



Order Decision

Site visit made on 12 January 2021

by Mark Yates BA(Hons) MIPROW

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

Decision date: 08 February 2021

Order Ref: ROW/3239339

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the 1981 Act") and is known as the Lincolnshire County Council, Addition to Tetford Public Footpath Number 33, Definitive Map Modification Order 2019.
- The Order was made by Lincolnshire County Council ("the Council") on 3 May 2019 and proposes to add a section of footpath to the definitive map and statement, as detailed in the Order Map and Schedule.
- There were two objections outstanding when the Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.

Summary of Decision: The Order is proposed for confirmation subject to modifications set out below in the Formal Decision.

Procedural Matters

1. I have determined this Order from the written representations made on behalf of the Council and one of the objectors, namely Brian Todd Homes Limited ("BTHL"). Various issues have been raised regarding the impact of the Order, particularly in relation to the residential development underway in this locality. However, these matters are not relevant to the main issues that I need to consider, which are outlined below.
2. All of the points referred to below correspond to those delineated on the amended Order Map attached to this Decision.

Main Issues

3. The Order relies upon the occurrence of an event specified in Section 53(3)(c)(i) of the 1981 Act. This specifies that an Order should be made where there has been the discovery of evidence which shows "*that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist*". The issue to be determined at the confirmation stage is whether a right of way subsists on the balance of probabilities.
4. It is apparent that the Council keeps a digital working version of its definitive map and Footpath 33 is shown finishing at point A on this map. However, I need to have regard to what is shown on the definitive map. I find that some of the submissions put forward by the Council to be confusing due to this issue. Nonetheless, it is apparent that Tetford Footpath 33 is currently shown continuing between points A and X on the definitive map¹, which means that this part of the route claimed cannot be added to the map under Section 53(3)(c)(i). Therefore, I can only consider whether the evidence is supportive of a public footpath subsisting between points X and B. The other anomalies identified by the Council involving rights of way elsewhere have no relevance to

¹ Found at page 13 of appendix 4 to the Council's statement of case

my decision. Each case needs to be determined on its own merits from the available evidence.

5. I do not accept the point made on behalf of BTHL that I can only have regard to the documentary evidence when considering whether to confirm the Order. Either documentary or user evidence or a mixture of both can support a modification being made to the definitive map in accordance with Section 53(3)(c)(i). It is not appropriate for me to disregard evidence that may be relevant to the issue to be determined. BTHL had the opportunity to comment on this user evidence but has chosen not to do so. Overall, the evidence will need to show there has been the dedication of a public right of way extending between points X-B by reference to either common law or Section 31 of the Highways Act 1980.
6. In light of the submissions of the parties, it seems to me that I should first assess whether the evidence is sufficient to support the common law dedication of a public footpath extending between X-B at some point in the past. An implication of dedication can arise at common law if there is evidence from which it may be inferred that a landowner has dedicated a right of way and that the public has accepted the dedication.

Reasons

Consideration of the evidence

7. The Ordnance Survey ("OS") drawing and Old Series map of 1818 and 1824 respectively appear to show some buildings to the south of point B and possibly the track shown on the later OS maps.
8. The track between points A-B is clearly evident on the 1888 OS 6-inch map and a path is shown continuing across the field to the south of point A. These features are consistently shown on other OS maps from the latter part of the nineteenth century and a proportion of the twentieth century. In the absence of a solid line towards the junction with North Road, I do not consider that there was a boundary feature at this point. The pecked line shown on some of the maps potentially represents a change in surface at this point. It is also apparent that there was previously a curved feature going westwards towards the end of the track which could have potentially looked like an extension to North Road.
9. The value of the historical OS maps is that they generally provide a reliable indication of the presence of particular physical features when the land was surveyed. They do not purport to identify the status of the paths or tracks shown and their evidential weight will accordingly be limited on this issue.
10. There is no apparent support for the existence of a highway over the track which encompasses points X-B in the documents produced for the purpose of the 1910 Finance Act. Whilst the Tetford Parish Council minutes (1900-1955) reveal that the parish council took an active interest in rights of way matters, they provide no information regarding the northern extent of Footpath 33. The highway records reveal that North Road does not include the curved feature shown on the OS maps.
11. The parish council undertook a survey of the alleged public rights of way as part of the process for the production of the original definitive map. The

survey form produced by the parish council² describes Footpath 33 (originally numbered 6) terminating at "*North Road near the Blacksmith's shop*". This footpath is described in the form as running down the side of the hedgerow within OS Field No. 150 where it ran to a gate near the blacksmith shop and into North Road. The form states that the structures on the path were maintained by the county council and it was used more than the other paths in the village put together. This document provides contemporaneous evidence in support of Footpath 33 continuing through to North Road and it should carry significant weight.

12. The survey sheet produced by the county council in respect of the draft definitive map states that the evidence in support of the inclusion of Footpath 33 was public use for twenty years. One of its termination points is listed as North Road near to the blacksmiths. This statement clearly endorses the evidence provided by the parish council.
13. A map stated to date from circa 1950³ appears to depict the claimed rights of way, but it does not show what became Footpath 33 beyond point A. This differs from the above surveys and also conflicts with what was subsequently shown on the definitive map.
14. I note the assertion made on behalf of BTHL regarding the removal of a section of the path between the draft and definitive stages. However, I have seen no evidence to show that this was the case. Aside possibly from the map of circa 1950, which does not show A-X-B, the only map provided in relation to this process is the definitive version. Footpath 33 is shown on the definitive map (published on 3 December 1971⁴) proceeding as far as point X. It is apparent that this location generally corresponds with the curved area shown on the OS maps.
15. Twenty-seven user evidence forms have been submitted in support of use of Footpath 33 extending through to point B. Notwithstanding the issues raised by the Council regarding five of the users, the forms provide evidence of public use over a significant period of time. Additionally, a public footpath sign has been maintained at the junction with North Road and this is likely to have served to encourage people to use the route in conjunction with Footpath 33.
16. There is no evidence to indicate that people have been prevented from continuing through to North Road. A metal anti-vehicle barrier was temporarily in place (1995-2012) but people were able to walk to the side of it. The evidence of use is not disputed, and Mr Todd says that he understood that Footpath 33 continued through to North Road.

Conclusions

17. It is apparent from the OS maps that there was a curved area extending from North Road and the northern extent of Footpath 33 is shown terminating in the locality of this feature on the definitive map. However, this area does not form part of the public road. The surveys produced in relation to the compilation of the definitive map describe Footpath 33 continuing through to North Road. Further, the basis for the path being added to the definitive map was public use. The signage in place and the evidence of public use is wholly consistent with the path continuing through to North Road.

² The form was signed on 28 January 1952

³ Found at page 8 of appendix 4 to the Council's statement of case

⁴ Having a relevant date of 3 January 1955

18. In light of the above, I find on balance that the evidence is supportive of the footpath continuing through to North Road at point B rather than terminating at point X. It follows that a footpath subsists between points X-B and the Order should be modified to record only this section.

Width

19. The Council submits that the width of the section of Footpath 33 originally included in the Order should reflect the width of the track at the time of the parish survey. This is taken to correspond to the width available between the boundaries shown on the 25-inch 1905 OS map. In contrast, BTHL argue that a 1 metre width should be recorded extending from the western boundary of the track in light of the description in the parish survey form.
20. In terms of the assertion that the footpath should be taken to run between the physical boundaries, the first question that needs to be asked is whether the fences or hedges were put up by reference to the highway, in order to separate it from the adjoining landholdings, or for some other reason. I have noted that there were buildings shown on the early mapping and it is possible that the historical boundaries were set out by reference to a private track.
21. Nonetheless, I do not find that a boundary to boundary presumption can apply to the X-B section given that on the whole no physical boundary to the west of this section is evident on the OS mapping prior to the parish survey. The pecked line shown on some of the maps in the locality of the curved area adjacent to North Road would not in my view represent a solid boundary feature.
22. In these circumstances, the appropriate approach to take is to include in the Order a width that is reasonable for pedestrian users. I consider that the 1 metre width advocated by BTHL would be too narrow, particularly given the area that was potentially previously available to the public. In my view, a width of 1.5 metres would be a reasonable width which would allow two people to pass with ease. I see no need to modify the alignment of the X-B section shown on the Order Map, as delineated by a purple line. The western boundary mentioned in the parish survey appears to me to apply to where the path proceeds through the field to the south of point A.

Overall Conclusion

23. Having regard to these and all other matters raised in the written representations I conclude that the Order should be confirmed with modifications relating to the extent of the section of footpath to be added to the definitive map.

Formal Decision

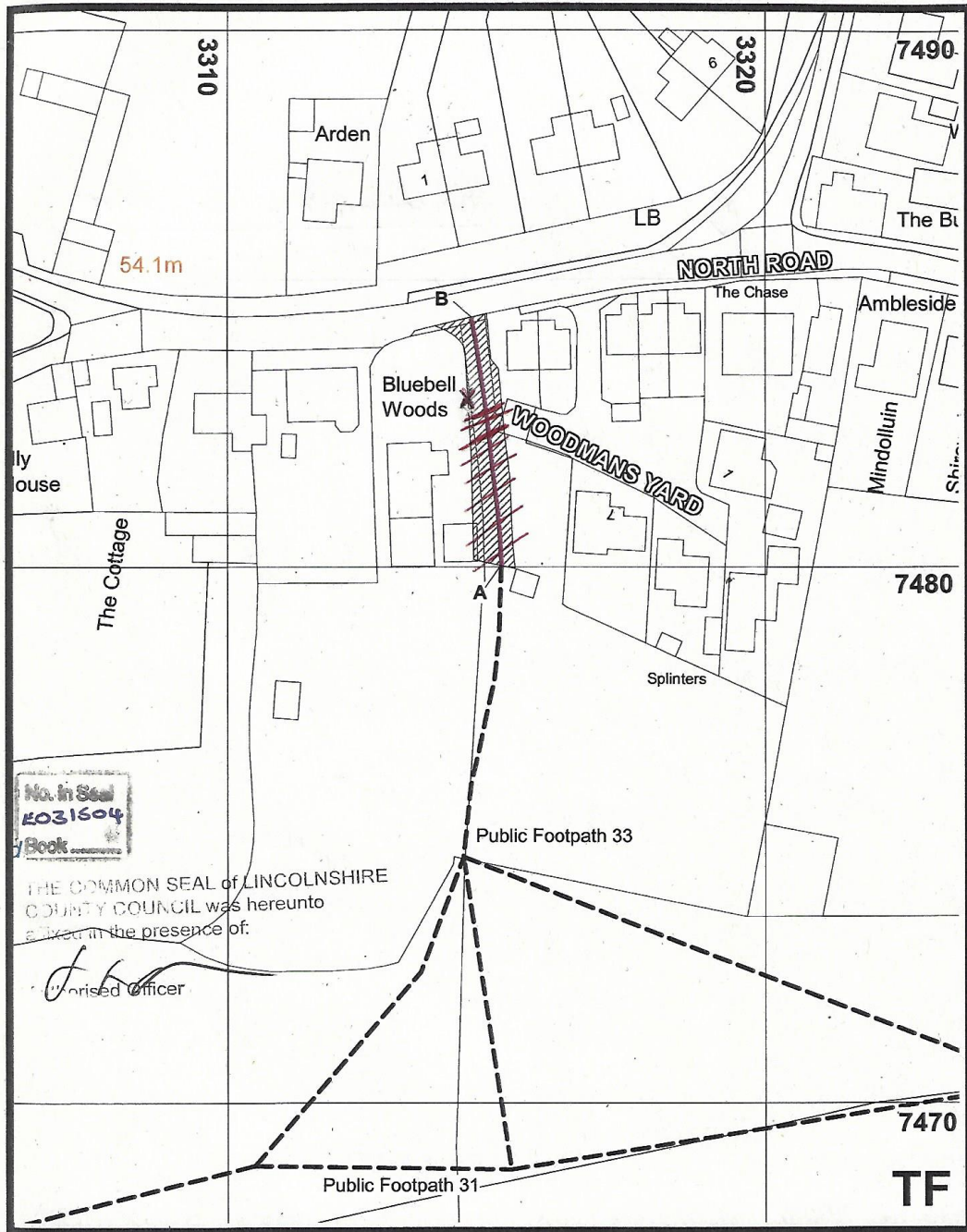
24. I propose to confirm the Order subject to the following modifications:




- Delete "A" from the first line of the description in Part I of the Order Schedule and insert "X".
- Delete the first grid reference within the description in Part I of the Order Schedule and insert "TF 3314 7483".
- Delete "46" from the fifth line of the description in Part I of the Order Schedule and insert "15".

- Delete the last sentence from the description in Part I of the Order Schedule and insert "*The width of this section of the path is 1.5 metres*".
 - Delete the first grid reference within the description in Part II of the Order Schedule and insert "*TF 3314 7483*".
 - Delete "46" from the fourth line of the description in Part II of the Order Schedule and insert "15".
 - Delete the last sentence from the description in Part II of the Order Schedule and insert "*The width of this section of the path is 1.5 metres*".
 - Insert "X" at the appropriate point on the Order Map.
 - Delete the section A-X from the Order Map and amend the map key accordingly.
 - Delete the details relating to the width of the path from the key to the Order Map.
25. Since the confirmed Order would not show a section of the highway shown in the Order as submitted I am required by virtue of Paragraph 8(2) of Schedule 15 to the 1981 Act 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.

Mark Yates

Inspector



Key:
 Addition to FP 33 
 Width of footpath as per Ordnance Survey 25' map 
 Affected Public Footpath 

Lincolnshire
 COUNTY COUNCIL
Making for a better future
 Dm. LP Date 25/04/2019

TETFORD
 (Definitive Map Modification Order)
 Addition to FP 33 to North Road

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