Roads, Public and Private Footpaths, in the Parish of Hepworth"* (Plan 2), shows similar information to Plan 1 with two differences. The curving route B-D is coloured blue indicating that it was stopped up and A-B is uncoloured.

² R (on the application of JD Andrews v Secretary of State for Environment, Food and Rural Affairs (2015))

12. The documents associated with the Award provide clear evidence that proposed Footpath 10 (B-D-F-E (or G)) was intended to be established in 1817. If there is evidence that the path actually did exist after 1817 and was not subsequently stopped up, it is my view that it continues to be a public footpath. The Award also gives a clear indication that proposed Footpath 11 (C-D) was already in existence in 1817. The situation regarding A-B is less clear cut owing to the difference between Plans 1 and 2. However, if this route did not carry public rights of some sort, the route B-D would be a cul de sac with little apparent purpose and it is difficult to understand why the commissioners would have taken the trouble to divert such a path.
13. The OMA has searched local records and found no evidence of the routes having been stopped up.

Other Documents

14. Early commercial maps prepared by Hodskinson (1776-83) and Bryant (1824/25) do not show the Order routes. Greenwood's map (1825) appears to show a short section of route south of Point C but not any of the rest of the Order routes. These maps were prepared at a small scale and did not show most footpaths. An Ordnance Survey (OS) map of 1837 is also small scale (1" to 1 mile) and does not show the Order routes.
15. The Hepworth Tithe Map (1845) does not show the Order routes. It was not the purpose of these maps to show public rights of way but to identify productive land on which tax was payable. Most footpaths were not shown as they were not considered to significantly affect the productivity of the land they crossed. The route between Points A and B is shown and identified in the apportionment as a privately owned driftway. This does not, however, preclude the possibility that the route also carried public footpath rights.
16. The larger scale (1:2500) OS maps of 1883 and 1904 show the whole of the Order routes as footpaths. There is a slight difference in the alignment of the route between points D and F on the two maps. On a 1976 OS map at the same scale the routes do not appear presumably indicating that by then they had become disused and were no longer apparent on the ground. OS maps are regarded as providing good evidence of features that existed on the ground at the time they were surveyed but they did not indicate whether or not routes that were shown were public or private.

The Definitive Map

17. Parish surveys were carried out following the passing of the National Parks and Access to the Countryside Act 1949 which required county councils to record public rights of way. The survey schedules for Hepworth are no longer available but the accompanying map shows the route B-D by a blue line annotated No.9 which has then been crossed through. The route C-D-F-E is marked by a blue line and annotated No.8 but is also highlighted in yellow. The OMA stated that this highlighting had come to be accepted as marking added by the county council to indicate that the route should not be included on the definitive map. It is not known what the reason for the inclusion and subsequent deletion of the routes was but, the first definitive map (relevant date 1953) did not include the routes.

18. A 1973 Draft Review Map for West Suffolk proposed amendments to the definitive map to include a footpath A-B-D-F-E on the grounds that this was amended in the inclosure award. The draft statement describes the route commencing at Beck Street immediately west of Ivy Nook and running to join Wood Lane nearly opposite FP6. This review was never completed and was abandoned after the merger of East and West Suffolk in 1974.
19. A further attempt was made to review the definitive map in 1979. Both Order routes and the link A-B were claimed by the Ramblers Association and the county council's review panel accepted a recommendation that they be added to the definitive map. However, before the review was complete the council was directed to abandon it as a result of the passage of the 1981 Act.
20. Thus the routes were not included in the first definitive map although there appears to have been some doubt as to their status at the time it was prepared and have not been added since despite proposals that they should be on two occasions.

Conclusions regarding the Documentary Evidence

21. The Inclosure Award provides clear evidence of the establishment of a public footpath running between Points B-D-F-E and the accompanying maps give a clear indication that a public footpath already existed in 1817 between Points C and D. The maps are less clear regarding the route A to B but, as there would have been no purpose re-aligning the path between B and D if it was to be a cul de sac path, it seems most likely that public footpath rights at least already existed over A-B.
22. There is no evidence to suggest that these footpaths have since been extinguished and therefore they still exist. They have not been recorded on the definitive map to date despite some proposals for this to be done but this does not mean that they have ceased to exist and the map should now be modified to add the paths.

Other Matters

23. On behalf of objectors the ability of the OMA to have correctly defined the alignment of the paths was questioned. The map base used at the time of the 1817 Inclosure Award was less accurate than modern maps on which the OMA has drawn the Order routes. In order to produce the Order Map, the OMA has taken what it regards as the first accurate map to show the routes published after the Award, the 1883 OS map in this case, and assumed that this correctly shows the paths that were referred to in the Award. The use of mapping software then allowed modern digital mapping to be overlaid on to the historic OS maps and adjustments made to achieve the best possible fit.
24. The wording of the Award and the accompanying maps clearly indicate the Order routes, although they themselves do not provide the precise alignment of these routes. However, the use of the most accurate survey of the routes that actually came into existence provided by OS maps and the application of present day technology to enable these to be plotted on a modern map seems to me the best available means of reconciling the Award with modern mapping.
25. The OMA has pointed out that the OS maps of 1883 and 1904 show a slightly different route between points D and F and the Order Map shows the 1904 alignment. As stated above, the 1883 map was regarded as being the first

accurate map published after the Award and the one that was intended to be used as the basis for the Order. The Order should therefore be modified to show the 1883 route which is already referred to in the Schedule to the Order.

26. The Order describes the width of proposed Footpath 10 as varying between 1.5 and 2 metres as shown on the 1883 OS map. Footpath 11 is said to 2 metres wide also as shown on the 1883 OS map. On behalf of objectors it is argued that it is unreasonable to measure such small widths from this OS map at scale 1:2500 and that the width of the paths, if the Order is confirmed, should be described as 1 metre throughout. I agree with the first part of this argument as the difference between 1.5 metres and 2 metres at scale 1:2500 is only 0.2mm. The Inclosure Award does not specify the width of the paths and there is no evidence of usage of the paths. In circumstances such as these where there is little or no evidence of the width of a route, current good practice is for a width to be specified that is the minimum required for two users to pass in comfort. In this case, it is my view that a width of 1.5 metres would be appropriate. I therefore propose to modify the Order to specify this width throughout.
27. At the inquiry the representatives of the OMA, were unable to confirm whether notices of the inquiry had been placed on site as required by regulations³. Subsequently, an officer of the OMA advised that the notices had probably not been put up.
28. Failure to display notices of the inquiry at each end of the proposed paths constitutes a breach of the relevant regulations and could mean that determination of an Order is not possible. However, in this case, it seems unlikely that anyone's interests have been prejudiced by the failure. The claim for the paths is based on historic documents rather than recent usage of the routes and the paths have not existed on the ground within living memory. Owners of all the land crossed by the routes were notified individually of the Order and the inquiry. In these circumstances, I have proceeded with the determination of the Order.

Conclusions

29. Having regard to these and all other matters raised, I conclude that the Order should be confirmed subject to modifications to add the route between Points A and B and to amend the route between Points D and F to reflect that shown on the 1883 OS map.

Formal Decision

30. I propose to confirm the Order subject to the following modifications:

In the Schedule to the Order, Part I, amend the grid reference in the second line from 59892,27594 to 59888,27599;

In the Schedule to the Order, Part II, delete the following words at the beginning of the first paragraph "*Commencing on a track south-east of Ivy Nook Farm at Ordnance Survey Grid Reference (OSGR) 59892,27594 and...*" and in their place add the words "*Commencing on the southern side of Beck Street (U6412) on the western side of Ivy Nook Farm at Ordnance Survey Grid*

³ Rights of Way (Hearings and Inquiries Procedure)(England) Rules 2007. SI 2007 No.2008.

Reference (OSGR) 59888,27599 running along a track in a south-easterly direction for 69 metres to OSGR 59892,2759 then...”;

In the Schedule to the Order, Part II, modify the width of both footpaths to be 1.5 metres throughout and delete references to the 1883 OS map.

Modify the Order Map to reflect the above and a slight re-alignment of the route between points D and F.

31. The proposed modifications would affect land not affected by the Order and have the effect of showing as a highway part of a way which is not shown in the Order. It is therefore required by virtue of Paragraph 8(2) of Schedule 15 to the 1981 Act that notice of the proposal to modify the Order be given and an opportunity for objections and representations to be made regarding the proposed modifications.

Barney Grimshaw

Inspector

APPEARANCES

For the OMA

Jonathan Lockington

Solicitor, Suffolk County Council (SCC)

Who called:

David Last

Definitive Map Officer, SCC

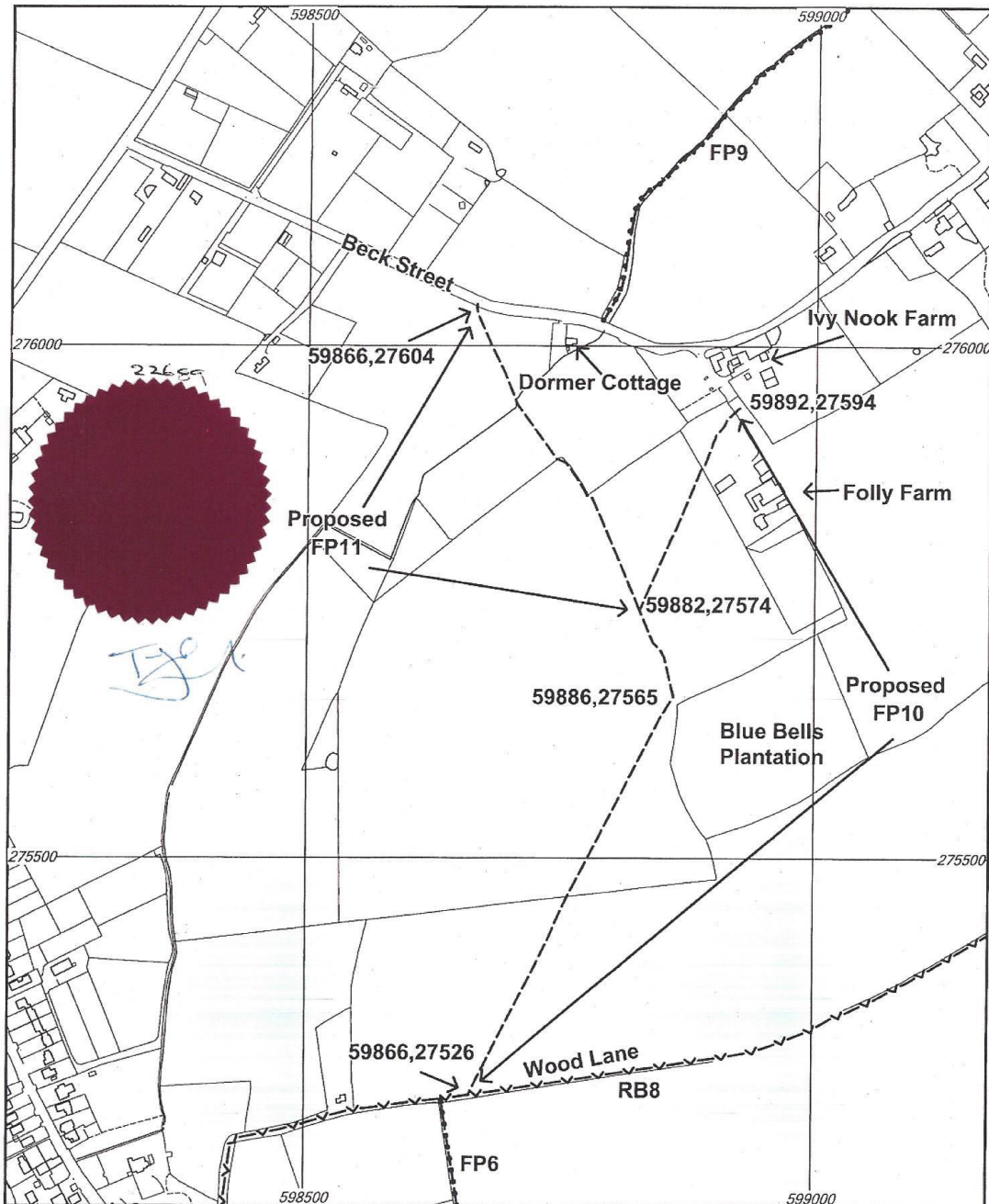
Objectors

Andy Dunlop

Representing CWG & RB Hatten and RJ
Burton

DOCUMENTS

1. Proof of Evidence of David Last, SCC.
2. Statement of Case of John Andrews.
3. Additional comments of John Andrews.
4. Objection Statement on behalf of Messrs Hatten and Burton, Ashtons Legal.
5. Proof of Evidence of Guy W Hatten.
6. Proof of Evidence of Richard Burton.
7. Opening Statement on behalf of SCC.
8. Closing Statement on behalf of Messrs Hatten and Burton.



PROPOSED PUBLIC FOOTPATHS IN HEPWORTH



- Proposed Public Footpaths
- Existing Public Footpaths
- ~~~~~ Restricted Byway

Scale 1:5000

