

|  |
| --- |
| **Order Decision**Site visit made on 24 February 2025 |
| **by D M Young JP BSc (Hons) MPlan MRTPI MIHE** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 12 March 2025** |

|  |
| --- |
| **Order Ref: ROW/3320351** |
| * This Order is made under Section 53 (2) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Norfolk County Council (South Acre (EH003)) Modification Order 2021.
 |
| * The Order is dated 22 September 2021 and proposes to modify the Definitive Map and Statement for the area by adding a Bridleway as shown in the Order plan and described in the Order Schedule.
 |
| * There was one objection outstanding when the Order was submitted to the Secretary of State.
 |
| **Summary of Decision: The Order is Confirmed.**  |

|  |
| --- |
|  |

Preliminary Matters

1. The Order route is shown between points A-B on the Order Plan (see Appendix 1) and comprises a linear route of some 170 metres between the current termination point of an existing Bridleway known as Sporle with Palgrave BR2 (BR2) (Grid Ref: TF 8199 1327) and the A1065 Castleacre Road (Grid Ref: TF 8182 1327).
2. The application to add the route to the Definitive Map and Statement (DMS) was made by Dr David Ormerod and is dated 20 December 2018. Following investigation by Norfolk County Council (the Order Making Authority (OMA)), it was considered there was a reasonable allegation of the route having historic highway rights. The Order was subsequently made on 22 September 2021. Having made the Order, the OMA takes a neutral stance in relation to its confirmation.
3. The land crossed by the Order route is owned by the Executors of Rosemary Fountaine (represented by Property Solutions). Ownership details are attached as Tab 8 to the OMA’s Statement.
4. I carried out a site visit on 24 February 2024 where I walked along the Order route and BR2 from Castleacre Road to Little Palgrave Hall.

Main Issues

1. The Order is made under Section 53(2)(b) of the 1981 Act, relying on the occurrence of an event specified in Section 53(3)(c)(i) of the same. This section requires me to consider whether the evidence discovered by the OMA, when considered with all other relevant evidence, is sufficient to show, on the balance of probabilities, that the right of way described in the Order subsists and that the DMS therefore requires modification.
2. I shall consider whether the historical documentary evidence provided is sufficient to infer the dedication of a highway over the claimed route at some point in the past. Section 32 of the Highways Act 1980 requires a court or tribunal to take into consideration any map, plan or history of the locality, or other relevant document, which is tendered in evidence, giving it such weight as appropriate, before determining whether or not a way has been dedicated as a highway.

**The Objection**

1. The landowner’s objection dated 30 December 2021 argues that the documentary evidence supporting the Order is inadequate. It is stated that no members of the public have been seen using the Order and no permission has been given to anyone to use the route. To the landowner’s knowledge no signs or notices were erected, and the route has not been obstructed. The land has for a number of years been included in a Countryside Stewardship Scheme. It is further argued that the fact that the Order route was included in the draft parish map and adjoins an existing bridleway does not constitute proper legal evidence.

Reasons

*Documentary evidence*

1. Dealing with the documentary evidence chronologically, the Order route is not shown on Faden’s map of 1797 nor Bryant’s map of 1826. I concur with the OMA that the 1837 South Acre Tithe Map provides little support for the Order as the feature indicated on the plan is most likely a simple field boundary rather than a track.
2. The Order route is however clearly shown on the 1884 Ordnance Survey (OS) Map First Edition and all subsequent editions up until 1974 when the Order route as well as Sporle with Palgrave BR2 were removed for reasons that are not entirely clear. The OS maps provide solid evidence of the physical existence of a track on the ground for a significant period of time but do not assist when trying to determine the status of the route.
3. The 1910 Finance Act was concerned with assessing various values in relation to land in order that a tax could be levied on the increase in the site value of land between its valuation at 30 April 1909 and generally any sale or other transaction involving the land in question. The Act provided for certain deductions to be made in terms of the value of the land. Information regarding landownership is contained in the valuation book entries provided. The maps prepared in connection with the Act show the Order route traversing land holding no. 351 to the south of ‘Bartholomew’s Hills Plantation’. However, there are no deductions for public rights of way for this holding in the accompanying valuation book entry. However, the same is true for the land holding to the east (no. 3) where BR2 is now recorded. On balance, I consider the Finance Act documents do not support confirmation of the Order.
4. The Order route together with BR2 is shown on three separate editions of Bartholomew’s Half Inch Maps from 1903, 1921 and 1943. On the first two of these the route is shown as a passable road for cyclists, this indicates the route must have been constructed and maintained to a certain standard. The 1943 map downgrades the route to an ‘other track’ or ‘track’ not suitable for cyclists. The inclusion of the whole track with no distinction between the Order route and BR2, indicates that it was reputed to be a route for the public to use. The Bartholomew Maps therefore weigh in favour of the Order.
5. BR2 is shown as a Bridleway in the draft, provisional and final versions of the Definitive Map arising from the 1949 National Parks and Access to Countryside Act. The route terminates at Point B which was and remains the parish boundary. The following description of the route was provided in the draft Definitive Statement:

*“Starts from Little Palgrave Hall and runs westwards past farm buildings to field gate. The path then continues through two further fields gates and runs to parish boundary by Bartholomew’s Hills.”*

1. A letter dated 12 December 1965 from Sporle with Palgrave Parish Council to South Acre Parish Council sought further details from the latter regarding the continuation of the Order route into the adjoining parish. The response dated 2 January 1957 stated that following investigation the Parish Council considered that the Order route should be added to the DMS as a ‘bridle road’. In my view this evidence weighs strongly in favour of the Order.
2. Only three years later in February 1960, a notice published by the OMA stated that the Order route was to be deleted from the DMS because the Parish Council had been unable to produce sufficient evidence of public use. Not only did that decision directly contradict the Parish Council’s earlier account, it was also irreconcilable with the evidence of use supporting the inclusion of BR2 in the DMS. That led to the unsatisfactory situation that remains today where the omission of the Order route results in BR being a cul-de-sac right of way.
3. I find it almost inconceivable that members of the public using BR2 would have turned back at point A, rather than continuing onto Castleacre Road. This begs the question, why the Order route, but not BR2, was deleted from the draft map in 1960 if there was insufficient evidence of public use. Given the OMA has been unable to explain the discrepancy or to give a more satisfactory account of why the Order route was deleted in 1960, I consider the original draft map and associated correspondence between the parish councils weigh in favour of confirmation.

*Other Evidence*

1. Mr J Mason is the owner of the land traversed by BR2. In his representation dated 5 September 2019 he accepted that the Order route has been used as a Bridleway for the last 40 years and had seen occasional use by the public in that time. Mr Mason’s evidence suggests that the public have used the route ‘as of right’ for a period of at least 20-years which would be consistent with the criteria for statutory dedication under Section 31 of the 1980 Highways Act. There is no suggestion in Mr Mason’s evidence that members of the public turned around at point A rather than using the Order route. This evidence of public use, albeit uncorroborated by user evidence, assists with regard to reputation and weighs in favour of the Order.
2. The landowner’s objection states that no permission has been given to the public to use the route. However, that statement conflicts with the Natural England map provided by the Applicant. This shows that the Order route was a permissive Bridleway as part of an Environmental Stewardship Scheme up until 31 October 2017. This evidence demonstrates that the landowner has previously accepted the public’s use of the route albeit on a permissive basis.
3. While the landowner has made a series of generalised assertions about the adequacy of the evidence, no cogent reasons have been provided to explain why the mapping evidence does not support the Order nor why the draft DMS and associated evidence does not constitute proper legal evidence.
4. Various aerial images of the Order route have been submitted but are of little assistance.

**Conclusions**

1. There is clear evidence from the Bartholomew and OS maps that a publicly accessible track, incorporating the Order route, has been a defined feature in the landscape from at least the latter part of the 19th Century.
2. There is evidence of public use of the route from the adjacent landowner for forty years prior to 2019 (1979-2019). There was also strong evidence of public use of BR2 and the Order route as part of the Definitive Map process. I attach limited weight to the 1960 decision for the reasons set out above.
3. Taking all these considerations in the round, I consider the synergy of evidence is sufficient to show, on the balance of probabilities, that the right of way described in the Order subsists and that the DMS therefore requires modification.

Other Matters

1. The law does not allow me to consider such matters as the desirability of the route in question or concerns regarding possible future use and management.

Formal Decision

1. The Order is confirmed.

D M Young

INSPECTOR

ORDER MAP – COPY NOT TO SCALE

