
Order Decision

Site visit made on 21 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: 27 November 2019

Order Ref: ROW/3221812

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as The Cambridgeshire County Council (Public Byways Open to All Traffic No.7 Witchford and No.14 Wilburton) Modification Order 2018.
- The Order is dated 14 November 2018 and proposes to modify the Definitive Statement for the area by adding the width of the routes as shown on the Order Map and described in the Order Schedule.
- There were three objections outstanding when Cambridgeshire County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed subject to modifications that do not require advertising.

Procedural Matters

1. I made a site inspection on 21 October 2019 when I was accompanied by objectors and officers of Cambridgeshire County Council, the Order Making Authority (OMA).
2. In writing this decision I have found it convenient to refer to points marked on the Order Maps. I therefore attach copies of these maps.

The Main Issues

3. In this case, the requirement of Section 53(3)(c)(iii) 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 particulars contained in the map and statement require modification.

Reasons

4. The Order route, although referred to as two Byways Open to All Traffic (BOATs) is in fact a single continuous route which happens to cross a parish boundary.
5. The northern part of the route, which is in Witchford parish was awarded as a Private Carriage Road 30 feet (9.1m) wide between ditches in the Witchford Inclosure Award 1839. The southern part of the route in Wilburton parish was awarded as a Private Carriage and Occupation Road of the same width in the Grunty Fen Inclosure Award 1861.

6. Accordingly, it would appear that at the time of the inclosure awards the route was not regarded as carrying any public rights. As there is no record of a formal dedication of the route for public use, it can be presumed that public rights were acquired subsequently under common law as a result of public use.
7. This being the case, it is necessary to try to determine when the route became public and what width was available and used by the public at that time.

When the route became public

8. The OMA considered various historic documents to try to determine when the route might have become public. In the survey carried out under the Finance Act 1910, the route appears to have been excluded for taxation purposes. This is how public vehicular highways were normally dealt with but, it is also the case that some private routes, particularly ones with no known owner and/or used by a number of owners, might have been similarly excluded.
9. The Isle of Ely County Council Highway Handover Map 1929 marks the Order route with a green dashed line. The map key does not indicate the significance of such a line but the OMA states that other routes shown in this way are also now byways and it is therefore considered that the Order route was regarded as a highway maintainable at public expense by 1929.
10. A so-called Soft Roads map produced by the Isle of Ely County Council in around 1960 shows the route as both a soft drove and an unclassified road indicating that it was regarded as a public vehicular route at that time.
11. The route was included in the draft definitive map 1972 as a BOAT.
12. Accordingly, it is difficult to determine a precise date when the route became public but, overall it appears most likely that this occurred at some time between 1861 and 1929.

Width of the route

13. In the absence of evidence to the contrary, it is assumed that the route was originally laid out with a width of 30 feet (9.1m) as specified in the awards. However, it appears that since 1861 its width has altered. Ditches have been widened or otherwise altered in places or partially filled in. In these circumstances, without knowledge of when the route became public and consequently no details of its width at that time, it is very difficult to define the width that should now be recorded.
14. The OMA has made considerable efforts to determine the appropriate width based on consideration of historic maps and photographs, the recollections of users and the commissioning of a detailed topographical survey by an expert surveyor. As a result, widths varying between 5m and 8.75m have been specified at 46 points along the length of the route. However, the conclusions reached are disputed in some parts by adjoining landowners.
15. The disputed widths are situated in the sections of the route adjoining areas where development has taken place or the pattern of land use has altered since the route was established, namely between Points A to B and Points L to S.
16. In other parts of the route, the available width appears to have been less problematic to determine and is not disputed. In these sections, in the absence of any information to the contrary, I have no basis on which to differ from the

view of the OMA as set out in the Order with regard to the most likely width when the route became public. I therefore concentrate my consideration on the sections of the route where the width is disputed.

Section A-B

17. In this section the owners of adjoining properties on both sides of the route have disputed the boundary of the route described by the OMA and used to calculate the available width of the byway.
18. On the eastern side, the OMA has taken the view that the property, No.243 Main Street, was constructed immediately alongside a 1.2m wide ditch at the side of the route. The owner of the property has asserted that this could not have been the case as the building would have been unstable. The ditch has long since been filled in, possibly before the building was constructed, and its precise location and width cannot therefore be precisely determined. However, it is argued that, in view of the shallow foundations of the building and the nature of material used to fill the ditch, the building would not have survived without damage if it had been built on the edge of the ditch. It is therefore suggested that the western wall of the property was built around 1 metre to the east of the ditch and accordingly the eastern edge of the route was 2.15m to the west of the property at the corner of Main Street. This is said to be confirmed by the extrapolation of the line of the boundary of the ditch further to the south.
19. On the western side of this section, the original ditch has also been filled in and, whilst it is agreed that the eastern edge of that ditch formed the boundary of the route, it is disputed between the OMA and the owner of the adjoining property, No.1 Sutton Road, precisely where this lay.
20. The present boundary of No.1 Sutton Road is marked by a lilac hedge which was said to have been planted on the edge of the former ditch by the OMA or slightly to the west of that line by the objector. As a result, the OMA states that at Point A the western edge of the Order route lies 1 foot (30cm) to the west of a stench pipe whereas the objector claims that it is only 8" (20cm) from the pipe. Further disagreement results from the objector's view that the edge of the byway follows a straight line south of Point A which can be drawn through other points identified by the OMA. On the other hand, the OMA takes the view that the route follows a slightly curving line based on its depiction on the 1885 Ordnance Survey (OS) map. The OMA has however, accepted that the western edge of the Order route at Point B should be 4cm further west than described in the Order.
21. In my view both the OMA and the objectors have made plausible arguments regarding the alignment and width of the Order route in this section. The result is that I find myself unable to conclude with any certainty what the correct width of the route is.
22. In such circumstances, official advice suggests that a width should be recorded which appears appropriate having regard to all relevant factors which may include the type of user, location and the nature of the surface. The width should also be at least adequate for the reasonable exercise of the public right and enough for two users to pass in comfort, except at occasional pinch points. The Order route is a BOAT which means that although it is open to all traffic, it is expected to be used mainly by pedestrians and horse and bicycle riders. In

general terms, a width of about 5m might be regarded as adequate for such a route. However, in this case it is clear that the route has historically been significantly wider than this. Also, the route can be expected to need to accommodate large agricultural vehicles on occasion and will serve as the vehicular access to a housing development. In the light of these factors I intend to modify the Order so as to record a width of 7.0m at Points A and B.

Points L-S

23. In this section, the boundary of the adjoining land to the east of the Order route is marked by a post and wire fence said to have been in place for 60 years. The OMA has concluded that this fence encroaches on to the route by a varying distance up to 1.5m. This alleged encroachment occurs between points to the south of Point N and to the north of Point R.
24. The 1975 OS map shows two continuous boundary lines on the eastern side of the route between Points L and S. The objector argues that these indicate the two sides of the ditch in this section and that the westernmost line is in fact his property boundary and the eastern limit of the byway. The OMA points out that this is the only section of the route where two boundary lines are shown. Whilst it is accepted that this might indicate the two sides of the ditch which was found to be much wider in this section than elsewhere, it is suggested that it is more likely that the western line represents another physical feature such as a fence or hedge. This conclusion is said to be borne out by reference to aerial photographs taken in 1969 and 1988. However, this is not clear from the copies of these photographs that I have seen.
25. In the topographical survey, the edge of the ditch depicted between Points M and O is significantly further to the west than elsewhere. The OMA considers this shows that the ditch was widened in this section resulting in an encroachment onto the Order route.
26. Again, I find myself unable to conclude with any certainty what the correct width of the route is as there are plausible arguments on both sides and no firm basis on which to determine which, if either, is correct. I therefore intend to adopt a similar approach to that taken for section A-B and modify the Order so as to record a width of 7.0m at Points O to Q.

Conclusions

27. Having regard to these and all other matters raised, I conclude that the Order should be confirmed subject to the modifications referred to above. As these modifications will not affect any land not otherwise affected by the Order, they do not necessitate any further advertisement.

Formal Decision

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

In the Schedule to the Order, Part II, modify the width at Points A, B, O, P and Q to 7.0 metres.

Barney Grimshaw

Inspector



