



## Order Decision

Site visit on 19 December 2017

**by Mark Yates BA(Hons) MIPROW**

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

**Decision date: 27 February 2018**

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### **Order Ref: ROW/3174603**

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the 1981 Act") and is known as the Suffolk County Council (Thingoe Rural District Definitive Map and Statement) (Parishes of Chevington, Horringer and Ickworth) Modification Order 2017.
- The Order was made by Suffolk County Council ("the Council") on 13 February 2017 and proposes to add footpaths in the parishes of Chevington, Horringer and Ickworth to the definitive map and statement, which form a continuous route ("the claimed route"), as detailed in the Order Map and Schedule.
- There were two objections and one representation 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 not confirmed.**

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### **Procedural Matters**

1. All of the points referred to below correspond to those delineated on the Order Map. In respect of this issue, I note the comments of the applicant for the Order (Mr Andrews) regarding the different notation which appears on the map attached to the Council's report recommending that an Order be made.
2. The Council's decision to make the Order was reached on the basis that it could at least be reasonably alleged that public footpaths subsist. No further case has been made by the Council regarding the test I need to apply, as set out in paragraph 4 below. Mr Andrews has nonetheless provided his reasons why the Order should be confirmed.
3. Following the site visit I requested further information from the Council. I have considered this information and the subsequent comments of the other parties before reaching my decision.

### **Main Issues**

4. 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 Act. Therefore, if I am to confirm the Order, I must be satisfied that the evidence discovered shows that a right of way, which is not shown in the map and statement, subsists. The burden of proof to be applied is the balance of probabilities.
  5. The case in support relies upon historical documentary evidence rather than evidence of recent public use. In considering the above test, I shall assess whether the documentary evidence is sufficient to infer the dedication of public footpaths at some point in the past over the claimed route.
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## Reasons

### ***Consideration of the evidence***

6. Reliance is placed on the inclusion of a section of the claimed route in the Chevington Inclosure Award of 1815 as one of the awarded public footpaths. This path is described leading out of Hollybush Green Road and continuing by reference to particular plots included in the award to a point where it joined a path leading towards Ickworth Hall. The Council refers to a route depicted on the inclosure award plan which generally corresponds to the description of the awarded footpath.
7. From an examination of the map evidence I agree with Mr Andrews that the awarded footpath terminated in the locality of point J. The remainder of the claimed route in Chevington would have proceeded through old inclosures, which were outside of the scope of the award. He points out that if the section through the new inclosures (points M-J) was not awarded, it would have been stopped up by virtue of Section 11 of the Inclosure Consolidation Act 1801.
8. The Chevington Inclosure Award provides good evidence in support of the existence of a section of public footpath in the locality of the claimed route. It is also supportive of the footpath continuing onwards towards Ickworth Hall. However, it is apparent that the route shown on the Order Map does not correspond entirely to the route identified by the Council on the inclosure map. There is an additional place where the path turns generally south eastwards, which is located somewhere between points K and J. This leads to a significant variation between the awarded section of footpath and the claimed route.
9. A proportion of the claimed route (generally between points B-H<sup>1</sup>) is depicted by way of a brown line on the 1850 Ickworth tithe map and annotated "*Foot Path from Chevington*". There is no mention of this footpath in the accompanying apportionment. Nor is the remainder of the claimed route depicted on the 1839 Chevington tithe map. Nonetheless, the annotation on the later tithe map is clearly supportive of the section shown being the continuation of a footpath from Chevington and could be indicative of public status.
10. The claimed route is generally shown on various editions of Ordnance Survey ("OS") mapping between 1891 and 1950<sup>2</sup>. Whilst I note the reference by Mr Andrews to advice issued by the OS to field examiners in 1905, there is other guidance which points to the OS not being concerned with identifying the status of the routes present on the ground. Further, 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. I therefore take the view that the OS maps should be taken to be a good indication of the physical features present but not the status of the routes shown. Nonetheless, they are supportive of the existence of a path that is consistent with the claimed route.
11. The Council outlines that no public rights of way were claimed in this locality within the parishes of Horringer and Ickworth when the original definitive map was compiled. The section of the claimed route in Chevington was initially claimed but was not included on the draft map. Mr Andrews has referred to

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<sup>1</sup> It continues slightly beyond the parish boundary

<sup>2</sup> A section within Ickworth is not shown on the 1902-3 with 1950 additions OS map

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incorrect advice from the Council, which is documented in a letter of 2 October 1950 to Hitcham Parish Council. However, it cannot be determined that this view influenced the decision to not include the claimed route on the draft map. The failure to include this route on the definitive map would nonetheless not lead to the extinguishment of any pre-existing public rights over it.

### **Conclusions**

12. The amount of evidence in support is limited but the inclosure award should be afforded significant weight in terms of the existence of a public footpath which corresponds to a section of the claimed route within Chevington. This footpath is described continuing onwards towards Ickworth Hall and the tithe map is supportive of a footpath proceeding within the neighbouring parish over the claimed route. The OS maps show the continued existence of the claimed route as a through route during the latter part of the nineteenth century and into the twentieth century.
13. I have nonetheless identified a significant variation between the awarded footpath and the alignment of the claimed route. The latter was taken from an overlay of the First Edition OS map. On this issue, regard should be given to the purpose of OS mapping and the substantial period between the inclosure award and the relevant OS map.
14. In light of the above, I am not satisfied on balance that a public footpath subsists in the parish of Chevington which corresponds to the claimed route. Nor do I find it possible to determine to any reasonable extent the alignment of the whole of the awarded footpath to enable the Order to be modified. In the circumstances I do not consider it appropriate to treat sections of the route in isolation.

### **Other Matters**

15. The potential impact of the claimed route being added to the definitive map and statement is not relevant to my decision.

### **Overall Conclusion**

16. Having regard to these and all other matters raised in the written representations I conclude that the Order should not be confirmed.

### **Formal Decision**

17. I do not confirm the Order.

*Mark Yates*

**Inspector**