

Planning Inspectorate reference FPS/V3500/7/303

Suffolk County Council (County Borough of Ipswich Definitive Map and Statement) (Restricted Byway 36) Modification Order 2009

Suffolk County Council (County Borough of Ipswich Definitive Map and Statement) (Restricted Byway 37) Modification Order 2009

Suffolk County Council (County Borough of Ipswich Definitive Map and Statement) (Restricted Byway 38) Modification Order 2009

Opening statement on behalf of Peter Turtill

1. Mr Turtill's only disagreement with the County Council's conclusions is that he believes the correct status of routes 36, 37 and 38 to be byways open to all traffic.
2. The County Council considers that any public rights for mechanically-propelled vehicles that existed over these routes were extinguished on 2 May 2006 when section 67 of the Natural Environment and Rural Communities Act 2006 took effect. The County Council considers that none of the exceptions to extinguishment provided for in subsection (2) of that section apply.
3. Mr Turtill considers that the exceptions in paragraphs (a) and (b) apply, at least in part, to the routes.
4. Paragraph (a) provides an exception where the main lawful use in the period of 5 years ending on 2 May 2006 was with mechanically-propelled vehicles.
5. Paragraph (b) provides an exception for a route where, immediately before 2 May 2006, the route was not shown in a definitive map but was shown in the list of streets required to be kept under section 36(6) of the Highways Act 1980.
6. It is our submission that there is evidence to show that the exceptions apply.
7. For routes numbers 36, 37 and 38 to be recorded as byways open to all traffic three conditions have to be met.
8. The first is that rights of way for mechanically-propelled vehicles have to be shown to have existed prior to 2 May 2006. We are content to rely on the County Council's submissions rather than repeat the arguments.
9. The second is that one or more of the exceptions in section 67 of the NERC Act have to be satisfied. We say that they are.
10. The third is that the ways are of such a character that it is appropriate to record them on the definitive map as byways open to all traffic. PINS Advice Note 8 provides guidance to you on that matter. We say that the character of the ways is such that, if the present obstructions to free use by the public were removed, they would be used by the public in such a way as to qualify them for recording as byways open to all traffic.

John Trevelyan
on behalf of Peter Turtill