
Order Decision

Site visit made on 7 January 2020

by Barney Grimshaw BA DPA MRTPI(Rtd)

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

Decision date: 13 January 2020

Order Ref: ROW/3222923

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as The Nottinghamshire County Council (East Markham Byway No.33) Modification Order 2005.
- The Order is dated 4 November 2005 and proposes to modify the Definitive Map and Statement for the area by adding a Byway Open to All Traffic running between Low Street and High Street, East Markham, as shown on the Order Map and described in the Order Schedule.
- There were 10 objections outstanding when Nottinghamshire 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.

Procedural Matters

1. I made an unaccompanied site inspection on 7 January 2020 when I was able to walk the whole of the Order route.
2. I attach a copy of the Order Map for reference purposes.

The Main Issues

3. 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 a right of way that is not shown on the definitive map and statement subsists along the Order route.

Reasons

4. The available evidence relevant to the determination of this Order is entirely documentary. No substantive evidence of public use of the Order route has been submitted.
5. Four documents were referred to in the application for the Order which was made in 2004 although the documents themselves were not submitted.
6. Nottinghamshire County Council, the Order Making Authority (OMA), has examined these and other relevant documents and I summarise the findings below, starting with the four documents referred to by the applicant.

East Markham Vestry Book

7. This book, commenced circa 1600, contains several entries relating to the annual letting of lanes for grazing. However, none of the entries appear to relate to the Order route.

East Markham Inclosure Award 1816

8. This refers to the Order route as a parcel of land allotted to the Masters, Fellows and Scholars of Trinity College. The sections of the award relating to the setting out of new ways or the stopping up of existing ones contain no reference to the Order route.

Deposited Plans for the Great Northern Railway Tuxford Deviation 1846

9. These plans relate to land elsewhere and not to the Order route.

Finance Act 1910

10. The Order route is shown uncoloured and excluded from adjacent hereditaments on the valuation maps prepared under this Act. This is the manner in which public roads were usually depicted but there were also other reasons why some routes were excluded in this way.

Ordnance Survey (OS) Plans

11. OS plans dated 1885 and 1920 show the Order route, which is named as College Lane on the 1920 plan. The route is crossed by solid lines at both ends probably indicating the presence of gates. OS plans did not seek to indicate the status of routes but simply showed features present on the ground at the time of survey.

Highway Handover Maps

12. Responsibility for highways transferred from Rural District Councils to County Councils under the Local Government Act 1929. Handover Maps prepared at this time showed routes for which the highway authority accepted responsibility for maintenance. The Order route was not shown as such a route.

The Definitive Map Process

13. The Order route was not claimed as a public highway of any sort in the survey carried out by the parish council in 1952 in connection with the preparation of the first definitive map. The route was not shown in the first map or any subsequent versions of it.

Aerial Photographs

14. Various aerial photographs taken between 1974 and 2000 show the Order route but cannot indicate whether there were any public rights over it.

Planning Agreement 2000 (Town and Country Planning Act 1990, Section 106)

15. Under this agreement, the developers of housing at College Farm, adjacent to the Order route, agreed to construct a footpath along the Order route and transfer the ownership of it to the District Council. As a result, the route is now available for public use as a footpath but there are signs at each end stating that it is not a public right of way.

Conclusions regarding Documentary Evidence

16. Although the Finance Act 1910 documents could be suggestive of public vehicular rights over the Order route, the majority of the evidence available from before and since gives no indication of the existence of any public rights over the route. Accordingly, on the balance of probability it is my view that the route has not been shown to be a public right of way of any sort. I also note that having reviewed the evidence, the OMA has requested that the Order should not be confirmed.

Other Matters

17. One objector has pointed out certain technical defects in the Order which could have necessitated its modification if it were to be confirmed. However, in the light of my conclusions regarding the documentary evidence, it is not necessary to pursue these matters any further.

18. As a number of objectors to the Order referred to the route being used by pedestrians, the OMA considered whether the route might have been established as a public footpath before 2000. However, in the absence of substantive evidence of public use, this possibility was not pursued further.

Conclusions

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

Formal Decision

20. I do not confirm the Order.

Barney Grimshaw

Inspector

