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| **Order Decision** |
| Site visit made on 26 September 2023. |
| **by Charlotte Ditchburn BSc (Hons) MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 3 October 2023** |

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| **Order Ref: ROW/3289256** |
| * 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 (West Markham Footpath No.13) Modification Order 2015. |
| * The Order is dated 20 March 2015 and proposes to modify the Definitive Map and Statement for the area by adding a Public Footpath as shown in the Order plan and described in the Order Schedule. |
| * There were 3 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.** |
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Procedural Matters

1. This case concerns the addition of a Footpath from Bacon Lane in West Markham Village running in a generally south-south-westerly direction across agricultural land to Back Lane.
2. I made an unaccompanied site visit on 26 September 2023, the landowner did not give permission to enter the land, but I was able to view the whole of the Order route from the north end on Bacon Lane, through gaps in the hedge along Wood Lane and from the south end on Back Lane.
3. Whilst Nottinghamshire County Council was satisfied that the evidence was sufficient to justify an order being made, it is taking a neutral stance as regards its confirmation.

The Main Issues

1. The Order has been made under Section 53(3)(2)(b) of the Wildlife and Countryside Act 1981 in consequence of the occurrence of an event specified in Section 53(3)(c)(i).
2. The main issue is whether the discovery by the Order Making Authority (OMA) of evidence which (when considered with all other evidence available) is sufficient to show that a right of way which is not shown in the Definitive Map and Statement (DMS) subsists over land in the area to which the map relates (section 53(3)(c)(i)).
3. Whilst it suffices under section 53(3)(c)(i) for a public right of way to be *reasonably alleged* to subsist, the standard of proof is higher for the Order to be confirmed. At this stage, evidence is required on the balance of probabilities that a right of way subsists.

Reasons

*Historical documentary evidence*

1. A pre-enclosure Plan of the Estate of Markham and Milton belonging to the Master Fellows and Scholars of the College of Saint John the Evangelist in the University of Cambridge 1779 shows the route of Westwood Road, on this plan called Wood Lane, but it does not show the Order route.
2. Under the Inclosure Consolidation Act 1801 and subsequent Award, the West Markham Inclosure Award map 1811 shows the route as a double pecked line starting from an unnamed road to the north then entering a field marked “128 College” and running parallel with Westwood Road to the junction with a road labelled the Road “to Tuxford”. The Order route is labelled “Westwood Foot”. The Inclosure Award delineates the path as the Westwood Footway “ONE OTHER PUBLIC FOOTWAY of the width of six feet beginning in West Markham Town Street and extending over ancient Inclosure and allotments No. 128, 126, 127 and 131 in the said Map on the South and East sides of Westwood Road or Wood Lane as delineated in the said Map to a stile on the Eastward side of a Close called Wood Hem Close.” The Order route runs parallel to the line of Westwood Road, it is not said that the route is to be for the benefit of any particular persons. It is described as “extending over ancient inclosure…to a stile” this implies it may be a pre-existing path especially as it is referred to as the Westwood Footway.
3. Although not directly affecting the Order route, the above mentioned Westwood Road is also delineated as a Public Bridleway and Private Carriage and Drift Road in this Inclosure Award. “ONE PUBLIC BRIDLE AND PRIVATE CARRIAGE AND DRIFT ROAD of the width of 30 feet called Westwood Road from the Town end now in the occupation of Robert Billiade in the Town of West Markham in its former course to the southwardly corner of Great South Hill field”.
4. The St John’s College Plans dated 1779 and 1812 show the route of Westwood Road or Wood Lane, but do not show the Order route running alongside it. The Remarks in the top left-hand corner of the 1812 map refer to the ‘Township of West Markham including the Hamlet of Milton was Inclosed by virtue of an Act of Parliament passed …18 June 1808’. Implying that St John’s College was aware of the particulars of the Inclosure Award.
5. Sanderson’s Map 1835 shows the post-inclosure road network in the vicinity of the claimed footpath, ‘Leys Lane’ and ‘Green Syke Lane’ are labelled on the map with Bacon Lane, Wood Lane and Back Lane all being shown on their current alignment. The claimed footpath is not shown on Sanderson’s map; there is no indication that Sanderson intended to depict minor highways such as footpaths or bridleways. The absence of the footpath from Sanderson’s map does not undermine the inclosure award evidence.
6. Ordnance Survey (OS) Six Inch Series Map 1884 and Ordnance Survey Twenty Five Inch Series Map 1920 which are perhaps of most significance do not show the Order route. The formation of the OS was in response to a military need for accurate maps. Over the years, OS developed a variety of maps to meet the growing need for accurate and up-to-date maps of the UK and the production of maps for sale to the public became an activity of increasing importance to OS from the early twentieth century. Since 1888 OS maps have carried a disclaimer to the effect that the representation of a track or way on the map was not evidence of the existence of a public right of way. These maps are generally taken to provide no confirmation regarding the status of the paths and tracks shown on them. Their evidential value is that they provide a reliable indication of the presence of particular physical features on the date of the survey. As the claimed footpath is not shown on the Six Inch or Twenty Five Inch series maps this shows that the route is unlikely to have physically existed on the ground at the time of the surveys.
7. West Markham Parish Survey Plan 1955 (prepared under the 1949 National Parks and Access to the Countryside Act) does not show the Order route.

Conclusions

1. Although weight must be given to the inclosure evidence, the later historical documents do not show the route, therefore considering the evidence together as a whole I find it is insufficient to reach the conclusion that the tests have been met such that the Order route subsists as a Footpath.
2. Accordingly, it is my view that, on the balance of probabilities, the available evidence does not indicate that the definitive map is incorrect and that a Public Footpath should not be added to the DMS.
3. Having regard to these and all other matters raised in the written representations I conclude that the Order should not be confirmed.

Other Matters

1. Objections mention “altering the direction of the path”, “moving a footpath” and “the footpath would be better running up the lane that already exists”. The Order is not seeking to divert West Markham Bridleway 12.
2. Objections raise matters regarding the adjacent lane having been used by generations of walkers and the lane’s presence eliminating the need for the Order route. Whilst noting these concerns they cannot influence the issue of whether or not public footpath rights exist over the Order route. The Order does not seek to create any new public rights of way but proposes to record those already in existence in accordance with the OMA’s duty to keep the DMS up-to-date.
3. Objections also raise concerns about the Order route’s impact on the land including the disturbance of wildlife and impact on farming operations by recording a route through a field margin as well as the impact to users from the use of the field for turnout of livestock and the use of fertilisers and pesticides on the field. I understand the points made but, as they concern matters which lie outside the criteria set out in the relevant legislation, I have not given them any weight in reaching my decision.

Formal Decision

1. I do not confirm the Order.

Charlotte Ditchburn

INSPECTOR

