



10 October 2012

Agenda Item:

REPORT OF CORPORATE DIRECTOR (ENVIRONMENT AND RESOURCES)

CONSIDERATION OF AN APPLICATION UNDER SECTION 53(2) OF THE WILDLIFE AND COUNTRYSIDE ACT 1981 TO ADD A BRIDLEWAY TO THE DEFINITIVE MAP AND STATEMENT IN THE PARISHES OF EATON AND BABWORTH

Purpose of the Report

1. To consider an application made by the Nottinghamshire branch of the Ramblers' Association for the registration of a route as a public bridleway on the Definitive Map and Statement for the parishes of Eaton and Babworth. The route being claimed is shown on Plan A.
2. The effect of this application, should a Modification Order to add the route be made and subsequently confirmed, would be to register a bridleway between the Ordsall road in Eaton and Babworth Bridleway No. 5.

Legal Background

3. The application is made under the provisions of the Wildlife and Countryside Act 1981, Subsection (5) of Section 53 of the Act allows any person to apply to the authority for an order under subsection (2) of the Act, which will make such modifications to the Definitive Map and Statement as appear to the authority to be requisite in consequence of the occurrence of one or more events falling within paragraph (b) or (c) of subsection (3) of the Act. In this case, the relevant event is the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates.
4. In order to accept a right of way claim on the basis of discovered evidence and make a Modification Order, it is not necessary to be able to show that the claimed right exists beyond all reasonable doubt. The tests to be applied are commonly known within the rights of way profession as 'Test A' and 'Test B'. In 'Test A', the question to be answered is whether the right of way exists on the balance of probabilities. There must be clear evidence of public rights, with no credible evidence to the contrary. In 'Test B', the question is whether it is reasonable to allege that a right of way exists on the balance of probabilities. If there is a conflict of evidence, but no incontrovertible evidence that a right of way cannot be reasonably alleged to exist, 'Test B' is satisfied as the right of way

is reasonably alleged to exist, and the claim should therefore be accepted and a Modification Order made.

The application and the documentary sources

5. The application is supported by a range of documentary evidence. The relevant records have been examined to determine the full extent of the evidence for the existence of public rights over the claimed route.
6. On 'A map of the parishes of Eaton and Ordsall in the county of Nottingham' of 1810, the Eaton section of the route is shown and is labelled 'Morton Grange Bridle Road 12 feet'. Its continuation is indicated by the wording 'From Morton Grange' on the Babworth side of the parish boundary. The public status of this route can be established by cross-reference with the Eaton inclosure Award.
7. In the Eaton inclosure Award of 1814, the Eaton section is named as the 'Morton Grange Bridle Road', and is set out as "one public bridle road from the Elksey Road at or near Wood Close corner in its present course over Eaton Common and the Brecks to a gate leading into Morton Grange Farm of the breadth of twelve feet". The award text also states that "the public bridle road ... shall from time to time be amended and repaired in like manner as the public roads within the said parish of Eaton are according to law to be amended and repaired". Although there is no inclosure Award for Babworth, given that there is no logical reason for the awarded bridle road to stop at the parish boundary, it can reasonably be presumed that public bridleway rights on the remainder of the claimed route continued through to Morton Grange.
8. In the case of R v Secretary of State for the Environment ex parte Andrews (1993), it was held that the Inclosure (Consolidation) Act of 1801 did not in itself give inclosure commissioners an express power to create public rights of way below carriageway status. This judgement, however, has no effect in cases where public rights can be shown to have existed prior to the date of the Award. In this instance, public rights can be shown to exist by reference to the 1810 map and the Award text referring to the bridleway's "present course", indicating that it was already in existence prior to the Award being drawn up. It should also be noted that the Eaton local inclosure Act specifically authorised the inclosure commissioner for Eaton to "set out ... such public ... Roads and Highways ... as he shall judge necessary". This would indicate that the commissioner did not act ultra vires in setting out the Morton Grange bridle road.
9. On 'A plan of the parishes of Ordsall and Eaton in the county of Nottingham' of 1839, the Eaton section of the route is shown, but not labelled. Part of it is inscribed '9' but there is no key to explain the numbering.
10. On the Babworth tithe map of 1839, the Babworth section is coloured brown and included within Parcel 539, listed as a road in the ownership of the Earl of Scarborough. A continuation is shown on the other side of the parish boundary, which is labelled 'To Eaton'.
11. On the Ordnance Survey 6 inch map 14 NE of 1887, the whole route is shown but not labelled. Taken together with the two maps from 1839, the O.S. map indicates the

continuing existence of a route open and available to the public linking Eaton and Morton Grange.

12. In deposited documents for the Nottingham and Retford railway of 1902, the proposed line crosses the Eaton section of the route. The relevant parcel is described as 'Bridle and occupation road', with the 'Owners or reputed owners' being Lieutenant Colonel Henry Denison and East Retford Rural District Council. The District Council's inclusion indicates that the bridle road referred to was public.
13. On the relevant Finance Act maps, the easternmost part of the Eaton section of the route is excluded from the adjoining land parcels, and therefore depicted as public highway. The preceding documentary evidence would lead to the reasonable presumption that public bridleway rights existed over this part at minimum. The associated Field Books covering the remainder of the route only refer to public footpaths over the land in question, but this must be weighed against all of the preceding evidence pointing to bridleway status. There is no evidence that public bridleway rights over this section have been stopped up by due process.
14. In the 'Report of County Surveyor on the provisions of the Local Government Act 1929', the 'Morton Eaton (Bridle Road)' is listed as one of the routes on which minor repairs have been carried out by East Retford Rural District Council. The length quoted is 0.95 miles, which corresponds to the whole of the Eaton section of the claimed route. On the subsequent handover map produced to accompany the transfer of responsibility for highway maintenance from the District Council to the County Council, the whole of the Eaton section of the claimed route is coloured yellow, indicating that it was recognised as being maintainable at the public expense. This same section is still recorded as being publicly maintainable on the current List of Streets.

Responses from consultees

15. Letters have been sent out to the standard list of consultees, including the local member and the parish and district councils, asking for comments or representations regarding the claimed route. No objections were received to the proposed bridleway.

Responses from landowners

16. Mr R Girdham, one of the directors of Joseph Camm Farms Limited, has objected on the grounds that "the land in question has never been a bridleway" and has been "continuously cropped since 1967". He also states that the route would "severely affect the security of Morton Grange", and that the land on either side of the route is in a "designated HLS and ELS Environment Scheme, which protects rare species of flora and fauna". Nearly all of the points are not legally relevant, and none of them undermines the documentary evidence for the existence of public bridleway rights. The security and environmental issues could, however, be considered if a diversion request was submitted.
17. Mr T Blagg, a partner of E Blagg and Sons of Brecks Farm, Eaton, has objected on the grounds that the land in question has been farmed by his family for 70 years, and at no

time during that period has there ever been a bridleway through the property. He also refers to a Statutory Declaration lodged in 2007 stating that on the relevant part of Brecks Farm 'No ways over the land have been dedicated as highways'. He also states that the proposed bridleway would severely affect the security of Brecks Farm, and that the land on either side of the route is in a designated HLS and ELS Environment scheme. Security and environmental issues are not legally relevant to the determination of the claim, and none of the points raised undermines the documentary evidence for the existence of public bridleway rights.

Conclusion

18. In order to accept the claim, it is necessary to be able to satisfy either 'Test A' or 'Test B', as described above. There is clear evidence of public bridleway rights over the claimed route dating back to 1810, and no credible evidence to the contrary. 'Test A' is therefore satisfied, and the claim should be accepted and a Modification Order made accordingly.

Statutory and Policy Implications

19. This report has been compiled after consideration of implications in respect of finance, equal opportunities, human resources, crime and disorder, human rights, the safeguarding of children, sustainability and the environment and those using the service and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

RECOMMENDATION

1. It is RECOMMENDED that the Committee accepts the claim, and authorises the making of a Modification Order to register the route as a public bridleway, as for the reasons set out above, the evidence demonstrates that public bridleway rights exist on the balance of probabilities.

Tim Hart
Senior Definitive Map Officer

For any enquiries about this report please contact: Tim Hart on 0115 977 4395

Constitutional Comments (SJE - 03/07/2012)

2. This decision falls within the terms of reference of the Rights of Way Committee to whom the exercise of the Authority's powers relating to public rights of way has been delegated.

Financial Comments (DJK 03.07.2012)

3. The contents of this report are duly noted; there are no financial implications.

Background Papers

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

Bridleway claim at Eaton / Babworth - case file.

Electoral Division(s) and Member(s) Affected

Misterton
Tuxford

Councillor Liz Yates
Councillor John Hempsall

H/TH/ROW83 - Add Bridleway to Parishes of Eaton & Babworth
2 July 2012