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## Order Decision

Site visit made on 27 August 2020

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

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

**Decision date: 16 September 2020**

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### **Order Ref: ROW/3235736**

- 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 (Parish of Cavenham) Modification Order 2019.
- The Order is dated 20 May 2019 and proposes to modify the Definitive Map and Statement for the area by adding a Byway Open to All Traffic (BOAT) running between the U6211 road and the parish boundary with Lackford by way of Cavenham Mill, as shown on the Order Map and described in the Order Schedule.
- There were two objections outstanding when Suffolk 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.**

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#### **Procedural Matters**

1. I made an unaccompanied site inspection on 27 August 2020 when I was able to view the whole of the Order route. Objectors had originally requested that they should attend the site visit but subsequently agreed that, in the light of the coronavirus outbreak, an unaccompanied visit was acceptable. However, on my visit I was approached by an objector, Mr R Davie, but did not discuss the merits of the case with him.
2. In writing this decision I have found it convenient to refer to points marked on the Order Map. I therefore attach a copy of this map.

#### **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.
4. Common law also requires me to consider whether the use of the way and the actions of the landowners have been of such a nature that the dedication of the way by the landowners can be inferred.
5. As this Order is concerned with a possible unrecorded vehicular route, it is also necessary to have regard to the provisions of Section 67 of the Natural Environment and Rural Communities Act 2006 (the 2006 Act) which

extinguished rights of way for mechanically propelled vehicles (MPVs) subject to certain exceptions.

### **Reasons**

6. There is no evidence of recent use of the Order route by the public and, accordingly, the determination of the Order depends entirely on the documentary evidence that is available.
7. Suffolk County Council, the Order Making Authority (OMA), and the applicant referred to a number of documents the main points of which are summarised below.

### **Documentary Evidence**

8. Early commercial maps published by Hodskinson (1783), Bryant (1824/25) and Greenwood (1825) show roads leading from what is now the U6211 to Cavenham Mill although not apparently following the line of the Order route and not continuing past the mill. These maps provide some information regarding routes that existed when they were surveyed but do not indicate whether routes were public or private.
9. The Cavenham Inclosure Act (1801) empowered the commissioner to set out public roads at least 30 feet (9.1m) wide and the subsequent Award (1802) includes a road passing Cavenham Mill and continuing to the parish boundary with Lackford. The accompanying map shows this road on the alignment of the Order route terminating at the parish boundary where it is annotated 'Pack Gate' and 'To Lackford'.
10. Ordnance Survey (OS) maps from 1820 onwards show a route on the alignment of the Order route. Although OS maps did not indicate the status of routes, they are a reliable source of information regarding features that existed on the ground at the time they were surveyed. These maps therefore show that the route awarded in the Inclosure Award was in fact set out and came into existence.
11. In the absence of any record of the route having subsequently been extinguished or diverted, of which none has been found, this evidence is in my view sufficient to demonstrate the continued existence of public rights for all traffic along the Order route.
12. Various other documents were investigated by the OMA but did not contain any evidence requiring reconsideration of the conclusion reached regarding the Inclosure Award.

### **Common Law**

13. An inference that a way has been dedicated for public use may be drawn at common law where the actions of landowners (or lack of action) indicate that they intended a way to be dedicated as a highway and where the public have accepted it.
14. In this case, in view of my conclusion regarding the documentary evidence there is no need to pursue the possibility of an inference of public dedication at common law any further.

## **The 2006 Act**

15. As mentioned before, this act extinguished rights of way for MPVs subject to certain exceptions. In this case it would appear that one of the exceptions is applicable. Section 67(3)(a) of the 2006 Act states that the extinguishment of MPV rights does not apply if an application for an order to show a route in the definitive map and statement as a BOAT was made before 20 January 2005. Such an application was made in respect of the Order route in January 1996. MPV rights have therefore not been extinguished and it is appropriate that the route should now be recorded as a BOAT.

## **Other Matters**

16. The Order route is a cul de sac route terminating at a point on the parish boundary where there is no feature which the public might wish to visit. The route would therefore appear to serve no useful purpose. The original application was for a route which continued into Lackford parish and linked with other routes. However, although the Cavenham Inclosure Award map indicated the continuation of the Order route to Lackford it did not show the alignment of the route in Lackford parish as this was not covered by the award. Subsequently, different lines have been suggested for the continuation of the route, but the OMA decided that there was not sufficient evidence in respect of any specific route to justify making an order to add it to the definitive map.
17. The applicant has requested that the current Order be modified to include the continuation of the Order route in Lackford parish on an alignment shown on the OS 6" to the mile or 25" to the mile map surveyed in 1882. However, as this section of route was not included in the Order and accordingly not subject to public scrutiny and objection, I cannot be sure that I have seen all the relevant evidence relating to it and therefore do not have an adequate basis to put forward such a modification.
18. Objectors who own some of the land crossed by the Order route state that opening up the route for public use would involve the removal of a hedgerow and several mature trees. They further point out that the route crosses a bridge over the mill race of uncertain structural stability and then passes through an area of water meadow subject to flooding. The route also passes alongside their home which is a listed building and public use would detract from their privacy and security. In addition, it is stated on behalf of the Royal Society for the Protection of Birds (RSPB) that the area supports ground nesting stone curlews which are very susceptible to disturbance. I understand these concerns but, as they lie outside the criteria set out in the relevant legislation, I can give them no weight in reaching my decision.

## **Conclusions**

19. Having regard to these and all other matters raised, I conclude that the Order should be confirmed.

## **Formal Decision**

20. I confirm the Order.

*Barney Grimshaw*                      I

## **Inspector**

