

Rights of Way Committee

Report Title:	Claimed Footpaths in Hepworth
Meeting Date:	Wednesday 25 January 2017
Lead Councillor(s):	Councillor Gary Green (Chairman)
Local Councillor(s):	Councillor Joanna Spicer
Director:	Geoff Dobson, Director of Resource Management
Assistant Director or Head of Service:	Alan Thorndyke, Head of Highway Network Management
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Brief summary of report

1. The routes depicted on map 2 are the subject of a formal application made by Mr John Andrews on 9 January 1995. The application was submitted following an inspector's public inquiry decision, dated 6 June 1994, not to confirm an order adding the routes after a previous investigation.
2. Between the routes previously being investigated and approved by the Rights of Way Committee at meetings in 1991/1992 and the public inquiry in 1994, a High Court ruling in 1993 determined that Inclosure Commissioners had the power to set out roads, but nothing of a lower status e.g. bridleways and footpaths.
3. In 2015 a Court of Appeal ruling overturned this when another case was considered, so case law now confirms that Inclosure Commissioners did have the power to set out all statuses of public rights of way. It is therefore now considered that evidence of Commissioners setting out public rights of way of any status in an Inclosure Award is conclusive evidence.
4. This case is now being considered again by the County Council following the change to case law as a result of the 2015 ruling. The applicant also applied to the Secretary of State for a direction, and in June 2016 the County Council was directed to determine the formal application by 1 March 2017.

Action recommended

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| <ol style="list-style-type: none"> 5. It is RECOMMENDED that a modification order is made under section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to add the routes to the definitive map and statement as public footpaths, incorporating the particulars contained in paragraph 42 into the definitive statement. |
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Reason for recommendation

6. It is considered that taken as a whole, with emphasis on the Inclosure documents, there is sufficient evidence to conclude on a 'balance of probabilities' that both claimed routes should be recorded on the definitive map and statement as public footpaths.

Main body of report

Documentary Evidence

Hepworth Inclosure Act 1815 (BRO ref: EG552/3/2)

7. This local Act gave the Inclosure Commissioners the power to "turn & stop roads, footpaths etc.", a clause that was not in the 1801 General Inclosure Act.

Hepworth Inclosure Map and Award 1817 (BRO ref: HB500/1443)

8. There are two plans with this award. The first is titled "Plan of the Parish of Hepworth as refers to the annexed Award. 1817. R: Payne, Surveyor." B to D is coloured yellow and shown as "2nd public footpath diverted." It is diverted from a curved line across the field depicted by a double dashed line, to a straight line terminating at point D. This section ran over land not affected by the award, which is undoubtedly why the local Act for Hepworth included its extra clause (see paragraph 7) to enable this diversion to be undertaken.
9. D to E is shown as "No. 4 public" and coloured yellow. Yellow in the key refers to new footpaths. This was across land which was part of 'new inclosures' being allotted under the award. The path here had to be set out otherwise the 1801 Act would have automatically stopped it up.
10. C-D is depicted by a red line, which the key denotes as old roads or footpaths that remain. This land was not affected by the award and nothing required diversion, so the route remained as it was.
11. A-B is not described in the award, but the track is coloured red, which would correspond with it being an old road or footpath that is to remain.
12. The second plan is titled "A Plan of the Public Carriage Roads, Public and Private Footpaths, in the parish of Hepworth. 1817. R: Payne. Surveyor." This appears to be a plan showing the final effects of the Inclosure Award. Apart from the field plots not being annotated to show to whom they were allotted, there are two notable differences between this plan and the first. The old route to be diverted between B-D is coloured blue, which the key denotes as "Those that are Stopped up". The other difference is that A-B has no colouring.
13. D-E is the only section described in the award. The description reads as follows: "One public footpath commencing at the end of the present footpath [C-D] at the southeast corner of the Great Common Field and proceeding in a south-westerly direction by the fence to the northwest corner of Bury Wood [now Blue Bells Plantation] thence in a southwest direction and straight line across the Great Common Field to the northwest corner of the ten acres where it enters the present footpath that leads to the church."

Greenwood's Map 1825

14. A short section at the top of C-D is shown as a "Cross road". This was a privately produced map that distinguished between two types of road, "Turnpike Roads", over which it is considered a toll was payable and "Cross Roads, which are

considered to be smaller linking roads. It would not usually be expected to find footpaths depicted on this map.

Hepworth Tithe Map and Apportionment 1847 (BRO ref: T114/1,2)

15. A-B is the only section of the claimed routes shown. It is annotated on the map with plot number 265, which the apportionment lists as a tithable driftway in the private ownership of Walter Notley. Officers do not usually expect to see footpaths depicted on these maps as it is considered that a footpath would have had little effect on the productivity of the land.

Historic Ordnance Survey Mapping

16. Whilst it is acknowledged that Ordnance Survey (OS) maps are silent on the public or private status of the routes that they depict, they are however the most accurate source of evidence for determining what physically existed on the ground at the time of the survey.

Old Series OS Map dated 1837

17. A-B can be seen as a track type feature with solid boundary lines.

1st Edition OS Map dated 1889-91 at 6" to 1 mile Scale (Sheets 23SE/24SW)

18. A-B is depicted by double solid lines in a similar way to known roads. B-D is depicted mainly by double pecked lines and has an "FP" annotation, it is shown by a single pecked near to B. D-E is depicted by double pecked lines and carries the "FP" annotation in two places. C-D is depicted by double pecked lines when crossing fields and, and by a single pecked line when alongside a field boundary. Heading south from C, a "Foot Bridge" is indicated at the first field boundary the route crosses. A total of ten solid lines are depicted across the route at field boundaries, including one across the track at B, suggesting there must have been stiles, hurdles or gates at these points.

2nd Edition OS Map dated 1905 at 6" to 1 mile Scale (Sheets 23SE/24SW)

19. The only changes from the previous edition, are that the whole of B-D now has a double pecked line depiction and the "Foot Bridge" annotation has gone.

3rd Edition OS Map dated 1952-53 at 6" to 1 mile Scale (Sheets 23SE/24SW)

20. Depictions are as per the previous edition.

1st Edition OS Map dated 1883 at 1:2500 Scale (Sheets 23/12 & 24/9)

21. Depictions are the same as the 6 inch map.

2nd Edition OS Map dated 1904 at 1:2500 Scale (Sheets 23/12 & 24/9)

22. As per the 6 inch edition, but with two more "FP" annotations added.

National Grid OS Map dated 1976 at 1:2500 Scale

23. The only section of the claimed routes depicted is the track that forms A-B, which still has a line across the route at B.

Production of the Definitive Map

Hepworth Parish Survey Map (IRO ref: 3332/24)

24. A-B does not have a route marked along it. B-D was depicted by a blue line annotated No.9, but the line has been crossed through. C-D-E is marked by a blue line and annotated No.8, and has also been highlighted in yellow. The yellow highlighting has come to be accepted as markings made by the County Council to indicate that the route should be deleted, or not included on the definitive map. "FG" for Field Gate is annotated at point D. The parish survey statements do not appear to have survived.

Hepworth Draft Definitive Map

25. None of the claimed routes were recorded at this stage of the definitive map production.

1973 Review Draft Map and Statement

26. A list of proposed amendments/additions includes "path 9", which is B-D-E, on the basis that it was amended in the Inclosure award. This is marked on the 1973 Review Draft map by a solid line annotated "9", and it is described in the statements as "Beck Street to Wood Lane. S.E. from point immediately W. of Ivy Nook for 75 yds. Then approx. S.W. to join Wood Lane nearly opposite F.P.6."
27. The 1973 Review was abandoned following the 1974 local government reorganisation.

1979 Review material

28. Both routes were claimed by the Ramblers Association for addition to the definitive map and statement, quoting supporting evidence as the Inclosure Map, OS Map and 1973 Review. Officers recommended the addition of these routes and the review panel accepted the recommendation.
29. As with the previous review, this review was also abandoned, due to a change in Rights of Way legislation, with none of its decisions taking place.

Landowner Evidence

30. Mr Nigel Webber of Home Farm in Barningham completed a landowner's information form on 18 October 2016, in which he advised he is opposed to the claim as an owner and occupier of land affected by the routes. He has owned the land since 1976 (40 years) and has never taken action to show the routes are not public rights of way, but has also never seen any public use of the routes. Mr Webber is currently in the process of selling the land.
31. Mr G W Hatten of Hartmoor, Hepworth Road in Market Weston completed a landowner's information form on 27 October 2016, in which he advises he is opposed to the claim as an owner and occupier of land affected by the routes. He has owned the land for 43 years, but has had knowledge of it since 1955 (61 years) when he started working on the farm. He made the following comments: "Every year since 1955 the land has been drilled, sown and harvested with no indication of a footpath nor any use of such." There are "3 unbridged ditches, one of which is a main watercourse taking rainwater drainage from Shepherds

Grove airfield/industrial estate.” “In 1994 a QC successfully reasoned that any agreed route was a private path(s).”

32. Mr Richard Burton of Folly Farm, Beck Street, Hepworth completed a landowner’s information form on 31 October 2016, in which he advised he is opposed to the claim as an owner of land affected by the routes. He has owned the land for 40 years. He has never seen any public use of the routes and states “We have never seen any paths, stiles or signs on our property and no bridge over the ditch where the said path enters our paddock after leaving Ivy Nooks Private Drive”.

Comments received post circulation of draft report

33. In an email dated 20 November 2016 Mr Andrews (the applicant) gave more explanation of the effects of the Inclosure Act and Award for Hepworth. These comments have been added to paragraphs 7 to 13 earlier in this report.
34. In a letter dated 28 November 2016 the Clerk for Hepworth Parish Council advised that the Councillors had discussed the matter at a meeting on 24 November 2016, and have no comment to make.

Legal Consideration and Conclusion

35. Section 53 of the Wildlife and Countryside Act 1981 provides that the definitive map and statement should be kept under review and modified if there is evidence to support a modification.
36. Section 53(3)(c)(i) of this Act states that the authority should make an order on the discovery 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.
37. Considering the documentary evidence and taking into account the 2015 Court of Appeal ruling relating to the powers of Inclosure Commissioners, it is considered that there is conclusive evidence from the Inclosure documents, in particular the two plans, that the routes should be recorded as public footpaths.
38. The only section that may be considered slightly weaker is section A-B as this was not set out consistently on both Inclosure plans. On one of them it was coloured red, which identifies it as an old road or footpath that was to be retained, so setting out would not have been necessary, the other Inclosure plan was silent on this section. However, as the old and new alignments of the diverted routes between B-D both use point B, it is unlikely that there should not be public rights between points A-B, otherwise an admittedly public footpath would be a cul-de-sac terminating at point B, both before and after the diversion. If a cul-de-sac had existed pre diversion, this would surely have been resolved as part of the diversion to link it up with public routes, so A-B may historically have had the reputation of already being a public right of way of some status.
39. The tithe map, dated 30 years after the Inclosure map, does not assist with confirming public rights as A-B is recorded as a Tithable privately owned track, but this would not be inconsistent with there also being public rights on foot over the track as public footpaths have rarely been found depicted on Tithe maps.
40. Considering the information supplied by the landowners, it is clear that there has been no use of the claimed routes by the public for at least 61 years, however

the documentary evidence in support of the routes' existence as public routes dates from 200 years ago and no evidence has been discovered to suggest these routes have been legally stopped up. The reference to the landowner's QC successfully reasoning in 1994 the paths were private, comes one year after the Court of Appeal ruled that Inclosure Commissioners did not have the powers to set out public footpaths, a ruling that was overturned in 2015.

41. To conclude, it is considered that as a whole, with emphasis on the Inclosure documents, there is sufficient evidence to conclude on a 'balance of probabilities' that both claimed routes should be recorded on the definitive map and statement as public footpaths.
42. It is therefore RECOMMENDED that a modification order is made under section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to record the routes as public footpaths incorporating the following particulars into the definitive statements:

Hepworth Footpath 10

Commencing on the southern side of Beck Street (U6412) on the western side of Ivy Nook Farm at Ordnance Survey Grid Reference (OSGR) 59888,27599 and progressing along a track in a south-easterly direction for 69 metres to OSGR 59892,27594; changing to a south south-westerly direction and passing across fields for 228 metres to a junction with Hepworth footpath 11 at OSGR 59882,27574; changing to a south south-easterly direction and continuing across fields for 92 metres towards the north-western corner of Blue Bells Plantation to OSGR 59886,27565; changing to a south south-westerly direction and continuing across fields for 437 metres to a junction with Hepworth restricted byway 8 at OSGR 59866,27526.

Width: Varying between a minimum of 1.5 metres and a maximum of 2 metres.

As shown by double pecked lines on Ordnance Survey Map 1st edition 1883 Sheets 24/9 and 23/16, 1:2500 scale.

Hepworth Footpath 11

Commencing on the southern side of Beck Street (U6412) west of Dormer Cottage at OSGR 59866,27604 and progressing in a south south-easterly direction across a field for 102 metres to a drain at OSGR 59870,27594; crossing the drain and continuing across a field for 70 metres to enter the north-eastern corner of a field plot at OSGR 59874,27589; continuing on the western side of the boundary for 48 metres to a point at OSGR 59877,27585; continuing across a field for 124 metres to a junction with Hepworth footpath 10 at OSGR 59882,27574.

Width: 2 metres.

As shown by double pecked lines on Ordnance Survey Map 1st edition 1883 Sheets 24/9, 1:2500 scale.

Sources of further information

- a) Formal application dated 9 January 1995
- b) Hepworth Inclosure Act 1815 (BRO ref: EG552/3/2)
- c) Hepworth Inclosure Map and Award 1817 (BRO ref: HB500/1443)
- d) Greenwood's Map 1825
- e) Hepworth Tithe Map and Apportionment 1847 (BRO ref: T114/1,2)
- f) Historic Ordnance Survey Mapping
- g) Hepworth Parish Survey Map (IRO ref: 3332/24)
- h) Hepworth Draft Definitive Map
- i) 1973 Review Draft Map and Statement
- j) 1979 Review material
- k) Landowner Correspondence
- l) Email dated 20 November 2016 from Mr Andrews (applicant)
- m) Letter dated 28 November 2016 from Hepworth Parish Council

