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| **Order Decision** |
| Site Visit made on 2 June 2025 |
| **by G D Jones BSc(Hons) DipTP DMS MA MRTPI** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 10 June 2025** |

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| **Order Ref: ROW/3333580** |
| * This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981. It is known as the Norfolk County Council (Honing - Crostwight) Modification Order 2022. |
| * The Order is dated 5 October 2022 and proposes to modify the definitive map and statement for the area by adding a Restricted Byway between points A and B, on North Walsham Road and Heath Road respectively, as shown on the Order map and described in the Order schedule. |
| * There was one objection when Norfolk County Council (the Council) submitted the Order for confirmation to the Secretary of State for Environment, Food & Rural Affairs. |
| |  | | --- | | **Summary of Decision: The Order is not confirmed.** | |

**Procedural Matters**

1. Mr Witham (the applicant) applied to the Council in February 2019 for a Definitive Map Modification Order to add a restricted byway to the Definitive Map and Statement (DMS). The route connects North Walsham Road and Heath Road following a roughly straight, north‑south alignment. Following research and the collection of evidence, the Council resolved to refuse the application in September 2021. The applicant appealed against that decision. The appeal was allowed in September 2022 and the Council was directed to make the Order.
2. The Order was made by the Council on 5 October 2022 to add a restricted byway to the DMS consistent with the direction, running from point A to B as shown on the Order map (the Order route). An objection was submitted on behalf of the current landowner and the wider Honing Estate in respect to the made Order.

**Main Issue**

1. As the Order seeks to add a public right of way to the DMS, Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 must be considered to establish whether the evidence, as a whole, supports the addition. Accordingly, the main issue relates to whether or not, on the balance of probabilities, the evidence shows that a restricted byway subsists over the Order route.

Reasons

1. The information before me is principally comprised of documentary evidence, with the user evidence largely limited to the applicant himself. The user evidence is very limited and does not appear to have influenced the outcome of the appeal. Accordingly, my reasoning focusses primarily on the assessment of the documentary evidence, which I deal with in turn below.

*Faden’s 1797 Map of Norfolk*

1. The Order route is not shown on this map. This might be because it did not exist at that time. However, it may have done bearing in mind that no access to All Saint’s Church is shown on the map. The evidence also refers to a route in a nearby parish being similarly not shown on Faden’s map even though the wider evidence indicates that that route did exist at the time. Accordingly, little can be drawn from Faden’s map either way.

*Bryant’s 1826 Map of Norfolk*

1. The Order route’s earliest depiction, at least within the evidence that is before me, is on Bryant’s 1826 map. It is shown as ‘Lanes and Bridleways’, connecting at each end to ‘Good Cross or Driving Roads’. Evidently, the map maker was of the understanding that the Order route was a ‘lane’, a ‘bridleway’ or both. However, in any case, it does not necessarily follow that it was a public right of way at that time. Indeed, I note that the map depicts other nearby routes, which are now private tracks, in the same manner as the Order route. Although Bryant’s map was made for sale to the public, it also does not necessarily follow that all routes depicted were public rights of way. In my view, it is also likely that private routes would have been included to help users of the map orientate themselves. Accordingly, the Bryant map also carries limited weight.

*Ordnance Survey Maps*

1. Numerous OS maps ranging from around 1838 onward show a route corresponding with the Order route connecting at both ends to roads. Indeed, it is shown in the same manner as what are now North Walsham Road and Heath Road. Although these maps are good evidence of the route’s longstanding and consistent existence, they do not confirm any form of public use rights. Accordingly, in that latter regard, their evidential weight is necessarily limited.

*Crostwick Tithe Map of 1838*

1. The Tithe Map shows the Order route as being enclosed yet open at both ends. There is no apportionment attached to it. In contrast, Bransmeadow Loke, a little to the east, has the apportionment number ‘24’ attached to it. However, there is no indication in the apportionment to explain the precise manner in which ‘Public Highways’ are shown on the map. Indeed, the Order route is not coloured sienna on the map in the manner that the surrounding routes known to be public highway today are. On balance, this colour treatment suggests that the Order route was thought to be a private rather than public road at that time.

*Bartholomew’s Map of 1903*

1. The Order route is shown on this map as an ‘inferior road’, not recommended for cyclists. The map expressly carries a disclaimer in terms that the representation of a route on the map is no evidence of the existence of a right of way. Alongside the OS maps, it provides further evidence of the route’s longstanding and consistent existence, but similarly it does not confirm any form of public use rights. Accordingly, in that latter regard, its evidential weight is also necessarily limited. Moreover, like Bryant’s 1826 map, it depicts some other nearby routes that are now private tracks in the same manner as the Order route.

*Inland Revenue Valuation*

1. There are two maps made for the purposes of the 1910 Finance Act before me, covering different sections of the Order route. This is because the Order route crosses two OS map sheets. The Inland Revenue Valuation Map XXIX 08 covers its majority, while the shorter remaining section to the south is shown on Map XXIX 12. Map XXIX 08 clearly shows a section of the Order route that is in neither of the adjoining hereditaments, Nos 5 and 10. Reading this Map alongside Map XXIX 12, I take this to mean that the entire Order route was excluded from these and any other hereditaments.
2. This uncoloured / white section might have been because the Order route was considered to be a vehicular highway at that time, given that public roads would have been exempt from charge and hence would be shown uncoloured. It might, though, have been because it was an occupation road. Either scenario remains a potentially valid interpretation.
3. This latter scenario is also consistent with the Order route serving as part of the historic access to the All Saint’s Church. While places of worship are often perceived as public places or where the general public are often encouraged to visit, it does not necessarily follow that there is a public right to access parish churches or churchyards. The access to the Church could equally have existed in a private capacity. This would also be consistent with the evidence regarding funeral corteges having used this route.

*Ministry of Food National Farm Survey 1941-42*

1. These maps indicate the extent of agricultural landholdings. The route does not appear to be coloured on either of the relevant maps, such that it is depicted in the same manner as public highways on the map. However, it does not follow that it was a public road and again it seems at least as likely that the route is uncoloured on the basis it was an occupation road. Indeed, the track shown to the east of the Order route, which the evidence indicates is a private route, is depicted in a similar manner on these maps.

*Definitive Map Process*

1. The DMS includes Footpath No 20 Honing, which joins the Order route to its east. Creating a ‘dead end’ of this type, without anything of interest as a destination at the eastern end, suggests that the Order route was understood to be a public vehicular road at the time the definitive map was compiled. This might also account for why the Order route does not feature on the DMS. But, of course, an understanding that a route is a public vehicular road does not mean that it necessarily was. Indeed, for the reasons outlined above, there is also a good likelihood that the Order route is an occupation road, the use of which included private vehicular access to and from the Church. Again, vehicular use of the Order route associated with the Church may have contributed to the, potentially erroneous, perception that it was a public road at that time.

*Aerial Photographs*

1. The aerial photographs, from 1946 and 1988, show the route present on an alignment consistent with the wider evidence. They are evidence that it has existed since at least the 1940s but provide no indication of the route’s status.

*Other Evidence*

1. The Land Registry title confirms that the whole of the Order route is in private ownership. Section 31(6) statements and plans deposited on behalf of the landowner in 1987, 1999, 2011 and 2016 show the Order route unmarked, thus indicating no intention of dedicating it as a public right of way. The latter of these deposits lasted 6 years to 2022. While the evidence indicates that no subsequent deposit was made, the deposits build a picture that there has been no intention to dedicate the route as a public right of way since at least the late 1980s.
2. There is also evidence that signage has been present on the Order route from 1999 and possibly as early as around 1987 maintaining that the route was a private road, which could be used on foot as a permissive footpath. This too indicates that there was no intention to dedicate the route as a public right of way while such signage has been in situ.
3. The funeral corteges referred to above are alluded to in a 1999 letter by Mrs Harvey, who has sadly subsequently passed away. She was born locally and lived in the vicinity of the Order route. Within the letter she refers to driving and cycling along the Order route to visit the churchyard. The letter also says that she and her husband were “almost certain it is a right of way” and that it was known as Oak Lodge Loke. She additionally expressed surprise at the notice erected earlier in 1999 indicating that there was no right of way on the Order route.
4. The letter also explains that her husband was born in Hall Farm Cottage in 1917. The agent acting for the Honing Estate indicates this property was in the ownership of the Estate at that time. Accordingly, there is the possibility that, as tenants, they may have had the landowner’s permission to use of the Order route, albeit that this is far from certain.
5. The agent for the Honing Estate has advised that the Estate continues to give permission for weddings and funerals to use the track. Additionally, as the Inspector who dealt with the appeal noted, the agent also provided a copy of a Deed of Exchange between the Estate and Norwich Diocesan Board of Finance. The Deed refers to “the benefits of such rights of way as the Board may have acquired by prescription over the track ...” The ‘track’ referred to is the southern section of the Order route, thus casting some doubt over the claim that the Estate has always given permission for weddings and funerals to use the Order route.
6. There is also a cutting from the Eastern Evening News of 9 October 1981 which features a ‘Weekend Walk’ that includes the Order route. This, alongside the other evidence of the use of the route, indicates that the route was understood by a number of parties over an extensive period to be a public right of way.

**Conclusion**

1. Although there is some user evidence, it falls considerably short of establishing a clear picture of use, as of right, of the Order route by any means for an uninterrupted period of 20 years. Moreover, there is also reasonably compelling evidence that the owner did not intend to dedicate the route from the late 1980s.
2. The documentary evidence is far more substantial. The Order route is clearly of long-standing. There is also good reason to believe that it has been perceived by a number of parties, across a substantial period of time as being a public right of way. Nonetheless, as outlined above, it does not follow from this that such rights exist. They may be explained by other factors, such as permissive use, for instance associated with vehicular access to the Church.
3. The documentary evidence itself could be interpreted as indicating that the Order route has public use rights. But this can also be accounted for by other considerations, notably that the route is an occupation road with only private use rights. In particular, that the Order route is not coloured sienna on the Tithe Map in the manner that the surrounding routes known to be public highway today indicates that the route is more likely not to be a public highway.
4. For these reasons, it is my view that, on a balance of probabilities, the evidence before me does not indicate that a restricted byway subsists along the Order route or that the DMS is incorrect in any other regard. Therefore, the Order should not be confirmed.

Formal Decision

1. I do not confirm the Order.

G D Jones

INSPECTOR

