



Order Decision

Inquiry held on 5 June 2019

Site visit made on 5 June 2019

by Susan Doran BA Hons MIPROW

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

Decision date: 04 July 2019

Order Ref: ROW/3174603R

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as the Suffolk County Council (Thingoe Rural District Definitive Map and Statement)(Parishes of Chevington, Horringer and Ickworth) Modification Order 2017.
- The Order is dated 13 February 2017 and proposes to modify the Definitive Map and Statement for the area by adding three footpaths forming a continuous route as shown in the Order plan and described in the Order Schedule.
- There were 2 objections and one representation outstanding at the commencement of the Inquiry.
- This decision supersedes that issued on 27 February 2018. That decision was quashed by order of the High Court.

Summary of Decision: The Order is confirmed

Procedural Matters

1. This case concerns a route crossing three parishes connecting Footpath 6 Horringer (at the A143 road at Horringer) with the C661 road at Chevington. Following the close of the Inquiry I made an accompanied visit to part of the Order route where it crosses land owned by Mr Percival.
2. Suffolk County Council adopted a neutral stance at the Inquiry but assisted with its smooth running.

The Main Issues

3. The Order has been made under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 ('the 1981 Act'), which requires me to consider whether, on a balance of probabilities, the evidence shows that public footpaths subsist over the Order route. The evidence adduced is documentary.
4. Section 32 of the Highways Act 1980 requires me to take into consideration any map, plan or history of the locality, or other relevant document provided, giving it appropriate weight, before determining whether a way has been dedicated as a highway, in this case as a public footpath. Amongst the historical documents available are Inclosure Award records, Tithe records, Ordnance Survey ('OS') mapping, and records concerning the preparation of the Definitive Map and Statement ('DMS').
5. In assessing the evidence, I shall consider whether, as a whole, it shows at common law that at some time in the past an inference of dedication may be inferred such that the landowner(s) dedicated a public right of way and the public has accepted that dedication.

Reasons

6. Inclosure Commissioners set out and appointed a public footpath in the Chevington Inclosure Award (1815)¹. The awarded path was described as meeting '*the present footpath leading towards Ickworth Hall*'. In the absence of evidence to the contrary, the Inclosure Award is conclusive as to the existence of a public footpath where set out within the lands to be enclosed. However, there is some ambiguity between the written description of the awarded footpath, and that shown on the Inclosure Map which I agree appears to be poorly drawn in this case. Nevertheless, taking the description and depiction together, I find, points to the Inclosure Commissioners' intention to award a footpath that provided a continuous link across the parish boundary for use by the public. The evidence is indicative of a route continuing into Ickworth parish as it is unlikely that the awarded footpath would change status on entering the neighbouring parish: there would have been little point in awarding a cul-de-sac public right of way to the parish boundary, or a public footpath that did not connect to another. Accordingly, the inference is that its continuation enjoyed the same status. Moreover, I agree it is more likely than not that the path in Ickworth parish was a pre-existing right of way over land already enclosed to which the awarded route, crossing the new lands to be enclosed, connected.
7. However, only parts of the awarded footpath shown on the Inclosure Map are consistent with the alignment of the Order route itself – notably between points M and L on the plan attached to the Order, and in part between K and J.
8. The Ickworth Tithe Map (1835) provides supporting evidence for the existence and alignment of a route from the parish boundary, showing a way annotated 'footpath from Chevington' corresponding with the Order route between points H and B. Although tithe records were not produced to record public rights of way, an annotation 'to' or 'from', referring to a destination, is suggestive of a public route rather than of a private one. Moreover, that it is shown extending across both parish boundaries is indicative of its continuation in neighbouring parishes. Again, a cul-de-sac route within the parish would serve no purpose. However, no path is shown on the Chevington Tithe Map (1839), although this is not evidence that none existed. The Map shows some alterations to field boundaries compared to those shown on the earlier Inclosure Map.
9. It is not until 1884 that a way corresponding to the Order route itself appears in the historical documentary record when it is depicted on the large-scale OS map. Subsequent OS maps to 1946 are consistent in depicting a route on the same alignment. I note various paths are mapped passing east of (the former) Monument Cottage to the north-north-west of point J; presently three paths emanate from this point, although this has not always been the case. Whilst it is possible that some or all of these may be estate paths, it does not follow that the same applies to the Order route given, in particular, the Inclosure Award which set out a *public* footpath. Furthermore, the maps show a way continuing as a through route between public roads which corresponds with the Order route.
10. The OS maps provide support for the long-standing existence of such a route. They provide further support for a route corresponding generally with those sections shown on the earlier Inclosure and Tithe records, albeit that surveyed on the ground in Chevington followed a straighter, more direct and presumably

¹ By reference to the 1801 Inclosure Act, and pursuant to Sections 10 and 35

more convenient line than was awarded in part in 1815. The section of the Order route between points A and B on the Order plan is first mapped in 1884, although it is likely that a route existed here before this date as inferred by the 1835 Ickworth Tithe Map. As above, it would be unlikely for a route from the Horringer Road to the parish boundary to have been a cul-de-sac, in the same way that it would have been unlikely for the Inclosure awarded route and footpath shown on the Ickworth Tithe Map to have terminated at parish boundaries.

11. Since 1888 OS maps have carried a disclaimer that tracks and paths shown provide no evidence of the existence of a public right of way. Whilst my attention is drawn to instructions to field examiners concerning marking paths in obvious use by the public, equally it was not the concern of the OS to identify the status of mapped routes. Accordingly, OS maps are good evidence of the existence on the ground of a path, here consistent with the Order route as shown on successive map editions over a long period.
12. It is the section J to I on the Order plan which is disputed. Here the Order route presently crosses two hedge and ditch boundaries, whereas it is suggested one crossing would be logical. A hedge existed here in 1839 as shown on the Chevington Tithe Map. Nevertheless, whilst the boundary is impenetrable now, the evidence does not support the view that it was in the past. OS mapping shows a path (represented by a double pecked line) crossing both boundaries in 1884. This appears on successive maps indicating there was indeed a way through over a very long period, in either direction. It follows that the hedge has become impenetrable in more recent times.
13. Chevington claimed a path within their parish in the survey of public rights of way in the 1950s, but no corresponding route was claimed in Ickworth or Horringer parishes and none was recorded when the DMS was compiled. Nevertheless, this indicates that the Order route, at least in Chevington, had the reputation of a public right of way. There is no evidence from this period (or any other) of Chevington residents following an alternative route via the Church to Horringer, which it was argued is more direct and surfaced.
14. I understand there is no reference in title deeds to a public right of way over the land at J to I, however, this is not unusual and does not indicate that no such right exists.

Assessment of the evidence

15. The Inclosure Award evidence is conclusive as regards the setting out of a public footpath at the south west end of the Order route although its awarded alignment differs in part to the Order route. Support for the continuation of a path into the neighbouring parishes is found in the 1835 Tithe records and subsequently in a range of OS mapping, the latter demonstrating a continuous through route providing a link between villages, although neither was produced to record public rights of way.
16. When the documentary evidence is taken together as a whole, it is consistent with a public right of way on foot having become established between points A and M. There is no evidence that any public rights have been legally stopped up or diverted subsequently.

17. The 1884 OS map provides a representation of the whole route which seems to reflect a more direct and convenient line having come into public use following changes to field boundaries at the south western end of the awarded route. It is more likely than not that such a route came into being following dedication by the landowner and acceptance by the public.
18. I have been provided no evidence to support the alternative public route suggested, nor do I find that the Order route was purely a private path for estate workers.
19. I therefore conclude from the above that the Order route subsists, however, I decline to modify the Order so as to record a second route at the south western end, the accurate plotting of which is problematic.

Other matters

20. Among the matters not before me are the suitability or desirability of the Order route as a footpath for use by the public. It follows I have not attached weight to such arguments.

Conclusions

21. Having regard to these and all other matters raised in the written representations and at the Inquiry, I conclude the Order should be confirmed.

Formal Decision

22. I confirm the Order.

S Doran

Inspector

APPEARANCES

For the Applicant:

Ross Crail *of Counsel*

representing John Andrews

Objector:

Martin Percival

Landowner

DOCUMENTS

1. Proof of Evidence of John Andrews
2. Submissions on behalf of John Andrews, together with bundle of statute and legal authorities
3. Colour copy of Location Plan, Map 1, from Suffolk County Council's Committee Report of January 2017



Director of Resource Management
 Endeavour House, 8 Russell Road, Ipswich, Suffolk.
 F1 2BX

Scale 1:10000

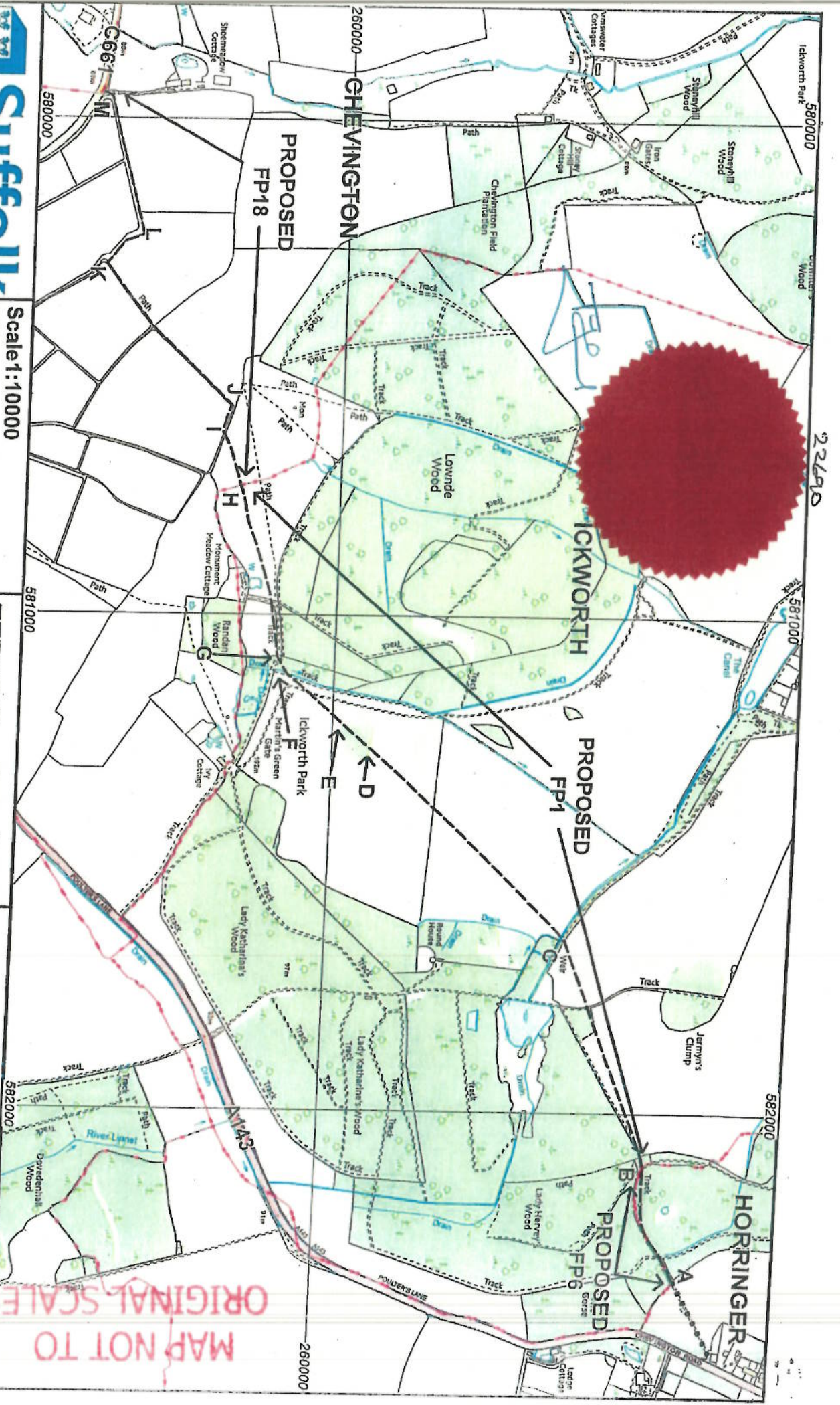
Ordnance Survey MasterMap

Crown Copyright.
 All rights reserved.
 Suffolk County Council
 Licence No. 1000233962017



- Proposed Public Footpath
- Existing Public Footpath
- Parish Boundary

PROPOSED PUBLIC FOOTPATHS IN CHEVINGTON, HORRINGER AND ICKWORTH



MAP NOT TO ORIGINAL SCALE