



Order Decision

Site visit made on 17 April 2018

by **Michael R Lowe** BSc (Hons)

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

Decision date: 13 February 2019

Order Ref: ROW/3180990

Knebworth and Stevenage, Hertfordshire

- This Order is made under section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Hertfordshire County Council (Knebworth 44 and Stevenage 108) Modification Order 2011.
 - The Order is dated 6 October 2011 and proposes to modify the Definitive Map and Statement by adding a footpath from near Church Lodge on Old Knebworth Lane in a generally north easterly direction, through Knebworth Country Park, then in a generally northerly direction through land now developed as a hotel complex, to a point on a roundabout over the A1(M) motorway as detailed in the Order map and schedule.
 - There were three objections and two representations outstanding when Hertfordshire County Council (the Council) submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.
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Decision

I confirm the Order.

Background and Preliminary Matters

1. The Council made the Modification Order following an application by the East Herts Footpath Society in January 2005. The application was supported by the evidence of a Quarter Sessions Order made in 1845. I am satisfied that such evidence was discovered in the sense of the Council considering evidence that was previously unknown to them. In October 2011 the Council made and published the Modification Order.
 2. After the Modification Order was made the Council commenced negotiations with the Knebworth Estate to secure an alternative route for the footpath that would have a less detrimental impact upon the Estate's business and be a more convenient route for the public. That approach followed the recognition by the East Herts Footpath Society, at the time of its application, that another route for the footpath could be agreed.
 3. The Hertfordshire County Council (Knebworth Park) Creation Order 2014 and the Hertfordshire County Council (Knebworth 21 and 44 and Stevenage 108) Extinguishment Order 2014 were made pursuant to the provisions of sections 26 and 118 of the Highways Act 1980 on 11 December 2014. Following publication of these Orders, objections were received and a public inquiry was held in February 2017 to determine whether or not they should be confirmed.
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In March 2017 the Orders were confirmed¹ and came into effect on 13 April 2017.

4. As a result of the confirmation and coming into effect of the Extinguishment Order, the public footpath proposed to be added to the definitive map and statement has been extinguished.
5. The Modification Order has been made under section 53(2)(b) of the 1981 Act relying on the occurrence of events specified in sections 53(3)(c)(i). The main issue is therefore whether the evidence is sufficient to show, on the balance of probabilities, that a public footpath which is not shown in the map and statement subsists on the route in question such that the definitive map and statement require modification. Such a modified map and statement would have conclusive evidential effect at the relevant date of the Order, that is 28 September 2011.
6. In simple terms, the proposal to record the existence of a public footpath on the definitive map and statement has been overtaken by the extinguishment of the footpath. However, once a Modification Order has been made and published by a council and objections and representations received, the council has no alternative but to refer the Order to the Secretary of State². The Secretary of State and appointed Inspectors are required to determine Orders on the basis of facts as set out above. Therefore, the question I must determine is whether or not a public footpath existed on 28 September 2011, notwithstanding the fact that the footpath was extinguished at a later date.

Reasons

7. The Quarter Sessions rolls contain an Order dated 1845 together with a plan titled "Plan showing the old and proposed new footpaths leading from Codicote to Stevenage through the Parish of Knebworth in the County of Hertford." The plan shows a footpath to be extinguished and a replacement path to be created. The path to be created follows the line of the Order route and is described in detail within the Order.
8. The Quarter Sessions rolls also contain the certificate showing that the new footpath was constructed to the satisfaction of the Justices of the Peace. I note that it appears that the footpath may have fallen into disuse by the end of the 19C and that no other evidence indicates the existence of the footpath. However, the Quarter Sessions rolls are cogent evidence of the creation of a public footpath along the route shown in the Modification Order.
9. I have noted the Estate's submission relating to a Joint Planning Scheme that was not completed due to the outbreak of war and that the Estate submitted a plan of acknowledged public rights of way in response to the Rights of Way Act 1932. I agree with the Council's response concerning the principle of estoppel having a very limited application to highway rights. It is an established legal maxim *once a highway, always a highway*; for the public cannot release their rights, and there is no extinctive presumption or prescription. Highway rights cannot be lost by disuse or by mere agreement with a local council. Only the full compliance with a statutory procedure will have the effect of extinguishing highway rights and there is no evidence to suggest that the footpath in question was lawfully extinguished until the Council's Order in 2014.

¹ Order decisions of Alan Beckett dated 28 March 2017 Refs FPS/M1900/6/1 and FPS/M1900/3/9.

² Schedule 15 para 7(1) of the 1981 Act and Circular 1/09 para 4.26.

Conclusion

10. The evidence is sufficient, on the balance of probabilities, to demonstrate that a public footpath subsisted along the Order route at 28 September 2011.
11. Having regard to these and all other matters raised in the written representations, I conclude that the Order should be confirmed.
12. I appreciate the submissions made in objections to the confirmation of the Modification Order that it is no longer of any relevance. For the avoidance of doubt, I confirm that the confirmation of the Modification Order will be of no practical consequence as the public right of way evidenced by the Modification Order has been extinguished. The Modification Order simply serves to record that it did exist before it was extinguished in 2017.

Michael R Lowe

INSPECTOR

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MAP NOT TO
ORIGINAL SCALE



Stevenage

Knebworth 21

Knebworth Country Park

Knebworth 44

Knebworth 19

Knebworth 18

Knebworth 16

Knebworth 17

This Plan forms part of the Hertfordshire
County Council (Knebworth 44 and Stevenage
108) Modification Order 2011

Existing footpath
Footpath to be added
Parish boundary



DP Petter