



# Order Decision

Inquiry opened on 24 October 2006

by **Helen Slade MA FIPROW**

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

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**Decision date:**  
15 October 2007

## Order Ref: FPS/L3055/7/29M

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as The Nottinghamshire County Council (North Muskham Restricted Byway No. 7) Modification Order 2006.
- Nottinghamshire County Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.
- The Order is dated 28 June 2006 and proposes to modify the Definitive Map and Statement for the area by adding a Restricted Byway to and alongside the River Trent in North Muskham as shown on the Order Plan and described in the Schedule.
- In accordance with paragraph 8(2) of Schedule 15 to the Wildlife and Countryside Act 1981 I have given notice of my proposal to confirm the Order so as to give a clearer indication of the width of the route.
- One representation in respect of my proposed modification has been received.

**Summary of Decision: The Order is confirmed subject to the modification I formerly proposed, and with further modifications which do not require advertising.**

## Preliminary Matters

1. The effect of the Order if confirmed with the modifications that I previously proposed would be to include in the Schedule to the Order an amplified description of the route to assist in identifying the width. My proposed modification was set out as follows:
  - In Part II of Schedule at the end of the paragraph delete the words 'delineated in red on the Order map' and insert:  
*'set out in the 1773 Bathley, Holme and North Muskham Inclosure Award and indicated in red on the Order map; except between points A and B on the map where the actual width constitutes the width between the pre-1773 inclosures'*
2. Nottinghamshire County Council ('the County Council') submitted a representation suggesting an alternative way of showing the information intended to be conveyed by my proposed modification. The County Council also commented on various other paragraphs of my interim decision, but which were not issues that were the subject of my proposed modification.
3. The matter has been dealt with by way of written representations and several parties have submitted correspondence as a result. Much of the material submitted relates to aspects of my decision, or the evidence, which were not

the subject of my proposed modification. I do not consider that any of those comments, or the additional material submitted, affects the decision that I reached in my interim decision.

4. Mr Horner of Langley's Solicitors, on behalf of the objectors, made a submission in respect of the evidence relating to the Inclosure Act and Award which he considered had not been raised at the inquiry. I have read this carefully, and the ensuing exchanges, to determine whether or not I ought to consider re-opening the inquiry. In a subsequent letter, Mr Horner welcomed the County Council's view that the matter had in fact been raised at the inquiry.
5. I am satisfied that the provisions of the 1771 Inclosure Act and the 1773 Inclosure Award were raised and exhaustively aired at the inquiry. I am also satisfied that the issues were fully dealt with in my interim decision, in which I came to a conclusion on the legal effect of the enclosure process. The issue re-visited by Mr Horner does not relate to my proposed modification, which concerns only to the manner in which the width of the Order route ought to be described. I see no need for a further investigation into the effect of the 1771 Act and 1773 Award.

### **Main issue**

6. The main issue is whether or not my proposed modification, to clarify the precise width of the Order route, can be better expressed in the Order.

### **Reasons**

7. The County Council indicated the width of the route in the Order by reference only to the red shading on the Order plan. No specific measurements are given.
8. At the inquiry, which lasted a total of three days, an amendment to the Order plan was proposed, which I dealt with in paragraphs 7 to 11 of my interim decision. It remains my view that it is beyond my powers of modification to substitute one plan for another in a legally sealed Order, whether or not that Order has yet to be confirmed. I may, however, modify the Order or the plan in exercise of the powers prescribed in Schedule 15 to the Wildlife and Countryside Act 1981 ('the 1981 Act'), and in accordance with guidance set out in Department of Environment Circular 2/93, if I consider it to be appropriate.
9. Part of the consideration as to whether or not it is appropriate to make a modification must take into account the clarity with which it is possible to indicate that modification, so that the Order is not rendered more confusing rather than less as a consequence. My aim in this particular case was to make the minimum alteration possible whilst still conveying the most accurate information.

### ***Trent Ford Road***

10. The County Council considers that it is not helpful to rely on details contained in a document which does not form part of the Order and thus my reference to the width as set out in the 1773 Inclosure Award is unhelpful. The County Council suggests that for the section of the Order route between points A and B

(on the modified plan) I should include cross-hatching to indicate the reduced width.

11. In my proposed modification I retained a reference to the red shading on the plan. Nevertheless, I have considered whether or not it would be helpful, and whether or not it would be possible, to clearly annotate the map in the way suggested by the County Council, and I conclude that it would be possible, and might be more helpful, if the width between points A and B were more clearly definable in some way.
12. However, there is no evidence in the Inclosure Award which gives precise details of the width between the 'old' inclosures. I have been provided with no specific measurements of the width for that section, and the only reliable information on which I have to base any judgement of the width is the wording of the 1773 Inclosure Act, and the evidence of the width shown on old Ordnance Survey ('OS') maps.
13. I do not have access to original copies of the large scale OS maps submitted, which in any case date from over 100 years later than the Inclosure Award. However, even if I were to assume that the width of A-B was accurately represented on the copies of the 1:2500 OS maps that I have seen, I do not consider that it would be safe for me to take precise measurements from them due to the risk of distortion to the scale during their reproduction. Nevertheless, a degree of interpretation is always necessary when attempting to translate what is shown on a map or plan and what it represents on the ground, however accurate the surveying techniques may be.
14. Dr Hart's plan of his suggested modification, presented to the inquiry, appears to me to be a close representation of what is shown on the old 1:2500 OS plans submitted in evidence. I consider it more likely than not that the situation reflected in those maps bears a close relationship to the location and size of the old inclosures, because the inclosures formed as a consequence of the 1773 Award are also clearly identifiable on those OS maps, where the boundaries remain. I consider that it would be possible for me to show, by cross-hatching, the reduced breadth of the Order route between points A and B on the modified Order plan, to indicate that it lies between the land occupied by the old inclosures.

### ***Ferry Road***

15. With respect to Ferry Road, I do not consider that my proposed modification altered the width set out in the Order. However, a query was raised by Mr Horner on behalf of the objectors as to whether the proposed modification was attempting to prescribe a specific defined width for Ferry Road.
16. In paragraph 70 of my interim decision I referred to the fact that the river was tidal at North Muskham at the time of the 1773 Award, and that the edge of the water would therefore fluctuate.
17. The Award set out the route of Ferry Road between numbered ancient inclosures and the River Trent. Since the water-line would fluctuate, so too would the width of the route alongside. The red shading on the Order plan reflects the width between the old inclosures and a line on the map which represents what is now considered (by OS surveyors) to be the edge of the

River Trent. I do not consider that it is possible to be any more specific about the width than that stated in the Award.

***Both routes***

18. I still consider that it is preferable to have as little 'interpretation' of the original information as possible, because it is clearly better to interrogate the primary document rather than successive interpretations of it. Each subsequent evaluation introduces the possibility of error and any error then being magnified.
19. I accept the view of the County Council that it is perhaps less than helpful to have to refer to a primary document which is held elsewhere than with the Order. I therefore consider that the Order itself ought to contain the original description of the width, as set out in the 1773 Inclosure Award, to enable the Order to be interpreted in relation to the primary documentary evidence as far as it is practicable to do so.
20. I realise that this is not a perfect solution, but I do not consider it is possible at this distance of time to be any more specific about the width than the details given in the 1773 Award, and I therefore propose to add to the Schedule the description of the routes from that document.
21. Neither of these changes alters the basis of the modification I proposed in my interim decision, nor do they affect the land concerned in a way that has not already been advertised. The additional information simply provides extra detail to assist in the interpretation of the modification I previously proposed, the effect of which remains the same. There is thus no necessity to re-advertise the additional modifications.

**Other Matters**

22. With respect to the notation on the Order plan, I acknowledge that the original Order plans do carry the notation for a Restricted Byway subsumed within the red colouring. The colouring obscures the notation, but does not obliterate it. I have ensured that my modification retains that notation.
23. Some correspondence submitted as part of the written exchange of representations related solely to the concurrent order being considered by the Magistrates Court under the stopping-up procedures (Section 116 of the Highways Act 1980). As I stated in my interim decision, that issue is not relevant to my determination of the modification order, and I have not taken any of the comments made in that regard into account in coming to my decision.

**Conclusion**

24. Having considered all the written representations submitted as a result of my interim decision, I conclude that the Order should be confirmed with the modification I previously proposed, with additional modifications which do not require advertising.

## Formal Decision

25. I confirm the Order subject to the modification I formerly proposed and additional modifications, as set out below:

- In Part II of Schedule at the end of the paragraph delete the words '*delineated in red on the Order map*' and insert:

*'set out in the 1773 Bathley, Holme and North Muskham Inclosure Award (see \* below) and indicated in red on the Order map; except between points A and B on the map where the actual width constitutes the width between the pre-1773 inclosures as indicated by cross-hatching.'*

- Insert the following wording from the 1773 Award:

*\*"There shall be at all times for ever hereafter one other public highway for all persons to pass and repass thereon on foot and on horseback and with cattle and carriages as the same is now admeasured and set out beginning between two ancient inclosures (Numbers 62 and 59) within the township of North Muskham aforesaid and continued from thence south eastwards to the River Trent and that the same shall be made sixty feet broad between the ditches or fences and called The Trent Ford Road.*

*That there shall be at all times for ever hereafter one other public highway for all persons to pass and repass thereon on foot and on horseback and with cattle and carriages beginning at the last mentioned Road and going from thence southwards between an allotment herinafter made to Bryant Cooke Esquire (marked H) and several ancient Inclosures (numbers 67, 70, 71, 72, 73, 74, and 75) and the River Trent and that the same shall be called Ferry Road."*

- On the Order plan, insert the letters A and B and cross-hatching to indicate the section of reduced width.
- On the Order plan, insert the symbol for a Restricted Byway along the centre line of the hatched length of the Order route between points A and B.

*Helen Slade*

Inspector