



Interim Order Decision

Inquiry held on 26 June 2018

Site visit held on 28 January 2020

by Martin Elliott BSc FIPROW

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

Decision date: 25 February 2020

Order Ref: ROW/3187903M

- 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 (Annesley Bridleway Nos. 2, 3 and 24 and Greasley Footpath No. 10 and Bridleway Nos. 11 & 85) Modification Order 2016.
- The Order is dated 8 January 2016 and proposes to modify the Definitive Map and Statement for the area by adding a bridleway near Felley Mill, upgrading a network of footpaths to bridleway status and consequential amendments to the Definitive Statement as detailed in the Order map and Schedule.
- In accordance with Paragraph 8(2) of Schedule 15 to the 1981 Act notice of the proposal to confirm the Order subject to modifications has been given. Two objections were received in response to the notice.

Summary of Decision: The Order is proposed for confirmation subject to some of the modifications previously proposed and further proposed modifications.

Procedural Matters

1. An inquiry was held into the Order on 26 June 2018 by Inspector Lowe. It is the usual procedure for the Inspector who proposes modifications to an Order to continue to its final determination. However, Inspector Lowe is unavailable and I have been appointed to consider the objections to the proposed modifications.
2. The proposed modifications are in summary:
 - Annesley Footpath No. 2 (between SK48604999 and SK 48854991); delete from the Definitive Map and Statement instead of the proposed upgrading. This is due to the discovery that the 1962 Annesley (Felley Mill) Diversion Order had no legal effect.
 - Annesley Bridleway No. 2 (between SK 4861 5000 and SK 4885 4991); add to the Definitive Map and Statement on the basis of evidence discovered after the making of the Modification Order.
 - Annesley Bridleway No. 2 (between SK 4885 4991 and SK 49895164); amend the particulars contained in Part 1 and Part 2 of the Modification Order.
 - Annesley Footpath No. 3; amend the particulars contained in Part 2 of the Modification Order to reflect the proposed termination points being bridleways instead of footpaths.
 - Annesley Bridleway No. 3; remove the proposed upgrading of Footpath 3.

Annesley Bridleway No. 25; add to the Definitive Map and Statement on the basis of evidence discovered after the making of the Modification Order. Greasley Bridleway No. 11; amend the particulars in respect of the northernmost termini.

3. The Council makes the point that an objection has been made in relation to an issue not referred to in the Interim Decision (limitations). It is contended that further determination of that point falls outside the Inspector's powers. Whilst Schedule 15 of the 1981 Act provides an opportunity to comment on proposed modifications, until a decision is made on the Order it is open to any party, whether or not involved in the original inquiry, to make representations in respect of the unmodified part of the order. The Notice of Order, relating to the proposed modifications, indicates that evidence is invited in respect of limitations. In the circumstances it is appropriate for this matter to be considered further.

The Main Issue

4. One objection is based on three grounds:
 - (i) That the Inspector has misdirected himself as to the provision of statute. Section 53(3)(C)(iii) provides for modification of the definitive map and statement on the basis that there is no public right of way over land shown in the map and statement as a highway of any description, or any particulars contained in the map and statement require modification. However, the recital in the Order only refers to the second limb of the provision (underlined) whereas the Inspector refers to the full provision in his decision. Whilst the Order only engages the second limb the Inspector purports to apply the test in the first limb of the section.
 - (ii) At paragraph 12 of the interim decision reference is made to the Annesley (Felley Mill) Public Path Diversion Order of 1962 (the 1962 Order) made under section 119¹ of the Highways Act 1959 being void. The objector contends that for the order to be void it must have been made by the engagement of powers not available to the order making body. The modification to delete Annesley Footpath 2 (between SK 48604999 and SK 48854991) on the basis that the 1962 order had no legal effect is founded on a clear misdirection.
 - (iii) The Order proposes to confirm the Order to include 'limitations' of three variously described gates. It is asserted that for the gates to be recorded as limitations they must have existed at the date of dedication of the highways (or created later by a statutory process) which the Inspector finds as being sometime before 1774, that being 'time out of mind'. The Inspector does not put his mind to evidence that the gates, or predecessors, existed at the time of dedication, were in the same place and have not become more onerous against highway users.
5. The main issue is whether, in the light of the objections, the proposed modifications in respect of Annesley Footpath 2 should be pursued and whether the Order should be modified further in respect of limitations on Annesley Bridleway 2 and Greasley Bridleway 85. No objections have been raised in

¹ Subsequent submissions from the objector point out that the correct section of the 1959 Act is section 111, I agree and the copy of the diversion order refers to section 111.

relation to the other proposed modifications or any other part of the Order and accordingly the Order should be confirmed in this respect.

Reasons

Relevant provision (objection i)

6. The Order as made refers to events specified in sections 53(3)(b), 53(3)(c)(i), (ii) and (iii). In respect of 53(3)(c)(iii) the second limb is quoted namely that other particulars contained in the map and statement require modification.
7. Where, '*...in the course of an inquiry, facts come to light which persuade the inspector that the definitive map should depart from the proposed order, he should modify it accordingly, subject to any consequent representations leading to a further inquiry.*'² In respect of this Order the first Inspector found that, in consequence of the conclusions on the 1962 diversion order, a section of Footpath No. 2 to be upgraded to a bridleway should be deleted from the definitive map and statement.
8. In consequence of the findings of the first Inspector the Order was modified to include the first limb of section 53(3)(c)(iii); that there is no public right of way over land shown in the map and statement as a highway of any description. As a result of the proposal to delete Footpath 2 from the definitive map and statement, and other proposed modifications, the modifications needed to be advertised by virtue of paragraph 8(2) of Schedule 15 to the 1981 Act. Given the need to advertise the proposed modifications an opportunity has been given for representations/objections to be made. The intentions of the modified Order are clear in its intentions and there is nothing to suggest that anyone will have been misled or prejudiced by the modification of the Order. Accordingly I conclude that it was within the powers of the first Inspector to modify the Order by the inclusion of the first limb of section 53(3)(c)(iii). However, my conclusions in respect of the effect of the 1962 diversion order are relevant in respect of this matter (paragraph 13).

1962 Annesley (Felley Mill) Public Path Diversion Order (objection ii)

9. The 1962 order was made under the provisions contained in section 111 of the Highways Act 1959. The order provided for the diversion of the route of what is the modified section of Order route 2 (SK 4861 5000 to SK 4885 4991) to a more southerly route shown as route 2 on the unmodified Order (SK 4860 4999 to SK 4885 4991). The Schedule describing the existing path or way describes the route to be diverted as a public footpath. The Schedule describing the new path identifies the route as a public footpath. There is no evidence before me to indicate that the order was not confirmed or that the confirmation of the order was challenged such that the order had no effect. Consequently the effect of the order was to divert public footpath rights. The Order would have no effect on any existing bridleway rights. I would agree with the objector that the 1962 order is not void.
10. I note the comments made by the Council and I would accept that the powers under section 111 of the 1959 Act are restricted to creating a footpath or bridleway. However, the 1962 Order makes it clear that the public right of way subject to the diversion is a public footpath.

² *Trevelyan v Secretary of State for Environment, Transport and the Regions* [2001] EWCA Civ 266

11. The effect of the diversion order gives rise to an anomalous situation where footpath rights were diverted to the more southerly route. However, bridleway rights remain on the original route.
12. Bearing in mind the above I conclude that the modification to add a section of bridleway 2 (grid reference SK 4861 5000 to SK 4885 4991) should stand. However, in respect of the modification to delete footpath 2 (grid reference SK 4860 4999 to SK 4885 4991), this footpath was established in consequence of the 1962 order and there is no evidence that the route has subsequently been extinguished. As such the public footpath remains as recorded on the definitive map.
13. The Order, as submitted, proposes to upgrade the route of the footpath to a bridleway. However, in view of my findings this route is unaffected by the Order and consequently will not be shown in the Order as submitted. The proposed modification to remove this route from the Order as a route to be upgraded will therefore require further advertisement. Additionally, in consequence of my conclusions the proposed modification to insert the first limb of section 53(3)(c)(iii) of the 1981 Act into the preamble of the Order should not be pursued as the route is not being deleted from the definitive map and statement.

Limitations (objection iii)

14. The unmodified part of the Order identifies limitations on Annesley Bridleway 2 (swing gate and farm gate) and Greasley Bridleway 85 (farm gate). It is noted that the first Inspector has not put his mind to the existence of limitations but it is also noted from the submissions from the Council that there is no conflict with the written evidence as to the existence of the various gates. Further, no objector attended the inquiry and no evidence was given in respect of limitations. As such it was not a matter in dispute at the inquiry. Nevertheless an objection has now been raised in connection to the limitations.
15. I note the Council's references to *R -v- Hull Prison Board of Visitors, ex p St Germain and others (No 2) [1979] 3 All ER 545* and *R(A) -v- The Secretary of State for Justice [2010] EWHC 1250 (Admin)*. However, as noted above, no evidence was given to the inquiry in respect of any limitations. It was not the case that evidence was given but not disputed, the existence as to limitations does not appear to have been given any consideration. Given that the limitations are recorded in the Order it is necessary to show that any dedication was subject to those limitations.
16. I have examined the evidence before me and the earliest Ordnance Survey maps from 1879 might indicate the existence of barriers across Bridleway 2 at locations identified in the Order. The parish survey³ in respect of Bridleway 2 refers to a '*swinging gate*' and a five barred gate although the survey provides no detail as to their locations. In respect of Bridleway 85 the Ordnance Survey and other maps indicate that the route was open to the vehicular highway at the point where a gate is identified as a limitation. The parish survey refers to gates where the route crosses the former mineral railway line. The Estate plan of 1867 refers to a number of gates and contains a note which refers to a bridle gate with '*the large gate being removed by me in 1852*' signed by B Heptonstall. However, this is not one of the gates identified in the Order.

³ Under the National Parks and Access to the Countryside Act 1949

17. Whilst there is evidence of gates on the various Order routes there is nothing to indicate that the gates were present at the time of dedication; the first Inspector concludes that this was at least 1774. I noted on my site visit that gates were present at the locations identified in the Order. However, these appeared to be more recent structures although of course there may have been other gates at these locations previously. I would acknowledge that there was no evidence at the inquiry in respect of the limitations, and that the matter was not in dispute. Nevertheless for me to reach a conclusion that the routes were dedicated subject to the limitations identified I would need such evidence.
18. Accordingly I conclude that the references in the Order to limitations should be removed.

Other Matters

19. The other objection to the proposed modifications is that the proposed addition to the route of Bridleway 2 is unnecessary given its proximity to Bridleway 24. It is stated that the route follows no definable route, crosses a small field and will impose excessive obligations to maintain. It is further unnecessary as Bridleway 24 joins up with existing Annesley Bridleways 4 and 1 thereby obviating the need for the path.
20. Whilst I note this objection, issues relating to suitability, desirability and need are not matters which can be taken into account in the determination of an Order made under section 53 of the 1981 Act. The Council refer to provisions in Section 118 of the Highways Act 1980 in respect of this objection.

Conclusion

21. Having regard to these and all other matters raised in the written representations I conclude that the Order should be confirmed subject to some of the modifications previously proposed and further modifications.

Formal Decision

22. The Order is proposed for confirmation subject to the following modifications:
- In the preamble to the Order delete the proposed modification relating to section 53(3)(c)(iii) leaving the Order unmodified in respect of the reference to this section.
 - At Part I of the Schedule to the Order delete the proposed modification relating to the 'Description of the path or way to be deleted'.
 - At Parts I and II of the Schedule to the Order in respect of Annesley Bridleway No. 2 and Greasley No. 85 delete the Limitations and insert 'None'.
 - At Part II of the Schedule to the Order insert a modification to describe the unaffected section of Annesley Footpath No 2 (between SK4860 4999 and SK 4885 4991) in consequence of the effect of the 1962 diversion order.
 - On the Order map, in respect of Annesley Footpath No. 2, delete the symbols depicting 'Footpath to be upgraded to bridleway' and insert symbols to show 'Existing unaffected path'. On the insert plan (Annex 3 to the interim decision dated 20 February 2019) replace the solid line depicting 'Footpath

to be Deleted' with a dashed line to show 'Unaffected Footpath' and amend the key accordingly.

- Annesley Bridleway No. 2 (between SK 4861 5000 and SK 4885 4991); add to the Definitive Map and Statement.
 - Annesley Bridleway No. 2 (between SK 4885 4991 and SK 4989 5164); amend the particulars contained in Part I and Part II of the Modification Order.
 - Annesley Footpath No. 3; amend the particulars contained in Part II of the Modification Order to reflect the proposed termination points being bridleways instead of footpaths.
 - Annesley Bridleway No. 3; remove the proposed upgrading of Footpath 3.
 - Annesley Bridleway No. 25; add to the Definitive Map and Statement on the basis of evidence discovered after the making of the Modification Order.
 - Greasley Bridleway No. 11; amend the particulars in respect of the northernmost termini.
23. Since the confirmed Order would not show a way in the Order as submitted I am required by virtue of Paragraph 8(2) of Schedule 15 to the Wildlife and Countryside Act 1981 to give notice of the proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modifications. A letter will be sent to interested persons about the advertisement procedure.

Martin Elliott

Inspector

INSERT PLAN

Nottinghamshire County Council

(Annesley Footpath No.3 and Bridleway Nos. 2, 24 & 25

And Greasley Footpath No.10 and Bridleway Nos 11 & 85)

Modification Order 2016

Scale 1:5000



KEY



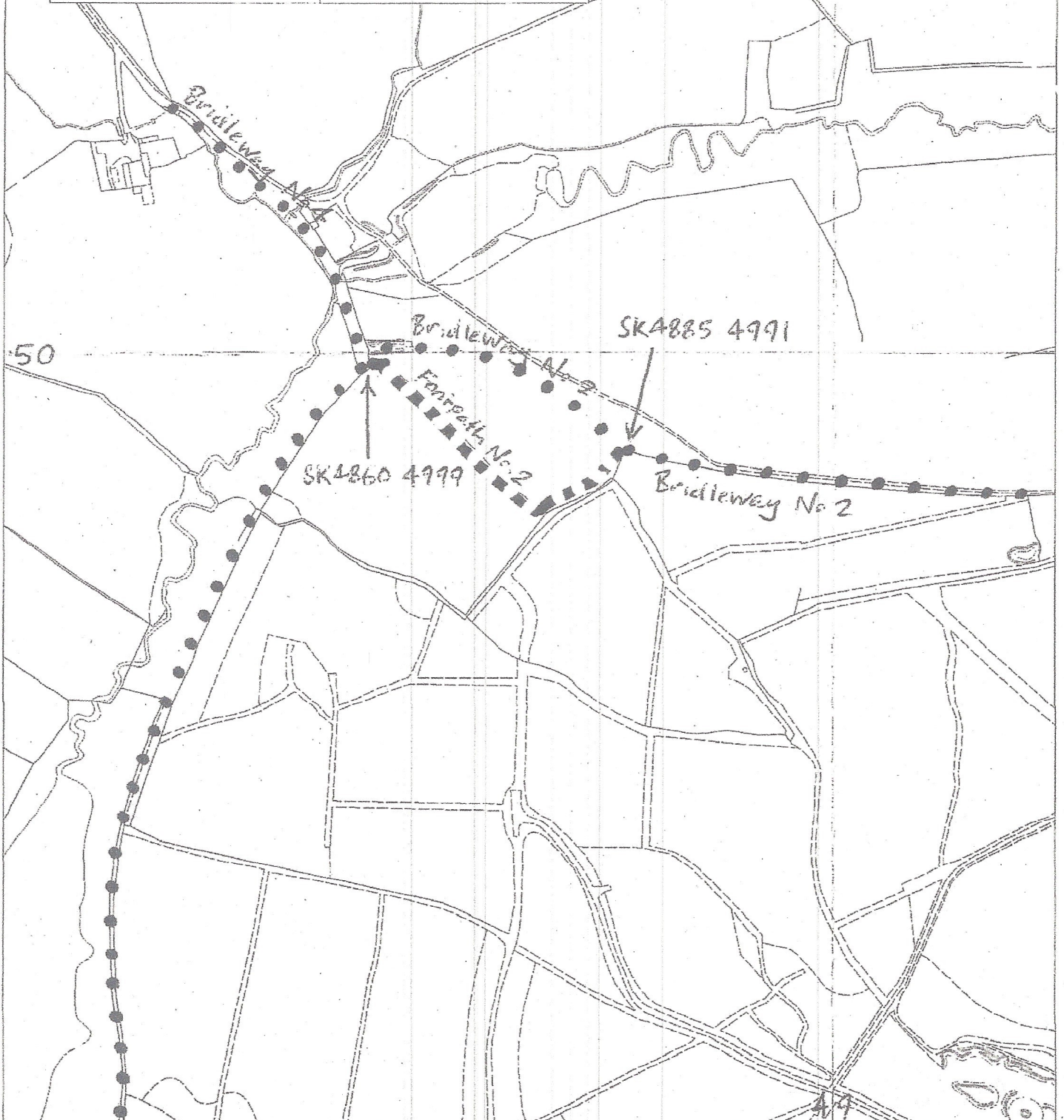
Unaffected Footpath.

~~Footpath to be Deleted~~



Existing Path Unaffected

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Nottinghamshire County Council

Scale 1:10000

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WILDLIFE & COUNTRYSIDE ACT 1981

Nottinghamshire County Council (Annesley Bridleway

Nos. 2,3 & 24 and Greasley Footpath No.10 and

Bridleway Nos. 11 & 85) Modification Order 2016

Key:

Existing unaffected path:



Footpath particulars to be varied:



Bridleway to be added:



Footpath to be upgraded to bridleway:



FELLEY CP

Annesley Park

SK 49895164

ANNESLEY CP

SK 50075118

SK 50075097

SK 48585014

SK 49765018

SK 50045027

SK 49644997

SK 48615000

SK 48615000

1860 4799

SK 4885 4791

SK 48934990

SK 49834950

SK 50204923

SK 50304923

SK 49824880

SK 49834886

