

In the Matter of
Section 53 of the Wildlife and Countryside Act 1981 and
the Suffolk County Council (County Borough of Ipswich Definitive Map and Statement)
(Restricted Byway 36) Modification Order 2009

STATEMENT OF CASE
of Forres Ltd. and Anglo-Norden Forest Products Ltd.

Introduction

[1] This Statement of Case is served by Forres Ltd. ("Forres") and Anglo-Norden Forest Products Ltd. ("Anglo-Norden") as objectors to the Suffolk County Council (County Borough of Ipswich Definitive Map and Statement) (Restricted Byway No 36) Modification Order 2009 ("the Order").

[2] Forres is the registered proprietor under title nos. SK191093, SK175474 and SK70295 of Eagle Mill on the E. side of Ipswich Wet Dock ("the Dock").

[3] Anglo-Norden is a timber importing company which traded from 1978 to 1997 at the Orwell Terminal on the E. side of the Dock. In 1997, Anglo-Norden moved its business to Eagle Mill from where it continues to trade. Eagle Mill was renamed Orwell Terminal but, for the purposes of this Statement of Case, Eagle Mill and Orwell Terminal will retain their original names.

[4] Gasworks Quay was built in the late Nineteenth Century by the Ipswich Gas Light Company pursuant to an agreement with the Ipswich Dock Commissioners. The interest of the Ipswich Gas Light Company vested in British Gas, which assigned to Anglo-Norden all its rights over Gasworks Quay. These rights are now vested in Forres. Gasworks Quay has been used by Anglo-Norden for unloading timber since 1989.

[5] On the acquisition of Eagle Mill from Paul's Agriculture, Forres also acquired all its rights over Eagle Wharf, which had been used throughout living memory for loading and unloading goods in connection with Eagle Mill.

[6] A roadway, known for part of its length as Helena Road, runs along the E side of the Dock.

[7] A plan is attached to this Statement of Case (**Attachment No. 1**) showing:

- Orwell Terminal tinted red
- Eagle Mill tinted blue
- Gasworks Quay tinted yellow
- Eagle Wharf tinted green
- Helena Road and its extension running in front of the Orwell Terminal (collectively called Helena Road for the purposes of this Statement of Case) tinted brown

Practical Issue

[8] Timber arrives by ship into the Dock and is unloaded either at Eagle Wharf or at Gasworks Quay and transported into Eagle Mill. Helena Road is necessarily crossed by timber being transported to Eagle Mill from Gasworks Quay or Eagle Wharf. Health and safety considerations require that the relevant parts of Helena Road (and of Gasworks Quay and Eagle Wharf) are closed to the public while timber is being unloaded and transported into Eagle Mill. Such closures take place on average about twice a week. This has been the practice for so long as Anglo-Norden has operated beside the Dock and it is apprehended that it has been the practice for as long as living memory goes back.

[9] If Helena Road were to become an unqualified public right of way in accordance with the Order and Anglo-Norden were unable to close the relevant parts of Helena Road to the public while timber was being unloaded and transported into Eagle Mill, it would no longer be practicable for Anglo-Norden to trade from the Dock as hitherto.

Scope of Objection

[10] These objectors have objected to the Order only insofar as it modifies the definitive map and statement by adding a restricted byway between points Q and S on Map 13 attached to the Officer Report ("the Report") to the Suffolk County Council Rights of Way Committee meeting on 18th. March 2009. A copy of Map 13 is attached to this Statement of Case (**Attachment No. 2**). In this Statement of Case the restricted byway between points Q & S on Map 13 will be called "the Disputed Way". The objection is so limited simply because this is the only part of the Order which in practice affects these objectors. However, it should not be inferred that these objectors accept the validity of the rest of the modification order, or indeed, of any of the other modification orders to be considered by the inspector at the public inquiry. Some or all of the

evidence and arguments put forward by these objectors may well be relevant to the validity of the rest of the modification order and to the other orders.

User evidence

[11] The SCC Statement of Reasons concluded that the claim to a modification order to add the Disputed Way based on user evidence failed because of the weakness of that evidence (Statement of Reasons paras. 48-52 & 54). These objectors support that conclusion for the reasons given in the Statement of Reasons. If it were sought to resurrect the case based on user at the public inquiry in support of the Order, these objectors would wish to test all the user evidence by cross examination and reserve the right (a) to call rebutting evidence and (b) to address legal arguments on prescription. In particular, these objectors reserve the right to argue *inter alia* that:

- There is no evidence from which to infer an historical dedication of the rights claimed,
- Insofar as any part of the Disputed Way has been vested in the Ipswich Dock Commissioners or their statutory successors, it would have been *ultra vires* for them to dedicate ways inconsistent with the proper use of the Dock as a working dock,
- The Disputed Way has frequently been closed and inaccessible during loading and unloading. Any public use has therefore not been continuous and uninterrupted nor as of right
- Regular closure for loading and unloading is sufficient evidence that there was no intention to dedicate
- The user claimed is in the nature of a *ius spatiendi* rather than user for passage

Statutory right of way

[12] The core justification for the Order (so far as relevant to the Disputed Way) which is put forward in the SCC Statement of Reasons is that the Disputed Way was created by statute, i.e. s. 27 of the Ipswich Dock Act 1837. These objectors contend that this is a misconstruction of the statute. It is necessary to consider the interaction between four important sections of the 1837 Act.

[13] Section 17 of the 1837 Act authorized and required the Dock Commissioners to build a 30 feet wide quay or wharf along the N & E sides of the Dock. It is clear from reading s. 17 together with s. 22 that the s. 17 quay was to run only as far S as the former ballast wharf at point Q on Map 13 (see SCC Statement of Reasons para. 56). There were two important features of the

s. 17 quay. First, the quay was not a public quay in that shipping and landing rights were private rights vested in the frontagers. Second, the quay was to be “an open and public roadway for all persons, cattle and carriages”. Thus the s. 17 quay was a private quay subject to a public right of way. The s. 17 quay lies to the N of the Disputed Way.

[14] Section 22 of the 1837 Act authorized and required the Dock Commissioners to construct “free and public” wharfs and quays along the E side of the Dock to the S of the ballast-wharf. Frontagers were to have the right of landing and shipping on the quays free of wharfage. Thus, whereas the s. 17 quay was to be a private quay subject to a public right of way, the s. 22 quay was to be a public quay. The public right of way over the s. 17 quay was clearly intended as access to the s. 22 quay.

[15] Section 23 of the 1837 Act provided that if the Dock Commissioners did not build the s. 22 quay within 7 years of the passing of the 1837 Act, it should be lawful for the frontagers to build private quays in front of their properties. There is no conclusive evidence whether the quay carrying the Disputed Way was constructed under s. 22 or s. 23. However, the 1843 plan (6 years after the 1837 Act) shows the Gas Dock, no quay S of point Q on Map 13 and no Helena Road. The Gas Dock was filled in some time about 1847 (i.e. 10 years after the 1837 Act). The probability is therefore that the Disputed Way lies over a s. 23 quay. This view is supported by the 1846 Agreement (**Attachment No. 3**)

[16] Section 27 of the 1837 Act required the Dock Commissioners to make a road at least 40 feet wide proper for the passage of cattle, carriages and foot passengers from the end of the ballast wharf along the E side of the Dock. The purposes of the road are spelt out at the end of the section, i.e. so that (a) all persons, with cattle and carriages may have free access to the docks and quays, (b) a free circulation of air may be preserved and continued and (c) the same may not only be rendered convenient for business but contribute to the health and recreation of the inhabitants of the said town. The SCC Statement of Reasons misconstrues this section in para. 57. These objectors make the following submissions about s. 27:

- The section did **not** declare the road to be a public right of way in contrast with e.g. ss. 17 & 28. When the draftsman wished to create a public right of way, he said so.
- Section 27 is clearly intended to apply to the public quay to be built under s. 22 and not the private quays to be built under s. 23
- Whether the quay was built under s. 22 or s. 23, none of the three purposes identified in s. 27 involves the creation of a public right of way.
- Free access to the docks and quays means access for the purpose of using the public docks and quays for landing and shipping (note the words “convenient for business”)

- Free circulation of air is nothing to do with public rights of way
- Contribution to health appears to be connected either with the free circulation of air or with recreation: in any event it cannot be construed as the creation of a public right of way
- Contribution to recreation may envisage recreational use of the public quays by inhabitants of Ipswich but a statutory power for the inhabitants of a locality to use land for recreation is different from a public right of way and has, in any event, been lost for non registration as a town green under the Commons Registration Act 1965. See ss. 1(2)(a) & the definition of town or village green in s. 22(1) (as amended). Statutory recreational rights lost for non registration under the 1965 Act remain extinguished under the Commons Act 2006.

Subsequent material

[17] The SCC Statement of Reasons refers to a great volume of documentary evidence, most of it later than the 1837 Act. However, later material cannot be used to interpret the 1837 Act. The meaning of a statute cannot be affected by subsequent events. If section 27 of the 1837 Act did not create or authorize the creation of a public right of way along the Disputed Way, subsequent events cannot have altered the true construction of the section. Otherwise, one could have a statute which meant one thing one day and another thing the next.

[18] Without prejudice to this basic submission, this Statement of Case will look briefly at the subsequent material mentioned in the Report.

Dock Plans

[19] SCC comments in para. 14 of the Statement of Reasons that it attaches considerable weight to the plans as they were produced as part of the statutory process. It is accepted that these plans are useful in showing the physical features on site as at the survey date of each plan. However, it is disputed that they are of any value in ascertaining whether the Disputed Way was a public right of way. The Order has been made on the basis of the construction of the 1837 Act and the views of the draftsmen of the plans or of a related Book of Reference on this topic are simply irrelevant.

1804 Plan (Item 1)

[20] This throws no light on the issue affecting these objectors

1836 Plan (Items 2a-d)

[21] This plan merely shows proposals before the passing of the 1837 Act and throws no light on the issue affecting these objectors.

1843 plan (Item 3)

[22] The 1843 plan shows that no s. 22 quay or s. 27 roadway thereon had been constructed by 1843 (6 years after the 1837 Act) on the route of the Disputed Way.

1875 Ipswich Dock Plan (Item 4a-d)

[23] The 1875 plan shows the existence of a quay along the route of the Disputed Way, but throws no light on the existence of a public right of way on the route of the Disputed Way.

1877 Dock Plans (Item 5a-d)

[24] These plans show the existence of a quay and road along the route of the Disputed Way but throw no light on the existence of a public right of way on the route of the Disputed Way. The proposal to build a tramway along the quay suggests that the quay was not perceived as carrying a public right of way of such nature as to impede dock use.

1898 Dock Plans (Item 6a-d)

[25] Item 1 in the Book of Reference refers to a public road amongst other features. However, it is not clear from the Plans and Book of Reference exactly what land was regarded as a public road.

1904 Dock Plans (Item 7a-c)

[26] These plans show the existence of a quay and road along the route of the Disputed Way but throw no light on the existence of a public right of way on the route of the Disputed Way. The existence of a double tramway along the quay suggests that the quay was not perceived as carrying a public right of way of such nature as to impede dock use.

1913 Dock Plans (Item 8a-c)

[27] It is not clear what land is comprised within item 6 in the Book of Reference nor that "public road" refers to the Disputed Way.

Railway Plans

[28] It is accepted that the railway plans are useful evidence of the physical features on site at the survey date of each plan. However, the comments in para. 23 of the SCC Statement of

Reasons are misconceived. The Order was made on the basis that the Disputed Way was a public vehicular right of way because it was constructed pursuant to s. 27 of the 1837 Act. The contents of a subsequent railway plan cannot affect the true construction and effect of s. 27 of the 1837 Act.

1898 GER Plans (Item 9a-d)

[29] Item 1 in the Parish of St. Clement appears to include some or all of the Disputed Way but is not described as a public road or as owned by the Surveyor of Highways.

1901 GER Plans (Item 10a-c)

[30] These plans do not relate to the Disputed Way.

1913 GER Plans (Item 11a-c)

[31] These plans do not relate to the Disputed Way.

Ordnance Survey Maps

[32] It is accepted that the OS maps are useful in showing physical features on site as at the survey date of each map. However, as SCC rightly acknowledge in para. 27 of the Statement of Reasons, none of the OS maps relied upon purport to show the existence of public rights of way. Even if they did, they could not affect the true construction of s. 27 of the 1837 Act.

1880 OS Maps (Item 12a-c)

[33] It is interesting to note that the annotation "Helena Road" appears to extend to the very edge of the quay, suggesting that the whole width of the quay was known as Helena Road. But if the whole quay were an unconditional public right of way, how could the wet dock operate in practice?

1904 OS Maps (Item 13a-c)

[34] Ditto

1927 OS Maps (Item 14a-c)

[35] Ditto

1950-52 OS Maps (Item 15a-f)

[36] Only some of the Disputed Way is shown (on Item 15f). The annotation “Helena Road” is on top of the tramlines, suggesting that the tramlines were perceived as forming part of Helena Road.

1970-73 OS Maps (Item 16a-f)

[37] Only some of the Disputed Way is shown (on Item 16f). The annotation “Helena Road” is on top of the tramlines, suggesting that the tramlines were perceived as forming part of Helena Road.

1987 OS Map (Item 17)

[38] This does not relate to the Disputed Way.

Records from Ipswich Port Authority

[39] These objectors submit that no Twentieth Century correspondence can affect the true construction of s. 27 of the 1837 Act

Letter of 10th December 1913 (Item 18)

[40] This letter is not, in fact, headed “Common Quay”. Nor does it relate to the Disputed Way but rather to Smart’s Wharf, which SCC says is part of Albion Wharf

Letter of 1st May 1914 (Item 19)

[41] This letter is headed “Common Quay” and must therefore relate to the Common Quay which is at the northern end of the Wet Dock. It does not relate to the Disputed Way.

Letter of 30th July 1918 (Item 20a-d)

[42] The letter was discussing the Ipswich Dock Bill. It was not proposed to include in the bill a provision closing to the public the roads belonging to the Commissioners around the Dock. It is not implicit in this comment that there was a public vehicular right of way along the Disputed Way.

Letter of 3rd August 1918 (Item 21)

[43] The letter says that all the Commissioners’ roads around their works have been open and public roads. It is not clear to what “their works” refers. Even if the author was referring to the Disputed Way (which is not clear) his comments cannot affect the true construction of s. 27 of the 1837 Act.

Newspaper Articles

[44] The following comments are without prejudice to these objectors' overriding submission that no newspaper article or letter of the Twentieth Century can affect the construction of s. 27 of the 1837 Act.

Report of 13th February 1913 (Item 22)

[45] It is not possible fully to understand the article without seeing the draft clauses that were under consideration. The point made by Mr. Ridley was that it was unnecessary to shut off the Promenade since all the traffic was on the east side of the dock. "Traffic" appears to be a reference to dock traffic. There was no proposal to shut off the east side of the dock, but this could have been because it was not thought to be subject to a public right of way.

May 1922 Correspondence (Item 23)

[46] Mr. Damant wrote that he "sauntered round the Dock". However, it is not clear that his saunter included the Disputed Way. Even if it did, it is not evidence that the Disputed Way was a public vehicular right of way created by the 1837 Act. Mr. Field wrote that he had been walking around the Dock on a Sunday. However, it is not clear that his walk included the Disputed Way. Even if it did, it is not evidence that the Disputed Way was a public vehicular right of way created by the 1837 Act.

Photograph of 31st January 1934 (Item 24)

[47] This cutting concerns a ship named Stella moored in Ipswich. The cutting talks about residents of the town who have taken a walk around Ipswich Dock. However, it is not clear that this involved the Disputed Way or the exercise of any public right of way. Clearly, and in any event, it did not involve user for vehicular traffic.

Photographic evidence

[50] In para. 38 of its Statement of Reasons, SCC rightly concede that the photographs cannot show whether public rights existed. It is to be noted that the vast majority of the photographs were taken on the northern part of the Wet Dock, north of the old ballast wharf. This part of the quay was a public right of way under s. 17 of the 1837 Act.

Aerial view of 1968 (Item 25)

[51] This aerial photograph appears to show (a) that there was no uninterrupted way along the eastern side of the Wet Dock and (b) that the road/quay was in general use for dock purposes.

Aerial view of 1977 (Item 26)

[52] The presence of cars on the quay shows that the quay was accessible to cars but does not show the existence of a public vehicular right of way. The cars all appear to be parked and could well be the cars of persons on dock business.

Specific views

[53] Para. 40 of the SCC Statement of Reasons refers to some 28 individual photographs. These objectors note generally that there is nothing in the SCC commentary on these photographs to suggest that they are evidence that the Disputed Way was a public vehicular right of way.

1860s photograph (Item 27)

[54] The photograph shows the quay north of Coprolite Street (a long way north of the Disputed Way). There is nothing in the photograph to indicate whether or not the quay was a public right of way. It is complete speculation by SCC to suggest that one of the men in the photograph was a member of the public watching proceedings: both men could be engaged on dock business.

1870s photograph (Item 28)

[55] This photograph shows the north end of the Wet Dock and not the Disputed Way. There is a line of posts and chains along the side of the dock, presumably as a safety precaution to stop people falling into the water. Use of the quay for dock purposes is illustrated by the line of wagons. It is impossible to tell whether the persons sitting on the chain and on the dockside are passing members of the public or connected with the dock. These objectors are not convinced that the seated figure is a child (note the long legs). If it is a child, it must be remembered that universal elementary education was only introduced in the 1870s.

1908 photograph (Item 29)

[56] This photograph also shows the north end of the Wet Dock and not the Disputed Way. Note the use of the quay for swinging cranes and wagons.

1921 photograph (Item 30)

[57] This photograph also shows the north end of the Wet Dock and not the Disputed Way. Note the use of the quay for swinging cranes and wagons. There appears to be a high level access to Burton's Mill which suggests that goods were swung across the quay from water to warehouse (or vice versa) by crane.

1923 photograph (Item 31)

[58] This photograph also shows the north end of the Wet Dock and not the Disputed Way. The quality of the copy photograph supplied to these objectors is very poor but the quay in front of the Custom House seems busy with wagons.

December 1923 photograph (Item 32)

[59] This photograph also shows the north end of the Wet Dock and not the Disputed Way. The horse and cart may well be on dock business: it is not easy to identify the contents of the wagon. There are a number of people in the photograph who appear to be looking at the electric crane (perhaps it was a novelty). These objectors do not accept the proposition of SCC that some of the people's clothing makes it unlikely that they were dock workers. All the people seem to have been wearing hats or caps, long or short coats and trousers and it is simply impossible to tell from this whether they worked in the docks or not. It must also be borne in mind that the dock and frontage businesses no doubt employed managerial and secretarial staff as well as labourers.

1926 photograph (Item 33)

[60] This photograph also shows the north end of the Wet Dock and not the Disputed Way. The quay seems busy with wagons. It is impossible to say whether the people in the photograph are on dock business or are members of the public.

1930 photograph (Item 34)

[61] This photograph also shows the north end of the Wet Dock and not the Disputed Way. Again, the quay seems busy with wagons.

1933 photograph and article (Item 35)

[62] The photograph is taken from Eagle Wharf but none of the quay is in shot. The runaway van was parked in Patteson Road and there is no evidence that it was using Helena Road (other than inadvertently when the van ran away).

1949 photograph (Item 36)

[62] This photograph shows the north end of the Wet Dock and not the Disputed Way. The mill buildings completely cover the quay at first floor level and its construction and use must have caused extensive interruption to any other use of the quay.

1955 photograph (Item 37)

[63] This photograph again shows the north end of the Wet Dock and not the Disputed Way. There are wagons on the quay. There appear to be gantries and a crane which cross the quay. There are cars (or perhaps vans?) on the quay but it not possible to tell whether or not they were on dock business. If SCC, by describing the cars as “private cars” is intending to suggest that they were not on dock business, then that is pure speculation on the part of SCC.

1950s/60s photograph (Item 38)

[64] This photograph again shows the north end of the Wet Dock and not the Disputed Way. The car on the right hand side of the photograph does look like a car of the 1950s. It is impossible to tell whether or not it was on dock business. Certainly, it seems to be parked rather than in motion. There are several lorries parked on the quay, which are likely to be on dock business and suggests that the quay was in significant use for dock purposes.

1950s/60s photograph (Item 39)

[65] This is essentially the same view as the previous photograph although taken at a time when there were no parked cars or lorries. It is interesting to note the mill building on the left which completely oversails the quay. Presumably wagons and lorries stopped on the quay under the building to be loaded or unloaded.

1965 photograph (Item 40)

[66] This photograph again shows the north end of the Wet Dock and not the Disputed Way. It is accepted that the quay shown in the photograph was wide enough to take vehicles. The lower photograph taken looking towards Neptune Quay from near Coprolite Street is interesting in showing that the quay at this point was only wide enough for two sets of tramway lines. If both lines were in use, e.g. for loading wagons, other vehicular traffic could not pass.

1970s photograph (Item 41)

[67] This photograph again shows the north end of the Wet Dock and not the Disputed Way. It is to be noted that there was not only a gantry across the quay but also a crane which appears to be designed to swing across the quay. The note says that they were used for aggregate dredged from the river. SCC comment that there appears to be one private car on the quay. In fact, it appears to be a van with commercial signage on the side and rear.

1970s photograph (Item 42)

[68] The exact location of this photograph is not stated. However, it shows a road barrier. It is a reasonable inference that the barrier was installed in order to close the quay to vehicles during loading or unloading. No one would install a barrier in order to leave it permanently open.

1970s photograph (Item 43)

[69] This looks like the same building although the road barrier appears to be in a different place. It is a reasonable inference that the barrier was installed in order to close the quay to vehicles during loading or unloading. No one would install a barrier in order to leave it permanently open. If its position was altered in the 1970s, this suggests that it was in use.

1970s photograph (Item 44)

[70] The location of the photograph is not stated although it is possible to fix the location by the mill on the left which is the same mill as shown in Item 41. Accordingly, this appears to be the aggregate unloading area on Neptune Quay which is at the north end of the Wet Dock. It is a reasonable inference that the barrier was installed in order to close the quay to vehicles during loading or unloading. No one would install a barrier in order to leave it permanently open.

1980s aerial photograph (Item 45)

[71] This photograph shows the north end of the Wet Dock and not the Disputed Way. Although this quay was a s. 17 public roadway, there were no fewer than three barriers across the quay, presumably to close the road during loading or unloading.

1982 photograph (Item 46)

[72] This photograph is taken outside Neptune Marina (north of the old ballast wharf). There clearly was a barrier across the quay and the only reasonable inference is that it was closed when boats were taken across the quay.

c. 1980 photograph (Item 47)

[73] This appears to be the barrier on the left in the 1980s aerial photograph (Item 45) to the north of the Wet Dock. None of the Disputed Way is in shot.

1982 photograph (Item 48)

[74] Ditto.

1986 photograph (Item 49)

[75] This photograph shows the north end of the Wet Dock and not the Disputed Way. It shows cars parked on the quay. It is impossible to say whether or not they were on dock business. In any event, this part of the quay was a public roadway under s. 17 of the 1837 Act.

2003 photograph (Item 50)

[76] The photograph is said to be near Coprolite Street and so is north of the old ballast wharf on a s. 17 roadway. Although the barrier in the foreground is open, there appears to be a closed barrier at the rear. Further, there is a "Road Closed" sign.

Undated but modern photograph (Item 51)

[77] This is said to be Albion Wharf before it was "denied" (demolished?). It is at the north end of the Wet Dock and does not show the Disputed Way. The quay seems to be completely empty of people or vehicles. There appears to be a barrier across the quay at the rear of the photograph.

1994 photograph (Item 52)

[78] This photograph is taken looking north from a point north of the old ballast wharf. These objectors' copy of the photograph is not clear enough to show it, but it is noted from the SCC Statement of Reasons that it shows a closed barrier across the quay.

1996 photograph (Item 53)

[79] This photograph is taken outside Neptune Marina, i.e. north of the old ballast wharf on a s. 17 public roadway. These objectors' copy of the photograph is not clear enough to show it, but it is noted from the SCC Statement of Reasons that it shows a sign on the open barrier across the quay reading "Quay closed cargo handling". It is a reasonable inference that the barrier was closed during cargo handling operations. It may not have been down at the moment when the photograph was taken because the quay was in any event blocked by a boat being taken across the quay.

1998 photograph (Item 54)

[80] This shows a mobile crane transporting a boat across the quay by the Neptune Marina. Although it is not entirely clear from the photograph (or at least from these objectors' copy), it is said that the crane was straddling and hence blocking the quay. The cars in the picture appear to be parked and it is not possible to say whether or not they were on dock business.

General comments on the photographs

[81] None of the specific photographs appear to show the Disputed Way (or indeed any part of the Wet Dock quay south of the old ballast wharf). All appear to show parts of the quay which were subject to a s. 17 public roadway. None are any evidence at all on the question whether the Disputed Way is a public right of way. However, it is to be noted (a) that the quay was historically in intensive use for dock purposes in a manner which must have clashed with unfettered exercise of a public right of way and (b) that there is evidence of road barriers across the quay going back to the 1970s. It is an unmistakable inference that any public right of way has been qualified by the requirement that the quays should be used as a working dock .

Mr. Turtill's evidence

[82] These objectors have not yet seen the evidence of Mr. Turtill summarized in para. 41 of the SCC Statement of Reasons. These objectors put Mr. Turtill to strict proof of this evidence, wish to cross-examine him upon it and reserve the right to call rebutting evidence.

Miscellaneous maps of dock and other material

Sales particulars 20th June 1842 (Items 55a-c)

[83] It is clear from this material that in 1842 (a) the existing quay and public roadway ended at the north end of the old ballast wharf and (b) that the proposed continuation public roadway was not along the water frontage but veered inland behind lot 1 and the gas dock.

Map 1918-22 (item 56)

[84] These objectors agree with the commentary in para. 43 of the SCC Statement of Reasons that it does no more than identify the position of the old ballast wharf.

Map 1926 (Item 57)

[85] This map shows the position of the old ballast wharf but throws no light on the status of the Disputed Way.

Map 1956 (Item 58)

[86] The 1956 plan throws no light on whether the Disputed Way was a public right of way save that it appears to suggest some obstruction between Gasworks Quay and Orwell Quay which is evidence against a through route along the whole of the E. side of the Dock.

Correspondence 1961 (Items 59-61)

[87] There was an allegation of the existence of a public footpath (N.B. not a public vehicular right of way) along the east side of Ipswich Dock past the old Promenade to the Dock Gates. The old Promenade was on the west side of the Wet Dock and the letter appears to relate to the east side of the New Cut. Certainly, this is how it was understood by the Commissioners who denied the existence of any such public footpath along New Cut East, relying upon periodic closure by gate and prohibitory signs. If there were any question of a public right of way based on user on this route it appears that the right was brought into question in or before 1961 (HA 1980 s. 31(2)).

Map 1966 (item 62)

[88] The map appears to show some restriction in the quay between Gasworks Quay and the old ballast wharf site suggesting that there was no free passage along the quay.

Ipswich Dock Revision Order 1969

[89] SCC mention the 1969 Order in para. 12 of its Statement of Reasons. It is to be noted that this order related only to s. 17 quays and not to the Disputed Way. It seems that the commissioners in 1969 did not consider that any restriction of public rights was necessary in relation to the Disputed Way, possibly because they did not consider that it was subject to a public right of way.

Other material

[90] There is some other material known to these objectors and not referred to in the SCC Statement of Reasons.

1847 Report (Attachment No. 4)

[91] There was a dispute between Ipswich Council and the Dock Commissioners about the ownership of the Gas Dock, but this does not appear to cast any light on whether the quay from points Q-S on Map 13 contained a public right of way. However it does appear from the 1847 report that the old Gas Dock was filled in some time about 1847 and this supports the view that the Disputed Way lies on a s. 23 quay. See also the undated note of settlement of proceedings in Chancery referring to the Dock Commissioner's Gas Dock (**Attachment No. 5**).

1974 plan of Ipswich Port showing extent of port land holdings (Attachment No. 6)

[92] The same comments apply to the 1974 plan as to the 1956 and 1966 plans

List of streets

[93] It is noted from the Report that the Disputed Way does not appear on the List of Streets (Report paras. 101 & 156). This is some evidence that it has not been viewed by the local highway authority as a long standing public vehicular right of way.

Conclusion on subsequent material

[94] Even if the material subsequent to the 1837 Act could be used to construe that Act (which it cannot) there is in fact nothing of any significant value in that material as an aid to the construction of the 1837 Act.

Relationship between Dock use and any right of way

[95] Even if (which is denied) s. 27 of the 1837 Act were to be construed as creating a public right of way over the Disputed Way, such right was clearly intended to be subsidiary to use of the quay from Q-S on Map 13 for shipping and unloading. Any right of way should be recorded as being subject to the right of persons with shipping and unloading rights over the quay to close the way temporarily for those purposes. Of course, loading and unloading techniques and health and safety requirements have changed between 1837 and today, but the 1837 Act was intended to facilitate the creation and effective operation of a wet dock for the indefinite future. It is an “always speaking” statute and must be construed in the light of the requirements of operating a working dock from time to time. There is no inconsistency between the propositions (a) that subsequent evidence cannot be used to construe a statute and (b) that a statute is “always speaking”. The statute always means the same but it has to apply to changed circumstances. Thus legislation passed relating to traffic in the horse and cart era applies to motor vehicles as well as horses and carts.

NERCA 2006

[96] These objectors agree with para. 68 of the SCC Statement of Reasons. If Mr. Turtill seeks to rely on the exception in NERCA 2006 s. 67(2)(a), these objectors (a) put him to strict proof of the exception, (b) wish to cross-examine him and any witness called in support of the exception and (c) reserve the right to call evidence in rebuttal.

Comments on objections

[97] These objectors have been supplied, as part of the SCC Statement of Case, with the SCC Comments on Objections.

Anglo-Norden Forest Products Limited

[98] This is the objection of these objectors. SCC's only comment is that it "has taken a different view of the evidence as explained in the Statement of Reasons". These objectors have dealt above with the Statement of Reasons. However, it is right to point out that the SCC comment does underline the mistake of SCC in thinking that the evidence can affect the construction of the 1837 Act (which is the sole basis on which the order is put forward).

Mr. R Allum

[99] Mr. Allum mentions RB36 in the heading to his letter of 10th September 2009. The only part of his letter which possibly refers to the route of RB36 is his comment that he is disappointed that SCC did not rely on Clarke's 1830 History to reinforce the existence of rights of way beginning on Orwell Quay and extending alongside the quayside to Cliff Quay. However, the quoted extract from Clarke's History does not deal with rights of way along the quayside, which had not been constructed in 1830. The relevance of the Note on pushing bicycles on public footpaths is not understood. The 2006 photograph does not relate to RB36. Judging by the dress of the onlookers, it seems doubtful whether the photograph was taken in 2006.

Mr. Turtill

[101] These objectors agree with the comments of SCC.

Neptune Marina

[102] When SCC comments that it considers that public rights exist by virtue of documentary evidence, these objectors believe that what SCC meant to say (consistently with its Statement of Reasons) is that the rights exist by statute. Neptune Marina's position differs from that of these objectors in that it is concerned with a stretch of quay north of the old ballast wharf and hence subject to a s. 17 right of way. However, it appears to these objectors that both Neptune Marina and these objectors have common ground in arguing that any public right of way around the Wet Dock must be subject to the right temporarily to close the quay when reasonably required for dock purposes.

General conclusion

[103] The Order should not be confirmed in relation to the Disputed Way.

Attachments to Statement of Case

Attachment No 1: the plan referred to in para. 7 above

Attachment No. 2: Map 13 referred to in para. 10 above.

Attachment No. 3: The 1846 Agreement referred to in para. 15 above

Attachment No. 4: The 1847 Report referred to in para. 91 above

Attachment No. 5: Undated note of settlement of proceedings in Chancery referring to the Dock Commissioner's Gas Dock referred to in para. 91 above.

Attachment No. 6: 1974 plan of Ipswich Port showing extent of port land holdings referred to in para. 92 above.

Signed for and on behalf of Forres and Anglo-Norden:



Name: Anthony O'Brien

Address: Orwell Terminal, Eagle Wharf, Helena Road, Ipswich IP3 0BT

Position: Group Legal Adviser

28 September 2010