



Order Decision

by **Michael R Lowe** BSc (Hons)

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

Decision date: 12 February 2015

Order Ref: **FPS/P2745/7/41M**

- This Order is made under section 53(2) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as Public Bridleway No 30.9/16 Fordon Road, Folkton Modification Order 2012.
 - The Order is dated 30 October 2012 and proposes to modify the Definitive Map and Statement by adding a bridleway from a point along Public Footpath 30.9/5 to Filey Road as detailed in the Order map and schedule.
 - In accordance with paragraph 8(2) of schedule 15 to the 1981 Act notice has been given of my proposal to confirm the Order subject to modifications.
 - 7 objections and representations were submitted to the proposed modifications.
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Decision

1. I confirm the Order subject to modifications:

In the first line of the Order delete '53(2)(a)' and insert '53(2)(b)'.

In Part 1 of the schedule (Section of Public Bridleway as shown on the attached map) delete the width of '6.1m' and insert a width of '3.5m'.

In Part 2 of the schedule (Particulars of Bridleway to be added) in the column headed 'Width (m)' delete the width of '6.1 metres' and insert '3.5 metres'.

Background and Reasons

2. In my interim decision of 10 February 2014, I proposed to confirm the Order subject to modifications. The reasons which led me to my conclusion were set out in my interim decision.
3. Since the Order as proposed to be modified would affect land not affected by the Order as submitted, I was 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. I also invited any further representations on the substantive issue as I introduced a matter that had not been considered by the parties and following the judgment in the case of R v Secretary of State for Environment Food and Rural Affairs ex parte Andrews [2014] EWHC 1435 (Admin).
4. In my interim decision I concluded that the Order route was a public bridleway before the Folkton Inclosure Award as it is shown on Greenwoods Map dated 1817 and this map shows the roads and ways network before the Flixton and Folkton Awards. I have considered the further submissions on this matter but I am satisfied, on the balance of probability, that this is the case for the reasons set out in my interim decision. Moule's map of 1830 reinforces this analysis. For the avoidance of doubt I should add that having concluded that the Order

route was a bridleway before the Folkton Award I am satisfied that, whilst the Award was ineffective in setting out Fordon Road as a bridleway of 20 feet in breadth, it was equally ineffective in extinguishing the pre-existing bridleway, in accordance with the judgement in R. v Secretary of State for the Environment ex parte Andrews [1993] QBD.

5. The Council and Mr Kind submit that the effect of the Andrews decision is that Fordon Road as set out in the 1807 Award never existed on the basis that the Court did not change the law, but stated what the law had always been. I agree with that submission.
6. Rights of Way Circular 1/09 makes reference to the principle that 'rights that cannot be prevented cannot be acquired'. Here the context is of a public right of way shown on a definitive map and statement, which is conclusive evidence that a right of way existed at the relevant date. When that is later discovered to be an error the public's use of the way after the relevant date, and before that discovery, is considered to be user that cannot have been prevented. The correction of a definitive map and statement by deleting a way shown in error is a finding that the right of way never existed. In these circumstances the conclusive provisions of section 56 of the 1981 Act were never effective. I consider this situation to be analogous to the 'binding and conclusive' provisions of the 1801 Act which became ineffective after the Andrews (1993) case. Looked at from the landowner's point of view, as common law principles require, until it could have been realised in 1993 that the Award was ineffective in establishing Fordon Road as a public bridleway, the landowner could not have prevented equestrian use of the Order route. It follows, in the circumstances, that the claim for a bridleway based upon section 31 of the Highways Act 1980 must fail.
7. For the above reasons and those set out in my interim decision I consider that the Order route was a public bridleway before the Folkton Inclosure Award. It follows that the width of the way should be no greater than that which it can reasonably be expected had been used by the public, and not the 20 feet (6 metres) set out in the Award and in the Order. In my view the width should be 3.5 metres.

Conclusion

8. Having regard to all these and all other matters raised in the written representations, I conclude that the Order should be confirmed with modifications.

Michael R. Lowe

INSPECTOR