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## Order Decision

Inquiry held on 18 September 2018

Site visit on 22 October 2019

**by Barney Grimshaw BA DPA MRTPI(Rtd)**

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

**Decision date: 19 November 2019**

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### **Order Ref: ROW/3191253M**

- 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 (Gipping Rural District Definitive Map and Statement)(Parish of Needham Market) Modification Order 2017.
- The Order is dated 12 July 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.
- In accordance with Paragraph 8(2) of Schedule 15 to the 1981 Act I have given notice of my proposal to confirm the Order with modifications to omit the eastern part of one route.

**Summary of Decision: I confirm the Order subject to the modifications that I proposed previously.**

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### **Procedural Matters**

1. I held a public inquiry into this Order on Tuesday 18 September 2018 at the Internet Community Café, Needham Market. I made an unaccompanied site inspection on Monday 17 September when I was able to walk one of the Order routes and view the other. It was agreed by all parties at the inquiry that a further accompanied visit was not necessary.
2. Following advertisement of the notice and deposit of the associated documents relating to the proposed modifications, 2 objections were received within the statutory period specified. One objection was unclear as to which part of the decision was opposed and what further modification the objector wished to see despite him having been contacted with a request to provide clarification. The other objection, made on behalf of the owner of land crossed by one of the Order routes, opposed both the modifications proposed and the Order itself.
3. I subsequently made a further visit at the request of an objector on 22 October 2019 when I was accompanied by the objector and an officer of Suffolk County Council, the Order Making Authority.
4. In writing this decision I have found it convenient to refer to points marked on the Order Map to which I have added an additional annotated point, Point Y. I therefore attach a copy of this map.

## **The Main Issues**

5. With regard to the modifications proposed in my interim decision dated 5 October 2018, the main issues that now require consideration are:
  - i) whether the modifications proposed were justified, and;
  - ii) whether there is any new evidence that has a bearing on the proposed modifications to the Order as submitted.
6. With regard to the whole of the Order, 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.
7. Much of the evidence in this case relates to usage of the routes. In respect of this, the requirements of Section 31 of the Highways Act 1980 (the 1980 Act) are relevant. This states that where it can be shown that a way over land has been enjoyed by the public as of right and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The period of 20 years is to be calculated retrospectively from the date when the right of the public to use the way was brought into question.
8. Common law also requires me to consider whether the use of the routes and the actions of the landowners have been of such a nature that the dedication of them by the landowners can be inferred.

## **Reasons**

### *Objection to Proposed Modifications*

9. The objection on behalf of a landowner opposed the modifications I previously proposed is made on the grounds that public use of a cul de sac route providing access to private property should not be regarded as use leading to the creation of a public right of way.
10. If the Order is modified as proposed in my interim decision, proposed Footpath 20 would be a cul de sac footpath running between Points X and Y. At Point X the path would join another public right of way but at Point Y it would terminate at the forecourt of a parade of shops. This is privately owned land to which the public have no right of access although it would clearly not be in the interests of the landowner to prevent members of the public being able to use the shops.
11. As I stated in my interim decision, there is no legal requirement for a public footpath to join another public highway at both ends and no reason why a cul de sac path leading to a destination to which members of the public are likely to wish to go cannot be a public right of way. In this case the evidence of users clearly indicated that the parade of shops was a destination to which they wished to go and that they used the Order route as proposed to be modified to get there.
12. The objection also raised the hypothetical possibility that the land and shops might at some time in the future be redeveloped in a manner which would be incompatible with public access at Point Y. This may be a possibility but is not

relevant to the determination of the current Order which is based on past use of the route not possible future use. In any event, should the route become unnecessary in the future, it would be possible for the highway authority to then make an order for it to be extinguished.

### *Objection to the Order*

13. The objection sought to argue that the owners of land crossed by proposed Footpath 20 had demonstrated a lack of intention to dedicate a right of way during the relevant period. This argument was considered in my interim decision and I concluded that the available evidence of action by the landowners had been insufficient to rebut the presumption that the route had been dedicated as a public footpath.
14. On my more recent visit my attention was drawn to holes in the wall of No.30a Barking Road adjacent to the Order route. These were said to be consistent with there having been signs attached to the wall. This may well have been the case but, in the absence of information as to when such signs were present, by whom they were erected or their wording, I cannot give significant weight to the possibility that they sought to discourage public use of the route.
15. Other signs said to have been present on the route were considered in my interim decision and no new evidence relating to these has been put forward.

### **Conclusions**

16. Having regard to these and all other matters raised, I conclude that the Order should be confirmed subject to the modifications I proposed previously to amend the line of proposed Footpath 20 to run between Points X and Y rather than X and A.

### **Formal Decision**

17. I confirm the confirm the Order subject to the following modifications:

In the Schedule to the Order, Part I, amend the second paragraph to read:

*"A footpath from a point at Ordnance Survey Grid Reference (OSGR) 60896,25453 (Point X) to a point at OSGR 60900,25453 (Point Y) as shown on the attached map, and"*

In the Schedule to the Order, Part II, amend the second paragraph to read:

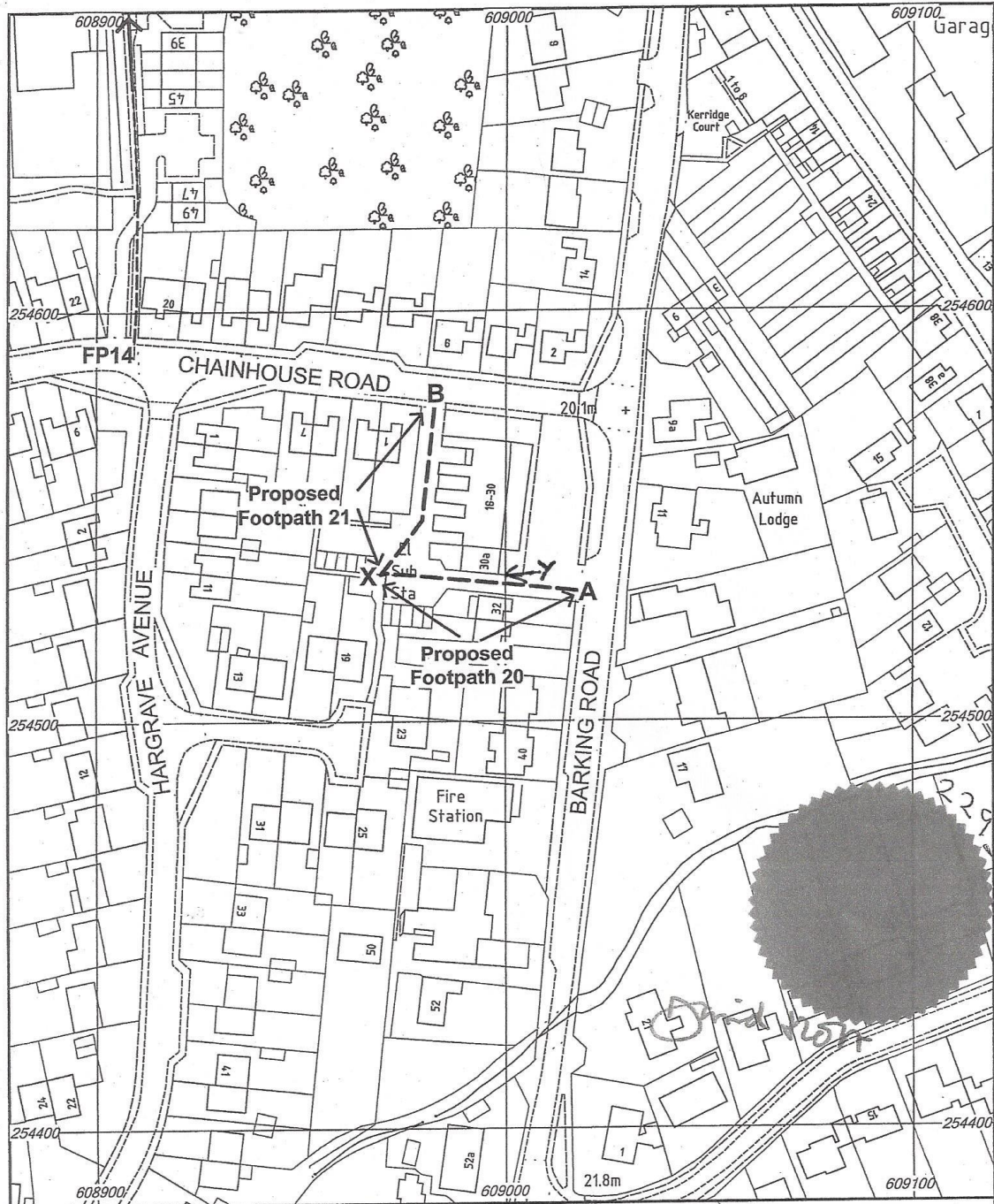
#### **"Needham Market Footpath 20**

*Commencing at its junction with a footway leading from Hargrave Avenue at OSGR 60896,25453 and progressing in an easterly direction over a metalled surface for a distance of 29 metres to the footway in front of the shops at Nos. 16-30a Barking Road at OSGR 60900,25453"*

Amend the Order Map accordingly.

*Barney Grimshaw*

**Inspector**



**PROPOSED PUBLIC FOOTPATHS 20 AND 21, NEEDHAM MARKET**



Proposed Public Footpath (X-A) (X-B)

MAP NOT TO ORIGINAL SCALE  
Scale 1:1250  
N  
W E