



Order Decision

Site visit made on 12 January 2021

by Mark Yates BA(Hons) MIPROW

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

Decision date: 8 June 2022

Order Ref: ROW/3239339M

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the 1981 Act") and is known as the Lincolnshire County Council, Addition to Tetford Public Footpath Number 33, Definitive Map Modification Order 2019.
- The Order was made by Lincolnshire County Council ("the Council") on 3 May 2019 and proposed to add a section of footpath to the definitive map and statement, as detailed in the Order Map and Schedule.
- The Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.
- In accordance with Paragraph 8(2) of Schedule 15 to the 1981 Act I have given notice of my proposal to confirm the Order with modifications.

Summary of Decision: The Order is confirmed subject to the revised modifications set out below in the Formal Decision.

Procedural Matters

1. This decision should be read in conjunction with my interim decision ("ID") of 8 February 2021, with the numbers in square brackets representing particular paragraphs in the ID. All of the points referred to below correspond to those delineated on the modified Order Map.
2. My proposed modifications involved the removal of a proportion of the footpath included in the Order and an alteration to the specified width for the section of path to remain in the Order. Both the Council and the landowner, Brian Todd Homes Limited ("BTHL"), object to the proposed modifications and this matter has continued by way of an exchange of written representations involving the parties.

Main Issues

3. I outlined the relevant test in relation to the Order, as made, in the ID [3]. The main issue now is whether the Order should be confirmed with the modifications proposed in the ID.

Reasons

The length of Tetford Footpath 33 to be added to the definitive map

4. My assessment of the relevant pieces of evidence is set out in the ID [7-18]. In summary, Ordnance Survey ("OS") mapping is supportive of the historical existence of a track between points A-X-B and a path continuing to the south of point A. Tetford Parish Council's survey of claimed public rights of way undertaken as part of the process to produce the definitive map identified that this footpath terminated at its northern end with North Road [11]. This termination point for the footpath is also noted in the survey sheet produced by
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the County Council [12]. In contrast, a map held with the survey documents from the 1950s does not show the footpath continuing beyond point A [13]. Subsequent evidence provides support for users of Footpath 33 continuing through to North Road [15-16].

5. The evidence is generally supportive of Footpath 33 passing between points A-X-B. It is therefore likely that the extent of the footpath shown on the 1950s map was an error. I noted the appearance of a curved area on the OS maps [8 and 17]. Although it is possible that this feature could have been interpreted as forming part of North Road, it is not included in the highway records. Nonetheless, for whatever reason, Footpath 33 was recorded as terminating at point X on the definitive map.
6. Given that the evidence is more supportive of Footpath 33 continuing through to North Road, the error which arises with the definitive map is that the footpath is shown terminating at point X rather than point B. It is the gap that is presently shown between points X and B that needs to be resolved rather than the section of the footpath to the south, which is already recorded on the definitive map. It therefore remains my view that the Order should only be confirmed on the basis that a right of way subsists on the balance of probabilities between points X-B. For the avoidance of doubt, I will additionally modify the Order and Order Map to make it clear that the section between points A-X corresponds with the continuation of the public footpath.

The width and alignment of Footpath 33

7. I noted that the historical boundaries were potentially set out by reference to a private track rather than the footpath [20]. Further, I did not find that the boundary-to-boundary presumption can apply to the X-B section given that on the whole no physical boundary to the west of this section is evident on the OS mapping prior to the parish survey [21]. Given that the footpath was claimed in the 1950s on the basis of longstanding use, it is likely that the path was dedicated well before the more recent evidence of use.
8. In these circumstances, it is appropriate to determine what would be a reasonable width for the footpath [22]. I viewed the 1 metre width suggested by BTHL to be too narrow [22] and nothing has been provided to alter my conclusion on this matter. It remains my view that 1.5 metres is a reasonable width for this section of the footpath.
9. Both parties believe that a width should also be specified for the A-X section. I accept that it would provide greater clarity for a width to be recorded for the section of the footpath I have concluded does not need to be added to the definitive map. I see no need to depart from the 1.5 metres width included for the X-B section.
10. In terms of the alignment of the footpath, it may well be the case that the public use has varied over time. For instance, a metal barrier in place between around 1995 and 2012 near North Road would have meant that people were likely to have joined the path by way of a gap on the western side of the barrier during this period. In contrast, there has at other times been a footpath sign positioned on the eastern side of the track.
11. BTHL's request that the footpath is defined as running along the western boundary of the track is not supported by evidence. There is no reference in the parish survey to the path following a particular route between A-X-B.

Further, as noted above, no western boundary is generally depicted adjacent to the X-B section on particular OS maps.

12. Overall, in the absence of clear evidence on this matter, I conclude on balance that the centre line for the footpath should be taken to coincide with the direct route between points X-B as represented by the purple line on the Order Map.

Conclusion

13. Having regard to these and all other matters raised in the written representations I conclude that the Order should be confirmed subject to the revised modifications detailed below.

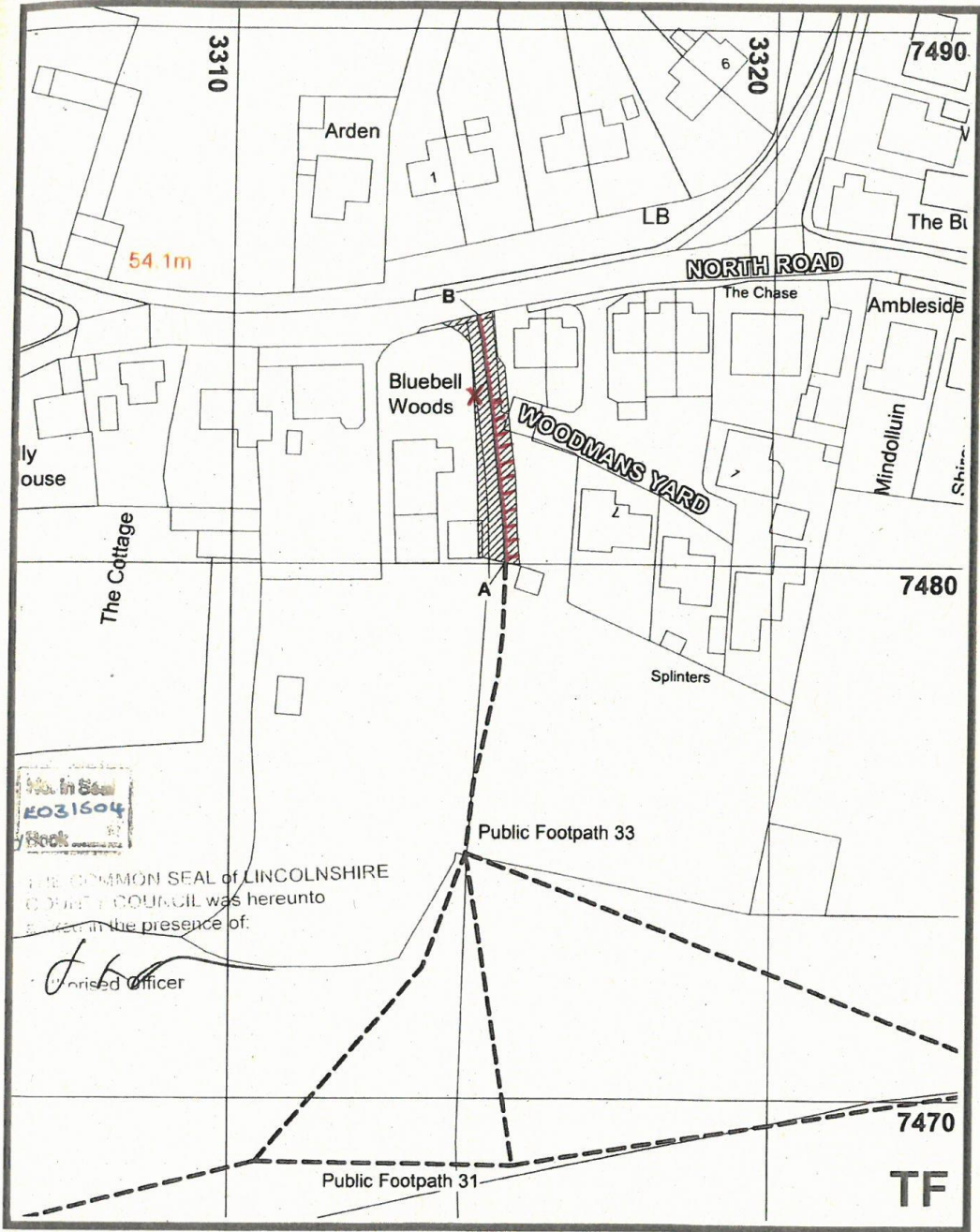
Formal Decision

14. I confirm the Order subject to the following modifications:

- Delete "from" and "at" in the first line of the description in Part I of the Order Schedule and insert "as" and "from" respectively.
- Delete "A" from the first line of the description in Part I of the Order Schedule and insert "X".
- Delete "TF 3315 7480) to continue" in the second and third lines of the description in Part I of the Order Schedule and insert "TF 3314 7483".
- Delete "46" from the fifth line of the description in Part I of the Order Schedule and insert "15".
- Delete the last sentence from the description in Part I of the Order Schedule and insert "*The width of this section of the path and its continuation southwards (between points A-X) is 1.5 metres*".
- Delete "from" and "at" in the first line of the description in Part II of the Order Schedule and insert "as" and "from" respectively.
- Delete "TF 3315 7480 to continue" in the second line of the description in Part II of the Order Schedule and insert "TF 3314 7483".
- Delete "46" from the fourth line of the description in Part II of the Order Schedule and insert "15".
- Delete the last sentence from the description in Part II of the Order Schedule and insert "*The width of this section of the path and its continuation southwards (between Grid References TF3315 7480 and TF3314 7483) is 1.5 metres*".
- Insert "X" at the appropriate point on the Order Map.
- Show the A-X section on the Order Map as an unaffected part of Footpath No. 33 and amend the map key accordingly.
- Delete the details relating to the width of the path from the key to the Order Map.

Mark Yates

Inspector



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THE COMMON SEAL of LINCOLNSHIRE COUNTY COUNCIL was hereunto affixed in the presence of:

J. K.
Authorised Officer

Key:
 Addition to FP 33 ——— A-B
 Width of footpath as per Ordnance Survey 25-foot map ———
 Affected Public Footpath - - - - -

Lincolnshire
 COUNTY COUNCIL
Working for a better future
 Drm. LP Date 25/04/2019

TETFORD
 (Definitive Map Modification Order)
 Addition to FP 33 to North Road

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Countryside Services
 County Offices, Newland, Lincoln, LN1 1YL.

Scale: 1 : 1,000
 Drawing No: 2019/013/DMMO365/A4