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## Order Decision

Site visit made on 11 March 2019

**by Susan Doran BA Hons MIPROW**

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

**Decision date: 14 August 2019**

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### Order Ref: ROW/3198932

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as the Surrey County Council Footpath No.93 (Egham) Definitive Map Modification Order 2017.
- The Order is dated 21 September 2017 and proposes to modify the Definitive Map and Statement for the area by adding a footpath as shown in the Order plan and described in the Order Schedule.
- There were 3 objections outstanding when Surrey County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

### Summary of Decision: The Order is not confirmed

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#### Procedural Matters

1. This case concerns the addition of a public footpath between Chertsey Lane, Egham ('the road') (point A on the plan attached to the Order) and the River Thames ('the River') (point B) and is based on documentary evidence. I made an unaccompanied visit to the Order route. In reaching my decision I have considered all the documentary evidence and submissions made by the parties.

#### The Main Issues

2. The Order is 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 a footpath subsists over the Order route.
3. 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 (in this case) a public footpath has been dedicated as a highway.

#### Reasons

4. The main documents relied on in support of the Order are the Thorpe Inclosure Award of 1813, Thorpe Tithe Map of 1840, and Minutes of the Thames Conservancy Board ('the TC').

#### *Map evidence*

5. Two spurs lead between the road and the River on the Inclosure Map both appearing to form part of the highway network. The northerly spur equates with the location of the Order route<sup>1</sup>, but there is no evidence it was set out as

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<sup>1</sup> The southerly spur meets an inlet from the River opposite Truss's island

- part of the Inclosure process. None of the early County Maps<sup>2</sup> show it, but an Estate Map of 1809<sup>3</sup> depicts both spurs. Drawn up for private purposes it does not demonstrate the route shown was public, but neither does it preclude such a status. An Ordnance Survey ('OS') drawing of 1804 shows both spurs, and Greenwood's 1823 Map shows one to the River at the Order route's location.
6. Both spurs appear on the Tithe Map<sup>4</sup>, leading from the road which is annotated 'to Staines', although the northern spur, consistent with the position of the Order route, differs slightly in shape. The Parish boundary runs adjacent and to the north. Although not produced to show public rights of way, the map's depiction of the northern spur (at least on one version) supports the earlier documentary evidence of a feature at this location. Collectively, the maps reviewed above indicate the existence of a way equating to, and/or incorporating, the Order route, though wider where it leaves the road at A.
  7. The 25-inch OS map of 1888 (produced from earlier surveys) shows Truss's Island joined to the western riverbank between the two spurs by an area of marshland. The spur equating to the Order route includes an oval feature near its western end, narrowing though not fully obstructing the width here<sup>5</sup>. The Parish boundary is marked within the spur's northern side. However, along with the oval feature, it is not seen on subsequent OS mapping (1896<sup>6</sup> and 1914), so at some point after the TC took over the land (in 1857) and it was depicted in 1888, it was no longer a physical feature. There is no evidence that any public rights that may have existed over it were legally stopped up, and its subsequent absence as a defined feature between the road and River suggests it had fallen out of use, whether public or private.
  8. No deduction for a public right of way is recorded in the Finance Act 1910 documentation, although this does not in itself indicate that none existed. I find this evidence neutral.
  9. The Order route was accessible when the 1914 and 1939-40 OS maps were surveyed, shown by a pecked line at A, although the 1934 edition shows a solid line. Posts are marked on the east side of the road on the 1964 edition, along with a feature consistent with steps, at the River bank. However, no similar 'landing point' appears on earlier editions at this location. A solid line suggests some form of boundary or feature, though not necessarily an impenetrable one: gates appear in the closed position as an unbroken line. By 1934, a structure (in the position of the current garage at 119A Chertsey Lane) partially obstructs the width of the spur seen on the earlier Tithe and Inclosure maps.
  10. Overall, the mapping evidence points to a historical feature corresponding with the location of the Order route, originally slightly wider at its western end, connecting with and possibly part of the highway network. I do not find support for the view that it served manorial land and was therefore manorial waste: the

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<sup>2</sup> Pre-1800

<sup>3</sup> Plan of the Manor of Thorpe

<sup>4</sup> It seems likely this was a 'second class' map, though not necessarily cartographically inferior to a 'first class' Tithe map, both of which have been accepted by the courts as evidence. Of the three maps produced under this process - an original retained by the Tithe Commissioners and two copies, one for the relevant Diocesan office and one for local deposit in the tithe district - that produced by the Applicant is understood to be the Diocesan copy. A tracing of the 1840 Tithe map provided by Objectors (date stamped 1876) apparently does not show the spur. However, it is not clear to me from the document provided which of the maps produced it is a tracing of.

<sup>5</sup> The oval feature appears on earlier 1:1250 editions published in 1869 and 1872. It is not shown touching the solid line feature to its south on the 1888 map

<sup>6</sup> The base map used for the 1910 Finance Act Valuation Map

spur ran from the road to the River. Whilst the OS maps are helpful in providing information about the physical features present on the ground at the time of the survey, they do not assist with determining the Order route's status. By the late 19<sup>th</sup> century it was no longer mapped as a feature, presumably having fallen into disuse and/or subject to a change of use. Later OS mapping depicts an accessible feature consistent with the Order route itself.

#### *Thames Conservancy records*

11. In Minutes dated January 1921 the TC resolved to make a piece of their land available as a public landing place, reserved for public use. Minutes dated October 1925 record that posts were to be erected to prevent the 'public right of way' at the upper end of the Eyot to Chertsey Lane being used by vehicles. At the time, consideration was being given to establishing or licensing a ferry crossing the River at Truss's Island.
12. There is no plan accompanying either of these Minutes. However, a plan, of which there are several versions, shows the River, the road and the land between divided into numbered plots. None of the versions are dated, but all show a strip of land consistent with the Order route on the north side of parcel No.1, narrower at its junction with the road and beside a 'garage' on neighbouring land, then widening to the River. Some include annotations referring to 1923, 1925 and 1963. The plan may date to 1932 when land where the garage is situated was apparently sold: the structure first appears on an OS map of 1934 (paragraph 9), so must pre-date this. It may be contemporary with the earlier handwritten annotations.
13. The plan records a 'Right of Way' over the strip of land which forms the Order route, its length marked in sections coinciding with boundary posts noted as erected in November 1925 alongside what is now 121 Chertsey Lane. Meeting the entrance to the 'right of way' is a double peaked line representing a footway alongside Chertsey Lane. Here, a note records that 'W.S.W' was to erect 4 equally spaced posts, and a further note indicating this was carried out, again in November 1925, their number and spacing consistent with the width marked (in excess of 16 feet). As noted above (paragraph 9), these were not recorded on OS mapping until 1964, although again they must pre-date this. It seems they were required to prevent unauthorised, presumably vehicular, use. The plan does not show or refer to a landing place at the River.
14. A further 'right of way' is shown to the south where there is a bungalow and 'stage', or landing place, beside the River. Here, the plan indicates a pedestrian-width gate adjacent to perhaps a vehicular access in excess of 20 feet. However, I prefer the view that the posts referred to in the Minutes, when evenly spaced, are more consistent with the available width at the Order route than at the bungalow, even allowing at the latter for an existing boundary post. I do not find any significance in the annotation in capitals in the one instance and lower case in the other, although I note that neither describe the 'right of way' as 'public'. Noting that the 1925 Minute refers to the 'upper end of the Eyot' or island, on balance, I interpret this to be the northern rather than the lower or southern end where the bungalow is situated.
15. Although the weight attaching to the plan is reduced by its unknown date and by whom, with what authority and when it was annotated, the references are consistent with the Minutes, and with the Order route. I consider it more likely than not that the annotations were made by the TC's staff.

16. Minutes of the Works, Navigation and Regulation of Water Committee, dated March 1934, authorised protective works to be carried out to the frontage of the 'public landing' owned by the Conservators above Truss's Eyot. Again, there is no accompanying map or plan. It is likely the reference to 'above' the island is its northern rather than southern end and hence to the Order route. However, whilst there would have been no need to authorise expenditure unless the landing existed at this location, there is no evidence of a feature at here before 1964.
17. The powers under which the TC operated are contained in the Thames Conservancy Act of 1894 ('the 1894 Act'). It repealed an earlier Act of 1857 in totality. Although it is argued that previous powers were retained in section 62 of the 1894 Act, corresponding powers to those relating to piers and landing places under sections 59, 63 and 64 of the 1857 Act are found under sections 119, 122 and 123 of the 1894 Act (with revised wording). However, the erection of such piers and landing places related to locations below Teddington Lock. The Order route lies to the north of Teddington Lock.
18. Section 62 of the 1894 Act concerned the improvement and completion of the navigation of the Thames for profit or pleasure through a variety of specified works for its navigation, and enabled the TC to erect, maintain, alter, extend, discontinue, remake and re-erect various structures. It provides a more general power regarding works than is specified in relation to piers and landing places (under sections 119, 122 and 123), neither of which are specifically mentioned under section 62.
19. Accordingly, in 1921, 1925 and 1934 when the TC resolved to provide a public landing place at the north end of the island, it was acting under the provisions of the 1894 Act. It is not clear to me that section 62 is the relevant power under which the TC acted in relation to the Minutes. It is suggested the power to improve and complete the Thames navigation did not exclude landing places north of Teddington Lock; and that the term 'wharf' (one of the structures listed) would embrace the provision of a landing place for boats above Teddington Lock. Nevertheless, if acting under section 62, a more general power, the right to 'discontinue' the structures specified suggests that the TC was not empowered to dedicate (in this case) a public landing place for all time, but rather that its provision was qualified, and could cease at any time. No other section of the 1894 Act has been cited under which the TC could have provided a public landing place that was not subject to the power to 'discontinue' works.
20. There is nothing in section 62 referring to the TC's powers as regards the public and nothing to indicate that public access to or from the works referred to was permitted or could be discontinued. Neither is there any provision cited enabling the TC to dedicate a public right of way rather than a right of way the use of which was revocable.
21. A 1962 Memorandum refers to a claimed public right of way at Truss's Island from the highway to the River at the north end of the site, suggesting the Order route was not acknowledged as a public way at the time. This pre-dated the transfer of part of the TC's land (over which the Order route passes) to Surrey County Council ('the Council') in 1963, to be established as public open space (under various Acts including the Local Government Act 1933). Nothing

in the 1963 Conveyance refers to the existence of a public right of way, nor to a landing place.

22. I find the Minutes refer to a landing place and a right of way at the north end of the Eyot which I interpret to be the land over which the Order route passes. A likely and direct destination from here would be the steps at the bottom of Wheatsheaf Lane on the opposite bank of the River. However, there is no evidence of a ferry having operated from this location (public or private) and no mapped evidence of a structure enabling such an operation before 1964. The Act under which the TC operated enabled them to remove facilities provided for public use and it is unclear whether they had the power to dedicate a public right of way for all time or a way the use of which amounted to a permissive right that could be withdrawn.

#### *User evidence*

23. There is reference to an individual mooring his boat at point B and occasionally crossing the River in the 1990s, and there is mention that there used to be a ferry. Nearby is Ferry Avenue which provides access to the land which includes the Order route, although there is no evidence available to me about when or how it came to be so-named. Neither is there any actual evidence that a ferry operated from the Order route. It was under consideration in 1925 (though not progressed at the time due to insufficient demand), and funds were expended on maintaining the landing in 1934. The National Rivers Authority and Environment Agency as successor authorities to the TC regarded the Order route as open space and a public right of way, the latter considering B a landing place owned and dedicated to the public in 1920s. The Council found no evidence of the existence of a public right of way when they acted to close it. Indeed, whilst it may be inferred that there has been use of the route by the public since the 1920s, there is in fact very little evidence to support actual use.
24. The Order route was fenced off in 1999 and correspondence at the time refers to a well-worn path to the River bank. In addition, there is reference from an adjacent landowner and objector to its use (by youths) prior to its closure.

#### *Conclusions*

25. Early mapping shows a way corresponding with the Order route as a spur to the River, linking with and appearing to be part of the highway network. Over time the route ceased to be mapped as a feature, having changed status or fallen out of use. Subsequently, it is depicted on OS mapping as a feature similar in appearance with the Order route itself.
26. As part of the landholding of the TC, I conclude the land parcel referred to in the TC's minutes of 1921 and 1925 is the Order route. It seems the TC did not consider there to be, or had no knowledge of, any existing public rights over the land in question at this time. Various features are described, and monies apparently set aside for their upkeep, although there is no contemporary mapping evidence of their existence. Acting under the provisions of the 1894 Act, the TC was empowered to discontinue and remove facilities provided for public use. It is not clear that they were able to dedicate a public right of way for all time that was not subject to their powers to manage the land in the way described. However, even if the land was dedicated as a public right of way by the landowner, such dedication would require acceptance by the public and

there is very little evidence for this. There is no evidence that a public ferry operated from this location and little evidence of use by the public of the Order route itself either before or after the land was conveyed to the Council in 1963, albeit the possible existence of a public right of way cannot be ruled out.

27. On balance and having regard to the available evidence as a whole, I conclude that whilst it is reasonable to allege that a public right of way subsists over the Order route, it does not lead me to conclude that such a right subsists.

### **Other matters**

28. I note concerns about anti-social behaviour should the Order be confirmed. I also note existing and proposed access to the River in the locality. However, neither are matters that I can consider under the legislation when reaching my decision.

### **Overall Conclusion**

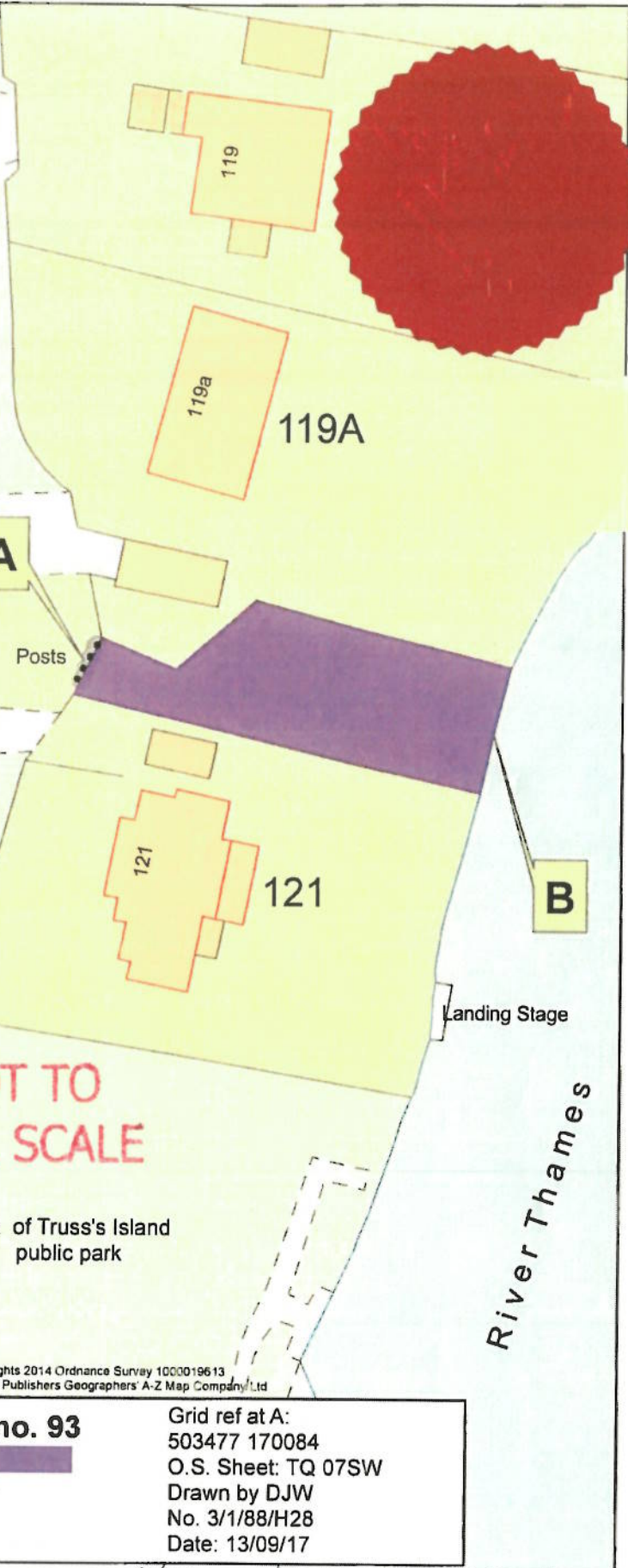
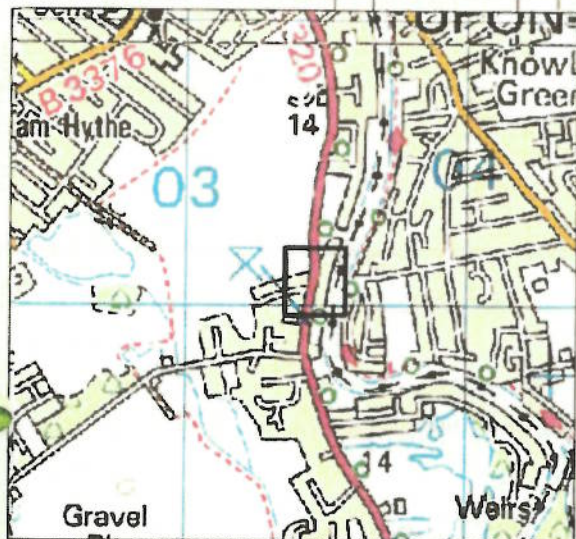
29. Having regard to these and all other matters raised in the written representations, I conclude that the Order should not be confirmed.

### **Formal Decision**

30. I do not confirm the Order.

*S Doran*

**Inspector**



Chertsey Lane

Ferry Avenue

River Thames

MAP NOT TO ORIGINAL SCALE

Part of Truss's Island public park

**Extent of public footpath no. 93 (Egham) shown shaded:**

**A-B = 33 m**

Grid ref at A:  
503477 170084  
O.S. Sheet: TQ 07SW  
Drawn by DJW  
No. 3/1/88/H28  
Date: 13/09/17



**WILDLIFE AND COUNTRYSIDE ACT 1981  
MAP MODIFICATION ORDER  
BOROUGH OF RUNNYMEDE  
EGHAM**

