



## Order Decision

Site visit on 24 April 2019

**by Sue M Arnott FIPROW**

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

**Decision date: 23 July 2019**

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### **Order Ref: ROW/3204275**

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981. It is known as the Nottinghamshire County Council (Granby Bridleway Nos. 19 and 20) Modification Order 2007.
- The Order is dated 15 June 2007. It proposes to modify the definitive map and statement for the area by recording a public bridleway near Granby, as shown on the Order map and described in the Order schedule.
- There was one objection outstanding when Nottinghamshire County Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs<sup>1</sup>.

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

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### **The Main Issues**

1. The main issue here is whether the evidence is sufficient to show that in the past the Order route has been used in such a way that a public bridleway has been established.
2. The Order was made under the Wildlife and Countryside Act 1981 on the basis of events specified in sub-section 53(3)(c)(ii). If I am to confirm it I must be satisfied, on a balance of probability, that the evidence discovered by the order-making authority (Nottinghamshire County Council (NCC)), when considered with all other relevant evidence available, shows that a public bridleway subsists along the route described in the Order and which is shown on the definitive map at present as a public right of way on foot only.

### **Reasons**

3. The Order route is in two parts, identified in the Order as Bridleway 19 and 20. I shall refer to here as the middle and northern sections. Together these form part of a longer route extending from Gypsy Lane in the south west to the Redmile road at the north east end. Both parts run along the north-west side of the county boundary in Nottinghamshire. The connecting section of the route lies in Leicestershire (which I shall refer to as 'the Leicestershire link'); this is recorded on that county's definitive map as Bridleway G18a. The route continuing south westwards to Gypsy Lane is recorded in Nottinghamshire as Bridleway 18 and a further section within Leicestershire is said to be also the subject of a claim for upgrading from footpath to bridleway.

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<sup>1</sup> A further representation was lodged *after* the statutory period set for the receipt of objections. Whilst not 'duly made', I have nonetheless taken into account the points raised where relevant.

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### ***Historical background***

4. Historical research undertaken by NCC shows the earliest depiction of this route to be on the Ordnance Survey (OS) 25" to 1 mile map of 1900. On this map, the northern section is annotated "FP", as is the Leicestershire link. However the next OS edition, published in 1919/1920, labelled the northern section as "Bridle Road"; neither the middle section or the Leicestershire link were annotated but all other paths joining further south were marked as footpaths. The same is shown on the 1921 6" to 1 mile map. There is no obvious explanation as to why this bridleway should be a cul de sac, other than the existence of Jericho Covert (identified on the map as a fox covert). This might suggest the way was a private rather than public one at that time.
5. Records compiled for the 1910 Finance Act show tax deductions were allowed for public rights of way in fields which contain the Order route but it is not possible to deduce whether these were acknowledging a footpath or bridleway.
6. When definitive maps were first being compiled following the 1949 National Parks and Access to the Countryside Act, it appears that route 14 (now Footpath 14 from Gypsy Lane to Redmile road) was identified as a right of way in Granby parish but no schedules are now available to indicate the status initially recorded.
7. However, on the Leicestershire side of the boundary, no connecting parts of Footpath 14 were recorded at the survey stage, prompting a claim by Leicestershire Footpaths Association that a right of way did exist. At an inquiry convened by the county council on 15 April 1954 to hear objections to the draft definitive map it was agreed that a public bridleway should be recorded along what I have referred to as the Leicestershire link. Regrettably, no records have survived to indicate what evidence was taken into consideration at the time.
8. Although these records offer some support for the existence of a bridleway dating back to the early twentieth century, the depiction of only part of the through-route as a 'bridle road' does raise questions over the claimed public status of the way at that time. Leicestershire CC may have had access to first hand evidence when it examined the matter in 1954 but those details are not available now. Whilst there is a strong suggestion that the northern and middle sections were used as a bridleway at that time, taken on its own, I do not consider the documentary evidence in this case to be sufficient to demonstrate the existence of a public right of way for horses.

### ***The case for statutory dedication***

9. The case in support of this Order is based primarily on the presumed dedication of a public right of way under statute, the requirements for which are set out in Section 31 of the Highways Act 1980 (the 1980 Act). For this to have occurred, there must have been use of the claimed route by the public on horseback or with horses, as of right and without interruption, over the period of 20 years immediately prior to its status being brought into question. Such evidence will raise a presumption that the route has been dedicated as a public bridleway. This may be rebutted if there is sufficient evidence that there was no intention on the part of the relevant landowner(s) during this period to dedicate the way for use by the public; if not, a public bridleway will be deemed to subsist over and above the public footpath that is already recorded.

*Bringing into question*

10. Following this approach, the first matter to be established is when the public's rights were brought into question.
11. The evidence indicates that use of the way by local riders was queried in February 2002 when earthworks were carried out along the northern section, including the removal of several bridges causing riders to resort to jumping ditches. This prompted complaints which led to the submission of a claim by the British Horse Society (BHS) that a public bridleway had been established and should be recorded. An application for a definitive map modification order was received by NCC in August 2003.
12. In the absence of evidence of any other challenge<sup>2</sup>, NCC accepted that the status of the Order route was brought into question in 2002, setting the relevant twenty-year period as February 1982 – February 2002. This has not been disputed and I do not disagree with that conclusion.

*Evidence of use by the public 1982-2002*

13. If a presumption of dedication is to be raised, qualifying use by the public during this period must be shown to have been enjoyed as of right, without interruption, and to have continued throughout the full twenty years. Use 'as of right' is interpreted as being use by the public that is not by force, does not take place in secret and is not on the basis of permission.
14. Nineteen forms were submitted by the BHS from local riders giving details of their individual use of the claimed route over many years, dating back as far as the 1950s. These written statements were accompanied by a map and in some cases further information was sought by NCC for clarification.
15. Analysis of these evidence forms shows that 5 of these riders claim continuous use throughout the whole of the relevant twenty years whilst other riders provide evidence of use for shorter periods.
16. Three people did not ride the route at all during the relevant period and must be discounted. So too must one other claimant who, as a landowner, would not have been using the route wholly 'as of right'. I also hesitate to place any weight on use claimed as part of the Belvoir Hunt since it is not certain whether this was with the permission of the relevant landowners<sup>3</sup>.
17. Many of the remaining 15 claimants refer to using the route with friends and family members and to seeing other horse riders on the route. The frequency of their use varies from daily to 4 times per year, with some riding the route only in the better weather of the summer months because of difficult ground conditions.
18. One of the points of objection concerns the width of the bridleway that would be recorded by the Order (3m). The objector argues that the footpath has never been 3m wide and that there had been 4-foot wide gates and ditch bridges since the land was purchased in the 1920s.

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<sup>2</sup> I have noted references to locked gates across the way but these were some years later. This could set a further twenty-year period for examination but this has not been pursued by NCC.

<sup>3</sup> Although in his objection, Mr Wilkinson makes clear that he regards use of his land by the hunt to be trespass.

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19. NCC points out that the measurement is based on what is considered reasonable for two users to pass comfortably, excepting pinch points such as gates or bridges.
20. In establishing the extent of a right of way, wherever possible it is a matter of looking at the evidence to see what has actually been walked or ridden by those who have used the way. In this case claimants have reported widths varying from "3-4m in most places" to "less than 1m where the land is cropped right up to the edge of field". Taking a balanced judgement as to what is reasonable in these circumstances, I find 3 metres to be generally appropriate.
21. In the absence of any substantive challenge to the veracity of the evidence provided, I am satisfied that use of the Order route by the 15 claimants was 'as of right', continuous and without interruption, sufficient to raise a presumption of dedication as a public bridleway.

#### *Intentions of the landowner(s) 1982-2002*

22. I turn next to consider whether there is evidence to show that during the relevant period, the respective owners of the land demonstrated a lack of intention to dedicate a public right of way over the claimed route.
23. In his objection, one of the landowners states that the Belvoir Hunt persistently trespasses over his land by assuming a public right of way exists. Whilst he is clear that he does not permit the hunt to access his farm land, there is no evidence to suggest that he took direct action to make clear his lack of intention to dedicate the way as a bridleway during the relevant period.
24. In fact there is no evidence before me to suggest that, at any time between 1982 and 2002, any of the owners of land crossed by the two sections of the Order route placed notices on site or otherwise challenged use by horse riders. Consequently I must reach the conclusion that the presumption of dedication raised by the evidence of long usage has not been rebutted and therefore, on a balance of probability, a public bridleway is deemed to subsist.

#### **Other matters**

25. In dealing with orders of this kind, which rest on evidence of long use establishing a public right of way, the merits of the route are not at issue. Consequently, I cannot take into account many of the points raised in objection to the Order. I recognise that concerns over biosecurity, animal welfare, misuse of the way by joyriders and possible disturbance to the surface are all significant matters for those managing the land over which this bridleway passes. However, these do not affect consideration of the evidence in this case.

#### **Conclusion**

26. Having regard to the above and all other matters raised in the written representations, I conclude that the Order should be confirmed.

#### **Formal Decision**

27. I confirm the Order.

*Sue Arnott*

**Inspector**



**Proposed Modification Order**  
 Parish and Path Nos. Affected:  
 Granby Bridleway Nos. 19 & 20  
 OS Sheet No. SK73NE



Scale 1:7,500

Produced by: David Squires

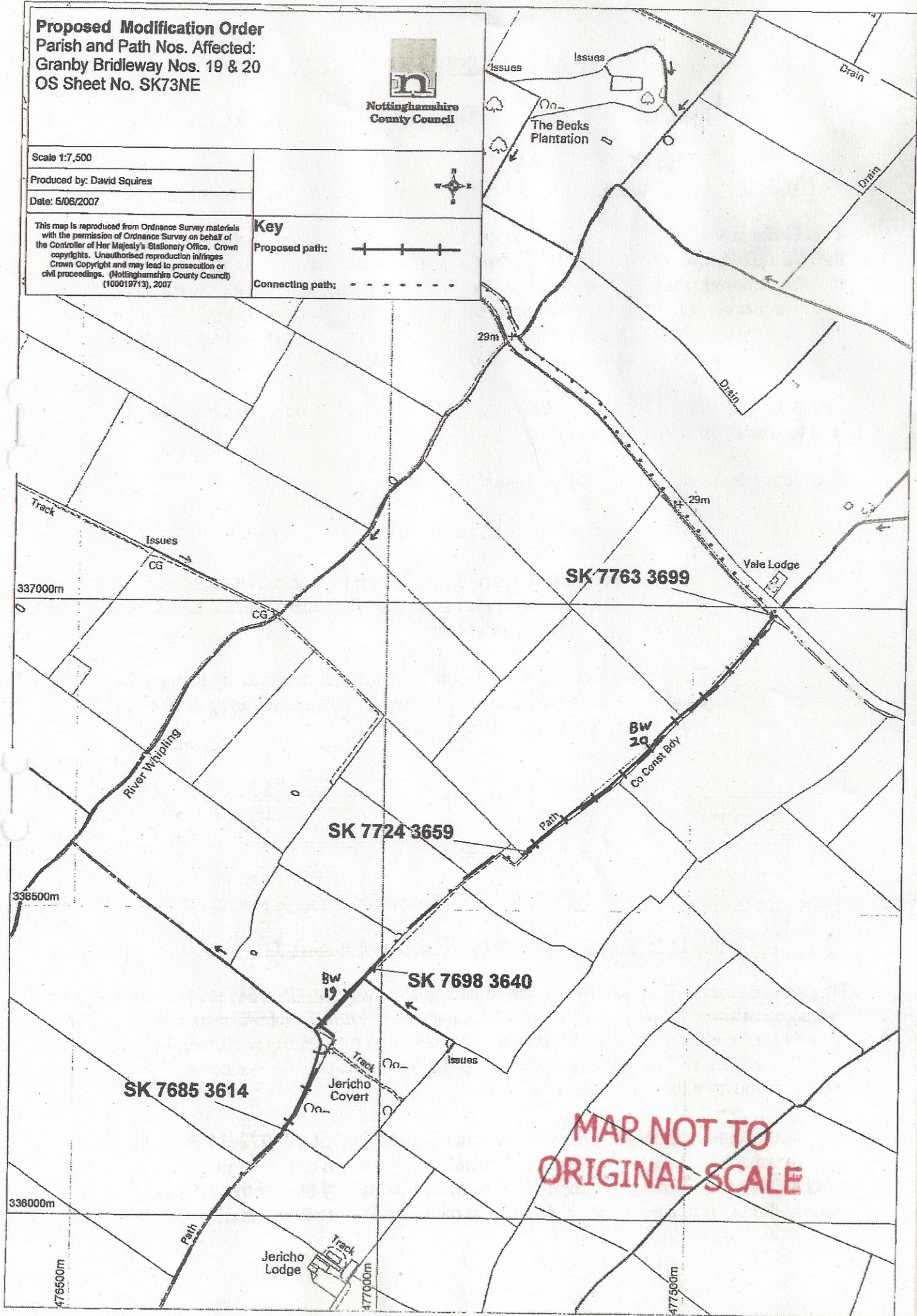
Date: 5/06/2007

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**Key**

Proposed path: ————+———+———+———

Connecting path: - - - - -



**MAP NOT TO ORIGINAL SCALE**