



Order Decision

Inquiry and site visit held on 11 July 2006.

By Adrian I'Anson, Solicitor

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

The Planning Inspectorate
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Date: 10 April 2007

Order Ref: FPS/L3055/8/3

- This Order is made under section 54(1) of the Wildlife and Countryside Act 1981 (“the 1981 Act”) and is known as The Nottinghamshire County Council (Car Colston Byway No. 13) Reclassification Order 1999.
- The Order was made on 5 February 1999 and proposes to modify the Definitive Map and Statement by reclassifying a Road Used as a Public Path (“RUPP”) as a Byway Open To All Traffic (“BOAT”) in the Parish of Car Colston as detailed on the Order Map.
- There were six objections outstanding when Nottinghamshire County Council (“the Council”) submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.
- By an Order Decision dated 31 August 2006, I proposed to confirm the Order subject to modifications which would alter the status of the Order route.

Summary of Decision: The Order is not confirmed.

Procedural Matter

1. The effect of the Order, if confirmed with the modifications that I previously proposed, would be to modify the Definitive Map and Statement for the area by reclassifying Car Colston RUPP 13 as a Restricted Byway.
2. Since these modifications would show as a highway of one description a way which is shown in the Order as a highway of another description, I was required by virtue of paragraph 8(2) of schedule 15 to the 1981 Act to give notice of my proposal to modify the Order.

Reasons

3. In the light of an objection from Mr Marshall and the publication of further guidance by the Department of the Environment, Food and Rural Affairs (“DEFRA”) on the application of sections 47 and 48 of the Countryside and Rights of Way Act 2000 (“the 2000 Act”) to RUPP reclassification, I issued a letter dated 12 January 2007. This set out my revised view that it would not be appropriate to confirm the Order. I invited further comment from the parties concerned before issuing my final decision. A copy of my letter is attached to this Decision for information.
4. Under the 2000 Act, all RUPPs shown on the Definitive Map and Statement were statutorily reclassified as Restricted Byways on 2 May 2006. Not confirming the Order would therefore have no impact upon the legal status of New Lane which since 2 May 2006 has been a Restricted Byway by virtue of the implementation of section 47 of the 2000 Act.

5. No further comments have been received from Mr Marshall on this matter. In response to my letter, additional representations were received from Mr Hiley, Mr Forman Hardy and Mr Geldart. Mr Forman Hardy made no representations as such, but told me that he had discussed the matter with Mr Geldart who would be writing to me.
6. Mr Hiley argues, on the basis of paragraph 32 of Version 4 of the DEFRA “*Guide to Part 6 of the Natural Environment and Rural Communities Act 2006 and Restricted Byways*” that section 67(3)(a) of the 2006 Act applies to this Order. He contends that it follows that since the application for this Order was made before 20 January 2005 the law as it stood at that date applies and, therefore, if the application is successful, mechanically propelled vehicle rights can be lawfully recorded. Although this is correct, it ignores the point I made in paragraph 6 of my Order Decision where I stated: “*Furthermore, I have considered the exemptions referred to in sections 67(2) and 67(3) of the 2006 Act. Those in section 67(3) apply only to applications made under section 53(2) of the 1981 Act. The Order before is made under section 54 of the 1981 Act and so these exemptions do not apply. None of the evidence I heard, leads me to conclude that any of the exemptions referred to in section 67(2) apply.*”
7. Paragraph 82 of the current DEFRA advice, referred to in the preceding paragraph, states that “*where an outstanding section 54 order for a BOAT has been found to carry public vehicular rights, but the public right of way for mechanically propelled vehicles has been extinguished by section 67 of the NERC Act, then the order should simply not be confirmed. As the right of way in question will already be a restricted byway by virtue of section 47 of the Countryside and Rights of Way Act 2000, this will result in the right of way maintaining the status appropriate to that outcome.*”
8. Mr Geldart claims that the advice from DEFRA which leads to the conclusion in paragraph 82 is open to challenge. He presents no clear argument to support this view and, accordingly, I have no reason to doubt the correctness of the view expressed by DEFRA.
9. Mr Geldart also contends that section 54 of the 1981 Act has the effect, in the event of non-confirmation of the Order, of converting the RUPP to a bridleway. As I explained at paragraph 5 of my Decision, the effect of section 54 is saved by paragraph 3 of SI 1172 only as regards the operation or process of an order and not its outcome.
10. In my letter, I concluded that non-confirmation of the Order would simply reflect the statutory reclassification of New Lane as a Restricted Byway. Having reviewed the representations, nothing has convinced me that the views expressed in my letter of 12 January 2007 are incorrect. Therefore, for the reasons set out in my letter, I do consider that it is appropriate to decline to confirm the Order

Conclusion

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

Formal Decision

12. I have not confirmed the Order.

A. F. I'Anson
Inspector.