
Order Decision

Inquiry held on 14 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: 28 January 2020

Order Ref: ROW/3174602M

- 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 (Thingoe Rural District Definitive Map and Statement)(Parish of Hepworth) Modification Order 2017.
- The Order is dated 13 February 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 amend the alignment of one section of footpath, to add an additional section and to amend the width of the paths.

Summary of Decision: The Order is confirmed subject to the modifications I proposed previously and a further modification to the width of the footpaths which does not require advertising.

Procedural Matters

1. I held a public inquiry into this Order on 14 August 2018 at Hepworth Pavilion. I made an unaccompanied site inspection on Monday 13 August when I was able to view but not walk the Order routes. It was agreed by all parties at the inquiry that a further accompanied visit was not necessary.
2. The effect of this Order, if confirmed subject to the modifications I proposed in paragraph 30 of my interim decision issued on 25 October 2018, would be to add to the definitive map two public footpaths; one, Footpath 10, running from Beck Street on the western side of Ivy Nook Farm south south-easterly along a farm access track and then generally south south-westerly across fields to join Hepworth Restricted Byway 8 (Wood Lane) and the other, Footpath 11, running from Beck Street, west of Dormer Cottage, generally south south-easterly to join Footpath 10. The paths would be 1.5 metres wide throughout.
3. Following advertisement of the notice and deposit of the associated documents relating to the proposed modifications, 3 objections were received within the statutory period specified.
4. I subsequently held a further inquiry on 14 January 2020 and made a further inspection of part of one Order route accompanied by parties who attended the inquiry. Suffolk County Council, the Order Making Authority (OMA), adopted a neutral stance at this second inquiry. As there was nobody present at this

inquiry who wished to support the confirmation of the Order as proposed to be modified, the proceedings took the form of a less formal hearing at which objectors were questioned by myself.

5. In writing this decision I have found it convenient to refer to the Order Map. I therefore attach a copy of this map on which I have annotated a number of points (A-F).

The Main Issues

6. 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.

Reasons

7. Objections related not only to my proposed modifications but also to the rest of the Order. I therefore address all the issues raised but have tried to avoid unnecessary repetition of matters dealt with in my interim decision.

The Hepworth Inclosure Award 1817

8. I afforded considerable weight to this award in my interim decision. At the second inquiry it was stated that two documents, both particularly relevant to the determination of the Order, conflicted with one another. The 1817 Inclosure Award indicated that the Order routes should be recorded as public footpaths whereas the Definitive Map did not record them. In the absence of evidence to the contrary both these documents could be presumed to have been properly prepared. It was argued that, as the conflict between them could not be reconciled, the more recent, the Definitive Map, should be given precedence. However, definitive maps are only 'definitive' in as much as routes shown are public rights of way; they do not purport to exclude the possibility that other routes, which are not shown might also carry public rights. Indeed, routes are regularly added as a result of modification orders such as this. Accordingly, in my view there is no irreconcilable conflict and the Definitive Map does not rule out the possibility that the Order routes are public footpaths.
9. It was further argued that, even if it is accepted that the intention of the Inclosure Award was to establish public footpaths, this does not mean that is what actually happened. However, Ordnance Survey (OS) maps prepared after the award show that the routes existed on the ground when they were surveyed. Such maps are generally accepted to accurately represent features that were present although they do not indicate whether routes shown were public or private. In this case, since the award clearly refers to the routes as public footpaths and the OS maps indicate that the routes existed after the award, it is my view that on the balance of probability it is most likely that the routes were public footpaths.
10. If the routes were public after the award they would remain so unless or until they were formally extinguished. The OMA had discovered no evidence to indicate that the routes had ever been extinguished. Nevertheless, it was suggested on behalf of objectors that such evidence might exist. Records prepared under the 1910 Finance Act had not been consulted and it was possible that the routes might have been stopped up by other means such as

use of the Emergency Powers (Defence) Act 1939. However, no substantive evidence of any stopping up was adduced and it cannot therefore be assumed that any took place.

The Definitive Map

11. The first Definitive Map was prepared after a parish survey carried out by the parish council. Each parish council should have received a guidance memorandum advising them how to carry out the survey and which documents to consult, including any inclosure award. It was argued on behalf of objectors that this meant that the award could not now be regarded as 'new' evidence and that it is not the purpose of modification orders merely to re-consider evidence that had already been considered in the preparation of the definitive map.
12. In this case, the schedules prepared in the parish survey are not available, but the accompanying map showed the routes B-D and C-D-F-E. These routes were not accepted by the county council and not included in the first Definitive Map. Neither the reasons for the routes to apparently have been claimed by the parish council nor to be rejected by the county council are known. In these circumstances, it cannot in my view be assumed that either the parish council or the county council considered the inclosure award as part of the process.
13. In addition, the implications of inclosure awards regarding the award of public footpaths has been clarified more recently as the result of a judgement in the Court of Appeal¹ and it is in my view appropriate that this judgement should be considered in relation to the present case.

Route A-B

14. The evidence relating to this section of route is less consistent than that for other sections. However, it is marked in red on the plan entitled "*Plan of the Parish of Hepworth as refers to the annexed Award*". This indicates that it was regarded as an existing road or footpath which was to remain.
15. Along with the rest of the Order routes it has not been shown on the definitive map although it has been proposed to be added to it on two occasions.
16. In my view the most significant factor affecting this section concerns the diversion of section B-D. This section was not included in the land covered by the inclosure award but the 1815 Inclosure Act, which preceded the award, specifically authorised the commissioners to divert other ways elsewhere in the parish. This was a relatively unusual provision in such acts. Subsequently, the commissioners did divert section B-D which was clearly described as a public footpath. It seems to me to be inconceivable that the commissioners would have taken the trouble to make this diversion if the path had been a cul de sac terminating at Point B and thus serving no apparent public purpose. It therefore seems most likely that section A-B was regarded as a public route of some sort linking Point B to the public road at A.
17. Objectors drew my attention to what was described as the site of a former pond which could have obstructed the line of the path (probably between B and D). However, no pond is shown on the maps associated with the inclosure award or the 1883 or 1904 OS maps.

¹ R (on the application of JD Andrews) v Secretary of State for Environment, Food and Rural Affairs [2015]

Width of routes

18. In my interim decision, I proposed that the width of the paths should be recorded as 1.5 metres throughout, this being a width that would allow two path users to pass in comfort. On behalf of objectors it was argued that most of the Order routes run across arable fields and that the Highways Act 1980 specifies that the minimum width of such paths that should be reinstated after ploughing is 1 metre. In addition, it was argued that the nature and location of the paths are such that they are unlikely to be subject to heavy use. In these circumstances, it was suggested that the minimum width of 1 metre would be adequate for these paths. I accept that there is some merit in this argument and that it would be undesirable to impose a greater width than necessary on landowners. I therefore propose to further modify the Order to specify a width of 1 metre throughout each path.

Limitations

19. The Order routes cross a number of ditches and field and other boundaries which are shown on the maps associated with the inclosure award and later OS maps, some of which have subsequently changed. It was suggested that it would therefore be appropriate to record the routes as being subject to some lawful limitations if the Order is to be confirmed.

20. However, part of one Order route was awarded in 1817, other sections appear to have already existed at that time. I have no basis upon which to determine what, if any, limitations on public use of the routes were present when public rights were established. In these circumstances, it is not in my view possible to include in the Order any specific limitations.

Other Matters

21. It appears that a plan placed on site along with the notice of the inquiry was slightly inaccurate in that it did not clearly indicate the proposed addition of section A-B. The notice itself did however correctly describe the proposal.

22. It was suggested that the inaccurate map might have confused some people who viewed it. However, people with an interest in the land affected by this proposal seem to have been well aware of the proposed modification of the Order and lodged objections to it. It is conceivable, but in my view unlikely, that others, possibly potential supporters of the proposed modification, might have been confused. On balance, it is my view that no person's interests will have been prejudiced and I do not think the determination of the Order should be affected.

23. A number of concerns were raised regarding the potential detrimental effect the confirmation of the Order might have on the management of land and the security and privacy of properties. It was also suggested that walkers sharing the farm access track with farm machinery could prove dangerous. I understand these concerns but, as they lie outside the criteria in the relevant legislation, I can give them no weight in reaching my decision.

24. It was further suggested that the proposed paths are unnecessary and that opening them up could have a detrimental affect on wildlife. Again, these are matters outside the criteria in the relevant legislation which can be given no weight in this decision.

Conclusions

25. 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 add the route between Points A and B and to amend the route between Points D and F to reflect that shown on the 1883 OS map plus a further modification to specify the width of the footpaths as 1 metre throughout.

Formal Decision

26. I propose to confirm the Order subject to the following modifications:

In the Schedule to the Order, Part I, amend the grid reference in the second line from 59892,27594 to 59888,27599;

In the Schedule to the Order, Part II, delete the following words at the beginning of the first paragraph "*Commencing on a track south-east of Ivy Nook Farm at Ordnance Survey Grid Reference (OSGR) 59892,27594 and...*" and in their place add the words "*Commencing on the southern side of Beck Street (U6412) on the western side of Ivy Nook Farm at Ordnance Survey Grid Reference (OSGR) 59888,27599 running along a track in a south-easterly direction for 69 metres to OSGR 59892,2759 then...*";

In the Schedule to the Order, Part II, modify the width of both footpaths to be 1 metre throughout and delete references to the 1883 OS map.

Modify the Order Map to reflect the above and a slight re-alignment of the route between points D and F

Barney Grimshaw

Inspector

APPEARANCES

For the OMA

David Last	Definitive Map Officer, Suffolk County Council
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Objectors

Andy Dunlop	Representing CWG & RB Hatten and RJ Burton
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Julia Hatten	Landowner
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Stephen Hatten	Landowner
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Guy Hatten	Landowner
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Hugh Burton	Landowner
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R Burton	Landowner
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Peregrine Penn	Local resident
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Interested parties

Joanne Spicer	County Councillor
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DOCUMENTS

1. Statement on behalf of Mr Burton and other statutory objectors, A Dunlop.
2. Letter from Mrs Julia Hatten, dated 25 October 2019.
3. Email from Mr Hugh Burton, dated 3 November 2019.
4. Letter from Mr Peregrine Penn, undated.

