



# Order Decision

Inquiry opened on 19 August 2008

by **Barney Grimshaw BA DPA**  
MRTPI (Rtd)

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

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**Decision date:**  
15 September 2008

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## Order Ref: FPS/E0535/7/23

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as The Cambridgeshire County Council (Public Footpath No 14, Eaton Socon) Definitive Map Modification Order 2007. It was sealed on 27 March 2007.
- The Order proposes to add to the Definitive Map and Statement a footpath running between School Lane and Footpath 14, Eaton Socon and to amend the description of part of Footpath 14 so as to specify its width, as detailed on the Order Map and Schedule.
- There was 1 objection outstanding at the opening of the inquiry.

**Summary of Decision: I have confirmed the Order subject to modifications that do not require advertising.**

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## Preliminary Matters

1. I held a public inquiry into this Order on Tuesday 19 and Wednesday 20 August 2008 at the Jubilee Hall, Eaton Socon. I made an unaccompanied site inspection on Monday 18 August and a further inspection on 20 August when I was accompanied by parties who appeared at the inquiry.
  2. In writing this decision I have found it convenient to refer to points along the Order route as marked on the Order map. I therefore attach a copy of this map as Appendix 1.
  3. The Order proposes to add to the Definitive Map a previously unrecorded footpath between School Lane (Point A on the attached map) and Footpath 14 at Point B. The only objection to this part of the Order was related to the proposed width of the new footpath. However, at the inquiry it was stated on behalf of the objectors that they were now prepared to withdraw this objection and accepted that the width proposed in the Order was in fact correct. A second part of the Order proposes to modify the description of part of Footpath 14 that is already recorded on the Definitive Map (Points B-C) so as to specify its width. The objectors maintained their objection to this part of the Order and presented evidence to suggest that it should be modified. In writing this decision I have considered all the evidence available in respect of the whole of the Order but I have dealt more briefly with those parts that are no longer disputed.
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## **The Main Issues**

4. The requirement of Section 53(3)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) is that a period should have expired such that the enjoyment of the public of the way during that period raises a presumption that the way has been dedicated as a public path.
5. The requirement of Section 53(3)(c)(i) of the 1981 Act is that the evidence discovered by the surveying authority, when considered with all other relevant evidence available, should show that a right of way that is not shown on the Definitive Map and Statement subsists along the Order route.
6. The requirement of Section 53(3)(c)(iii) of the 1981 Act is that the evidence discovered by the surveying authority, when considered with all other relevant evidence available, should show that there is no right of way over land shown in the Definitive Map and Statement as a highway, or any other particulars contained in the Map and Statement require modification.
7. Much of the evidence in this case relates to usage of the route. In respect of this, the requirements of Section 31 of the Highways Act 1980 (the 1980 Act) are relevant. This states that where it can be shown that a way over land has been enjoyed by the public as of right and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The period of 20 years is to be calculated retrospectively from the date when the right of the public to use the way was brought into question.
8. Common law also requires me to consider whether the use of the path and the actions of the landowners have been of such a nature that the dedication of the path by the landowners can be inferred.

## **Reasons**

9. The majority of the evidence in this case consists of that provided by people claiming to have used the Order route. Thirty one people completed User Evidence Forms (UEFs) describing their use of the whole Order route, Four of these people also appeared at the inquiry along with two others who had also used the route but had not completed UEFs. In total I have therefore been able to consider evidence of 33 people who claim to have used the route over a period between 1963 and 2006.
10. Most of the use described was on foot but a few people also claimed to have used it in vehicles and some had also used it with bicycles.
11. In addition, a limited amount of documentary evidence was referred to in support of the user evidence. I have dealt with this alongside the user evidence in respect of each section of the Order route in turn.

## ***Section A-B***

12. Extracts from a map and documents describing highways taken over by Bedfordshire County Council from the Rural District Councils (RDCs) in 1930 show a route similar to the section of the Order route between A and B coloured yellow, in the same way as the remainder of School Lane. However notes made by the Deputy County Surveyor on inspection of the highways

- state that the route over the bridge and past the mill (A-B) was a public footpath under the control of but not metalled by the RDC.
13. There is evidence that since the mid 1970s there has been a gate or barrier restricting vehicular access along this route, which was usually locked at night although there is no suggestion that pedestrian access has ever been obstructed, as there was always a gap at the side of the gate/barrier.
  14. Effectively, this section of the Order route appears to have served as a public footpath and a private vehicular access to various business premises in and around the mill for a considerable period. Users of the route have provided little precise detail regarding this part of the route but none of the people providing evidence has referred to pedestrians being confined to part of the available width, although some refer to walking between pub benches. It therefore seems logical to assume that walkers will have made use of the whole width available to them between car parking areas and pub benches and tables. Although the exact layout of these may have varied to some extent over time, it would seem that a width of at least that shown in the Order has always been available to the public in a similar location to that shown.
  15. As mentioned previously, this part of the Order is not disputed.

### **Section B-C**

16. The Ordnance Survey (OS) 1:2500 map of 1901 shows the line of the route now recorded as this section of Footpath 14 between two solid lines, one representing the edge of the mill stream and the other probably a feature such as a fence or hedge. This map does not however provide any indication of the status of the route.
17. This section of the Order route was described in the survey carried out by Eaton Socon Parish Council in 1951 as the first step towards the recording of public rights of way in the Definitive Map and Statement. The path was shown on the map starting at River Mill and running alongside the mill stream between two solid lines, as on the earlier OS map. The northern end of the path is annotated KG (Kissing Gate). The description refers to it as Footpath 14 and states that it *"starts at point near Messrs. Jordan and Addington's Mill by a kissing gate, passes along the side of the mill stream by a foot-bridge over floodgates..."*. The width of the path is not stated. The footpath has been shown in a similar manner on all versions of the Definitive Map and Statement since this time.
18. There is no dispute in this case regarding the existence of a public footpath between Points B and C but only about the width of this path. It would appear that the path was at one time clearly defined as running between the edge of the mill stream and a hedge. The hedge remained until 1978, although it may have been reduced in size and length prior to this. Mr Duncan Simmonds, whose father was a director of the company then owning the mill, has stated that he undertook the work of removing the hedge for the purpose of providing car parking facilities for commercial activities at the mill. From 1978 until 2004 when new gates and fencing were erected, the whole area between the mill stream and the main river remained largely open and it is claimed that all of the available area was used as a public footpath. The only parts of the area that are not claimed to have been used in this period are those occupied by a

gas bottle store bounded by a fence and hedge immediately adjacent to the main river, a sunken fuel tank and a 1.5 metre wide area occupied by benches and porches in front of the mill house. These areas are excluded from the Order.

19. The UEFs that were submitted had maps of the area attached on which people were asked to mark the route of the path clearly and precisely. Not all people used the map but those that did typically showed a line or lines across the area between B and C. The location of the lines depicted varies considerably, possibly indicating that users followed various routes across the area. However, most users do not appear to have only walked along the line of Footpath 14 as shown on the Definitive Map, immediately alongside the mill stream and many regarded the fence erected in 2004 as obstructing the path even though it does not necessarily impinge upon the definitive route.
20. Based on the evidence provided by users of the route and others, the nature of public use of the area now claimed as public footpath seems to have been varied. Many people used it as a footpath forming part of a recreational walk or to travel between Eaton Socon and Eynesbury but, many also appear to have used it as a general recreational area for activities such as feeding ducks, sitting by the river, picnicking and watching boats. Some also used it in connection with visiting the pub or other businesses in and around the mill and some to gain access to or from boats or for fishing. Not all of this use can be regarded as contributing to the establishment of a public right of way over the land. Nevertheless, the available evidence indicates that between 1978 and 2004, almost the whole of the area between the mill stream and the river was accessible to the public and a considerable number of people walked through the area which formed part of the well used footpath route between Eaton Socon and Eynesbury. It is also clear that many people did not stick to the route of Footpath 14 alongside the mill stream as shown on the Definitive Map. What is less clear is whether the whole of the claimed area or any other specific route(s) through it were used sufficiently and in such a manner for a period of 20 years as to raise a presumption that a public right of way had been dedicated in accordance with the provisions of the 1980 Act.
21. Even if any or all of the area was used in this way, it is also necessary to consider whether any steps taken by owners of the land provide sufficient evidence that there was no intention during that period to dedicate it.
22. On behalf of the objectors it was stated that a lack of any intention to dedicate additional land as a right of way had been demonstrated by the erection of signs, challenges to users and the nature of the use to which the land in question had been put by the owners of it.
23. Two signs were referred to in particular. The first was situated facing the river to the north of the gas bottle store area. This sign advertised the businesses based at River Mill and by its location was presumably primarily directed at people using the river in boats, although it is within the area where people claim to have walked. The sign included the following words: *"Mooring and Car Park are Privately Owned. Visitors Use is at your Own Risk and Subject to Owners Permission. FP 14 to Village through Private Estate"*. A photograph shows this sign in place alongside a newly planted willow tree which it is known was planted in 1992.

24. A second sign was described by a number of witnesses and said to have been in place close to Point A from the early 1980s until the early 1990s. No photographs of this sign were available but a design of it was submitted and witnesses confirmed that this accurately depicted the sign that was actually erected. This sign also advertised businesses at River Mill and the Garden Centre, which used to exist to the west of the mill stream. It included the words: *CAR PARKS AND MOORINGS ARE PRIVATE OWNED ESTATE VISITORS USE IS AT OWN RISK AND SUBJECT TO OWNERS PERMISSION*". The sign also diagrammatically depicted Footpath 14 by means of two parallel solid lines running diagonally across the sign and annotated "*FP 14 to Eynesbury through Private Estate*".
25. Mr Bennett also gave evidence that he had erected a further sign in 2003 directing footpath users alongside the mill stream. A similar sign was subsequently attached to the fence erected in 2004.
26. There was evidence that other signs had also been displayed on the site at different times but these had not related to use of the land as a footpath.
27. Although these signs did not specifically state that any particular part of the area in question was not a public right of way, they do appear to have sought to indicate that the route of the public footpath crossed an area which was private and to which public access was only allowed with the permission of the owners.
28. Miss N Simmonds, sister of both D Simmonds, who was responsible for managing the River Mill site from 1989 to 2003, and I Simmonds, who ran a flag making business in what is now the Mill House from 1987 to 1989, lived on the site in 1988 and from 1992 to 2002. She stated that although the public were generally welcomed by the businesses on the site, people such as dog walkers and school children were frequently challenged if not on the public footpath (that is alongside the mill stream). Teachers from the nearby school were sometimes involved and the police were called on a few occasions. Mr N Bennett, who acquired the site in 2003, stated that anyone not using the footpath route was challenged and asked to keep to the path prior to the erection of the gate and fence in 2004. Mr R Young, who managed the boatyard at the River Mill site from 1985 to 1988, said in a statement that he challenged members of the public on foot and in vehicles on many occasions. Mr D Young, part owner of the site from 1975/76 to 1985, also referred to challenges being made but these seem to have been mainly directed at people misbehaving in some way rather than merely straying from the line of the footpath.
29. Witnesses described the businesses located in and around River Mill from the 1970s. These included the tavern, a boat hire business, marina, beauty salon, tea rooms, chandlery, flag making, angling shop and offices. The area to the east of the footpath that is now claimed as part of the Order route was used on a regular basis for the siting of tables in front of the Mill House, which was the location of the tea rooms, staff car parking for 6-8 cars, storage and repair of boats and craning boats out of the water twice a year. On weekly change-over days for the boat hire business up to 25 customers' cars were also parked in this area. Contractors' vehicles would sometimes also be present on the site. It

was argued on behalf of the objectors that such use was incompatible with an intention to dedicate the area as a public right of way.

30. At some time after the hedge was removed in 1978 a low post and rail fence was erected running parallel to the mill stream roughly on the line of the old hedge. On behalf of the objectors it was stated that this had been to define the footpath and prevent it from being obstructed by parked cars. Gravel was also laid in the car parking area but not on the footpath. Users that remembered the fence stated that they thought it had been to prevent people (or vehicles) accidentally falling into the water. In the late 1980s the wall of the mill stream was in disrepair and crumbling leaving only a narrow gap between this fence and the water's edge. Also, photographs and witness evidence indicate that boat owners sometimes moored their boats to the fence posts in such a way that ropes crossed and obstructed the path. At this time it seems likely that walkers may have preferred to walk to the east of the fence. In the early 1990s, the wall of the mill stream was rebuilt and the fence moved to the water's edge.
31. On the other hand, few users recalled seeing any signs and none reported ever having been challenged. Although several referred to cars having been parked on the land they stated that they had never prevented them from walking across it.
32. Overall, it is my view that although the signs, challenges and other actions of the landowners were not effective in preventing public use of the area in question, they did indicate that it was not intended to dedicate it as a public right of way.

### ***Common Law***

33. An inference that a way has been dedicated for public use may be drawn at common law where the actions of landowners (or lack of action) indicate that they intended a way to be dedicated as a highway and where the public have accepted it.
34. In this case, although it seems clear that the public has used the area between the mill stream and the main river over a lengthy period, there is no substantive evidence of action by owners of the land that would indicate their intention to dedicate the area as a public right of way. On the contrary, the evidence regarding the erection of signs, challenges to users and the manner in which the land was used for commercial activities shows that they did not intend such dedication to occur. It is therefore my view that it would not be reasonable to infer that the whole of the Order route has been dedicated as a public footpath under common law.

### ***Conclusions***

35. The documentary and user evidence available indicates that section A-B of the Order route has been a public footpath for a considerable time. Although the evidence regarding the precise alignment and width of this part of the route is not clear, it is my view that it is most likely that people will have used the whole of the width easily available to them and that this is reflected in the way the route is shown and described in the Order.

36. With regard to the section B-C, it is clear that the footpath is well used and that all users have not always confined themselves to a narrow strip of land alongside the mill stream. However, although the public may well have used the whole of the available area between the mill stream and the main river for various purposes, some of these, such as feeding ducks and visiting businesses located in the area, cannot be regarded as contributing towards the establishment of a public right of way. On balance, it is my view that the available evidence does not show that this whole area or any particular route across it, other than the recorded Footpath 14, has been used by the public in such a way and for a sufficient period to raise a presumption that it has been dedicated as a public right of way in accordance with the provisions of the 1980 Act.
37. Even if 20 years continuous use of all or part of the area as a public footpath could be demonstrated, it is my view that the actions taken by the owners of the land since 1978, when the hedge delineating Footpath 14 was removed, have been sufficient to demonstrate that there was no intention to dedicate additional land as a public right of way.
38. Although there is some evidence of use of the Order route on bicycles and with vehicles, this is quite limited and there is evidence that vehicular access has been controlled by a gate or barrier since the 1970s. It is therefore my view that no public vehicular rights have been established over any part of the Order route.
39. The footpath currently recorded in the Definitive Map runs alongside the mill stream but its width is not recorded. The limited amount of evidence that is available suggests that prior to 1978 the available width between the hedge and the water was quite limited, possibly as little as 1 metre. However, it seems to me unlikely that, following removal of the hedge and notwithstanding the subsequent erection of a fence on a similar line, walkers would have only used such a narrow path when it would have been easy to walk a little further from the water's edge. This view is reinforced by the knowledge that for a time the bank of the mill stream was crumbling and the path was obstructed by mooring ropes.
40. Nevertheless, it is important that the width of this path is established and recorded to avoid continued confusion and to facilitate future maintenance and enforcement of the path. The minimum width that is currently available between Points B and C is 2.3 metres. This is an adequate width for walkers to pass each other without difficulty and, in the absence of more precise evidence as to the width of the path, I therefore intend to modify the Order so as to describe this section of the footpath as being 2.3 metres wide.

### **Other Matters**

41. Some supporters of the Order referred to matters such as the potential danger of walkers being confined to a route along the edge of the mill stream, the reduction in access to the river bank and the loss of a popular amenity area if the Order is not confirmed. I understand these concerns but, as they lie outside the criteria set out in the 1981 Act, I have given them no weight in reaching my decision.

42. The OMA has suggested that it might be concluded that public access had been more effectively controlled in the area immediately in front of the Mill House and that as a result it might be appropriate to describe the path as being 2.3 metres wide for part of the route between B and C but extending to the whole width of the available area between the mill stream and the main river for the remainder of the route. I have considered this suggestion and it is my view that, whilst it is possible that challenges to users may have been more likely nearer the Mill House and commercial activity more intense, I have insufficient substantive evidence to justify reaching different conclusion regarding different parts of the disputed area.
43. The final page of the Order is blank where it would normally have indicated the date on which the Order was made. However, the date on which the Order was formally sealed by the OMA, 27 March 2007, is clearly indicated on the first page of the Order. In these circumstances, it is my view that the inclusion of an additional date at the end of the Order was unnecessary and the omission of such a date in no way invalidates the Order.

### **Overall Conclusion**

44. Having regard to these and all other matters raised in the written representations and at the inquiry, I conclude that the Order should be confirmed subject to the modification mentioned above.

### **Formal Decision**

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

In the Schedule to the Order, Part II, modify the description of the Footpath 14 from OSGR TL 1736 5876 to read: "At that point the path turns to run in a generally south-easterly direction for about 83 metres, with a width of 2.3 metres to OSGR TL 1741 5870. From that point the path continues in a generally south-easterly direction to the parish boundary."

Modify the Order map accordingly.

*Barney Grimshaw*

**INSPECTOR**

## **APPEARANCES**

### **For the OMA**

Sue Rumfitt  
Sue Rumfitt Associates  
161 Spring Road, Kempston  
Bedford MK42 8NR  
(representing Cambridgeshire County  
Council (CCC))

#### Who called:

John Oxley	9 Cowpers Court Eaton Ford PE19 7LR
John Nunn	25 Cambridge Gardens Eaton Socon PE19 1PG
Sally Wale	80 Ridgeway Eynesbury PE19 2RA
Chris Bowring	17 Blakes Way Eaton Socon PE19 8PU
Garth Hurden	4 Woodlands St Neots PE19 1UE
Steven Ouditt	Definitive Map Officer, CCC

### **Supporters**

Cllr Bob Farrer	151A Crossmill Road Eaton Ford PE19 7GB
Gordon Thorpe	5 Milton Avenue Eaton Ford PE19 7LH

### **Objectors**

Nigel Farthing	Birketts, 24-26 Museum Street Ipswich IP1 1HZ (representing Mr and Mrs Barnes)
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#### Who called:

Derek Young	151 Crosshall Road Eaton Ford PE19 7GB
Russell Young	41 The Highway Great Staughton PE19 5DA

Brian Smith	44 School Lane Eaton Socon PE19 8HN
Lorie Smith	As above
Nicky Simmonds	33 Cromwell Gardens St Neots PE19 1PY
Nick Bennett	The Old Paddock, Hatchet Lane Stonely PE19 5EG
Doug Barnes	The Mill House, School Lane Eaton Socon PE19 8GW
Susan Ritchie	7 Chaucer Place Eaton Ford PE19 7LN

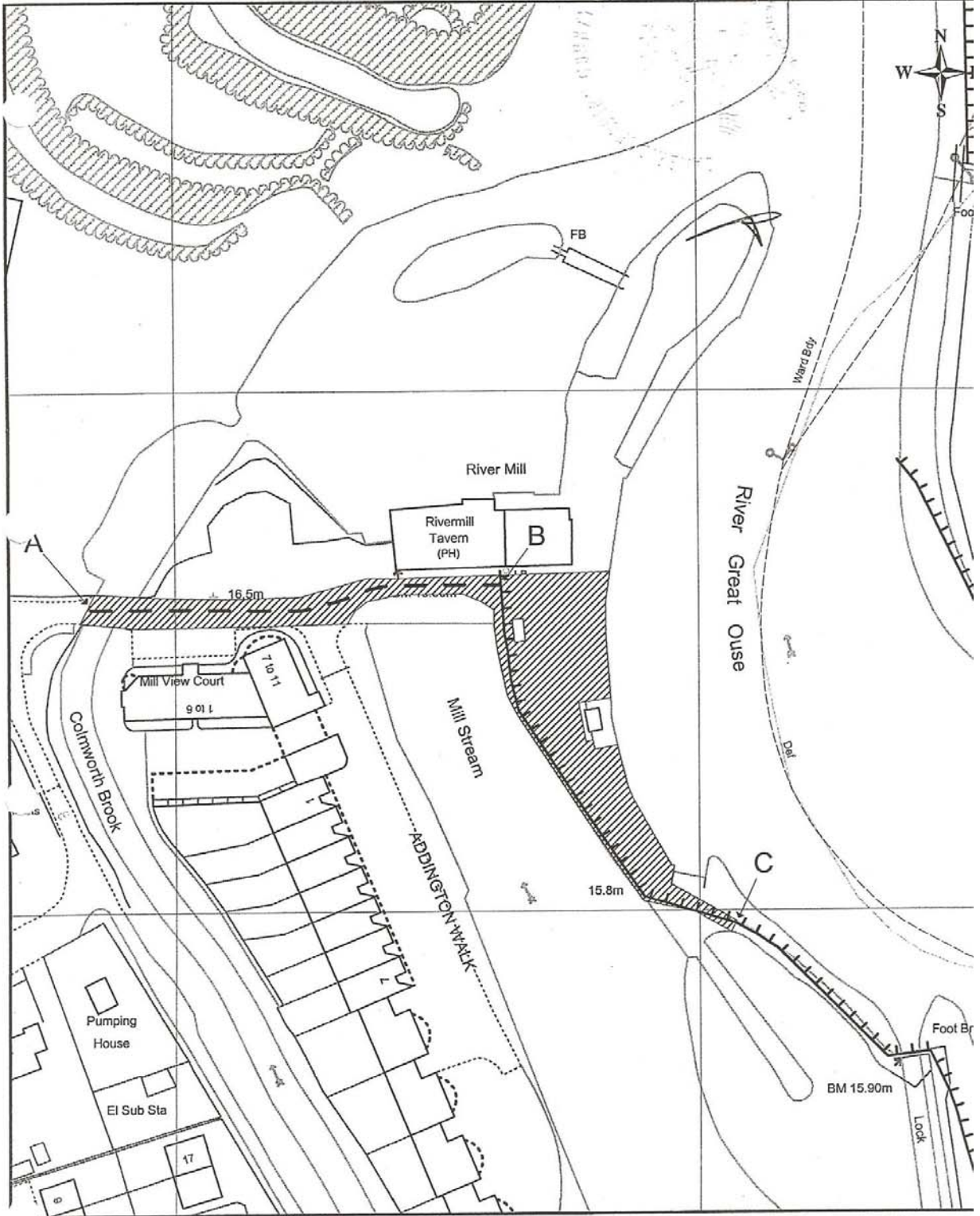
## **DOCUMENTS**

1. Statement of Case of Cambridgeshire County Council (CCC) with associated documents (Documents I-V, Pp 1-332)
2. Proof of Evidence of Steven Ouditt, CCC & Summary.
3. 4 further Proofs of Evidence in support of the Order (G Hurden, C Bowring, S Wale, J Nunn).
4. Bundle containing the Statement of Case on behalf of Mr & Mrs Barnes and 17 further Statements in support of the objectors.
5. Summary of Statement of D Barnes with copies of additional photos.
6. Copies of 10 further photos submitted by Mr Oxley.
7. Copy of extract from "Walks in and around St Neots".
8. Site plan with design of sign overlain, submitted by Mr Barnes.
9. Copy of plan indicating possible modification of the Order, CCC.

# Public Footpath No 14, Eaton Socon

# APPENDIX I

Cambridgeshire  
County Council



Scale: 1:1000  
Date: 26/03/2007  
By: fh392

Key	
Public Footpath shown on Definitive Map	
Public Footpath to be added to Definitive Map	
Width of Public Footpath No 14, Eaton Socon	

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