

**The Planning
Inspectorate**

4/05 Kite Wing
Temple Quay House
2 The Square
Bristol
BS1 6PN

Direct Line: 0117 372 8064
Customer Services: 0117 372 6172
Fax No: 0117 372 6241
e-mail: W00ms.cddy@planning.gov.uk

Jay Harvey
20 Back Hamlet
Ipswich
IP3 8AJ

Your Ref:
Our Ref: **HE/01/007/303, 304, 306 & 307**

jay@waterfrontaction.co.uk

Date: **04 MAR 2011**

Dear Sir

WILDLIFE AND COUNTRYSIDE ACT 1981 SECTION 53

Suffolk County Council

(County Borough of Ipswich Definitive Map and Statement) (Restricted Byway 16)
Modification Order 2005

(County Borough of Ipswich Definitive Map and Statement) (Restricted Byway 37)
Modification Order 2005,

(County Borough of Ipswich Definitive Map and Statement) (Public Footpath 39) Modification
Order 2009

(County Borough of Ipswich Definitive Map and Statement) (Public Footpath 40) Modification
Order 2009

I enclose for your information a copy of the Inspector's decision on this Order following the
Inquiry on Tuesday 7 December 2010.

Also enclosed are two leaflets entitled *Our Complaints Procedure* and *Challenging the
Decision in the High Court*.

If you have any queries about the enclosed decision, please contact the Quality Assurance
Unit at the following address:

Quality Assurance Unit
The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol
BS1 6PN

Tel: 0117 372 8052

http://www.planning-inspectorate.gov.uk/olms/agency_info/complaints/complaints_decision.htm



The Planning
Inspectorate

4/05 Kiln Wing
Temple Quay House
7 The Square
Bristol
BS1 6PN

Direct Line: 0117 372 8064
Customer Services: 0117 372 6372
Fax No: 0117 372 6341
e-mail: yourmail.0000@planning.gov.uk

Jay Harvey
20 Back Hamlet
Ipswich
IP3 8AJ

Your Ref: _____
Our Ref: FPS/VR500/1/305
Date: 04 MAR 2011

jay@waterfrontaction.co.uk

Dear Sir

WILDLIFE AND COUNTRYSIDE ACT 1981 SECTION 53
Suffolk County Council
(County Borough of Ipswich Definitive Map and Statement) (Restricted Byway 38)
Modification Order 2009

I enclose for your information a copy of the Inspector's interim decision on this Order following the inquiry on Tuesday 7 December 2010.

This is an interim decision because the Inspector has proposed a modification to the order, which will need to be advertised before a final decision can be made. You are entitled to comment on the Inspector's proposals and I will write to you again shortly about how you can do this. In the meantime, you will find information about the modification process at section 7 of our booklet, *Definitive Maps and Public Path Orders*. Please let me know if you require a copy of this booklet.

If you have any complaints or questions about the way we have handled the order to date, or about the conduct of the Inspector at the inquiry, please write to me at the above address. We will investigate your complaint and you can expect a full reply within three weeks.

An electronic version of the decision will shortly appear on the Inspectorate's website.

Yours faithfully

Yvonne Oddy (Mrs)
(Rights of Way Section)

Deborah IM



The Planning
Inspectorate

Order Decisions

Inquiry opened on 7 December 2010

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

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

Decision date:

Order Ref: FPS/V3500/7/303 referred to as Order A

- This Order is made under Section 53(2)(h) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Suffolk County Council (County Borough of Ipswich Definitive Map and Statement) (Restricted Byway 36) Modification Order 2009.
- The Order is dated 14 July 2009 and proposes to modify the Definitive Map and Statement for the area by adding a Restricted Byway running between Foundry Lane and Ship Launch Road, Ipswich by way of Orwell Quay, as shown in the Order plan and described in the Order Schedules.
- There were 7 objections outstanding at the commencement of the inquiry.

Summary of Decision: The Order is confirmed subject to a modification that does not require advertising.

Order Ref: FPS/V3500/7/304 referred to as Order B

- This Order is made under Section 53(2)(h) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Suffolk County Council (County Borough of Ipswich Definitive Map and Statement) (Restricted Byway 37) Modification Order 2009.
- The Order is dated 14 July 2009 and proposes to modify the Definitive Map and Statement for the area by adding a Restricted Byway running between Foundry Lane and Ship Launch Road, Ipswich by way of New Cut East, as shown in the Order plan and described in the Order Schedules.
- There were 6 objections outstanding at the commencement of the inquiry.

Summary of Decision: The Order is not confirmed.

Order Ref: FPS/V3500/7/305 referred to as Order C

- This Order is made under Section 53(2)(h) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Suffolk County Council (County Borough of Ipswich Definitive Map and Statement) (Restricted Byway 38) Modification Order 2009.
- The Order is dated 14 July 2009 and proposes to modify the Definitive Map and Statement for the area by adding a Restricted Byway running between Dock Street and Griffin Wharf, Ipswich by way of New Cut West, as shown in the Order plan and described in the Order Schedules.
- There were 5 objections outstanding at the commencement of the inquiry.

Summary of Decision: I propose to confirm the Order subject to modifications that require advertising.

Order Ref: FPS/V3500/7/306 referred to as Order D

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Suffolk County Council (County Borough of Ipswich

Order Decision: FFS/V3500/7/707 - 307

- Definitive Map and Statement) (Public Footpath 39) Modification Order 2009.
- The Order is dated 14 July 2009 and proposes to modify the Definitive Map and Statement for the area by adding a footpath running along part of Cliff Quay, Ipswich, as shown in the Order plan and described in the Order Schedules.
- There was 1 objection outstanding at the commencement of the Inquiry.

Summary of Decision: The Order is not confirmed.

Order Ref: FFS/V3500/7/707 referred to as Order B

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Suffolk County Council (County Borough of Ipswich Definitive Map and Statement) (Public Footpath 40) Modification Order 2009.
- The Order is dated 14 July 2009 and proposes to modify the Definitive Map and Statement for the area by adding a footpath on the area formerly known as The Avenue, Ipswich, as shown in the Order plan and described in the Order Schedules.
- There was 1 objection outstanding at the commencement of the Inquiry.

Summary of Decision: The Order is not confirmed.

Procedural Matters

1. I held a public Inquiry into these Orders on Thursday 7 to Friday 10 December inclusive, Wednesday 15 December, Tuesday 21 December and Wednesday 22 December, 2010 at the IP – City Centre, Bath Street, Ipswich. I made a site inspection on Monday 6 December, when I was accompanied for some of the time by Mr T Garwood, Ports Operations Manager and Security Officer, Associated British Ports (ABP) for health and safety and security reasons. I made a further inspection on 15 December 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 on the Order routes as shown on the Order Maps. I therefore attach copies of these maps to some of which (Order A) I have added some additional points.

The Main Issues

3. The requirement of Section 53(a)(c)(i) of the Wildlife and Countryside Act 1981 (the 1981 Act) is that the evidence discovered by the surveying authority, when considered with all other relevant evidence available, should show that rights of way that are not shown on the Definitive Map and Statement exist along the Order routes.
4. Some of the evidence in this case relates to usage of the routes. 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.
5. Common law also requires me to consider whether the use of the routes and the actions of the landowners have been of such a nature that the dedication of the routes by the landowners can be inferred.

UN001 Decision PPS/V1500/7/303 - 307

6. Also, as three of the Orders propose that the Order routes be recorded as Restricted Byways, it may be necessary to have regard to the provisions of Section 67 of the Natural Environment and Rural Communities Act 2006 (the 2006 Act) which extinguished unrecorded rights of way for mechanically propelled vehicles (MPVs) subject to certain exceptions.

Reasons

Ipswich Dock Acts

7. A number of Acts of Parliament and a Statutory Instrument relating to the development of Ipswich Docks are referred to in evidence in connection with all of the Order routes. In order to avoid unnecessary repetition, I summarise the main relevant provisions of these below in general terms but refer to the specific provisions regarding each of the Order routes later.

- The Ipswich Dock Act 1837 (the 1837 Act) gave Dock Commissioners the power to make the West Dock and a new channel for the River Orwell with roadways on each side of it.
- The Ipswich Dock Act 1852 (the 1852 Act) repealed the 1837 Act but without prejudicing anything already done under that Act. It recites the main provisions of the 1837 Act and makes clear that almost all the works had been carried out and some additional ones as well.
- The Ipswich Dock Act 1877 (the 1877 Act) authorises the construction of a new entrance to the Dock.
- The Ipswich Dock Act 1898 (the 1898 Act) notes that a new entrance lock has been constructed and authorises the provision of a swing bridge over it.

The Ipswich Dock Act 1913 (the 1913 Act) authorises the construction of a new entrance to the Dock along with a swing bridge, a quay and various tramways within 10 years. It also empowered the Commissioners to erect a quill or barrier on East Road (now known as New Cut East) and thereafter to restrict public access to East Road and The Avenues (a popular recreational area). These latter powers were not to be exercised until 5 years had elapsed and a special meeting of the Borough Council had agreed to the erection of the barrier on East Road.

- The Ipswich Dock Act 1918 (the 1918 Act) extended the time limit set out in the 1913 Act by a date 10 years from the end of the 1st World War and repealed the requirement for a special meeting of the Borough Council to agree to the erection of the barrier on East Road. This Act also authorised the construction of Cliff Quay and the stopping up of 2 footpaths.
- The Ipswich Dock Revision Order 1969 provided that public rights over a defined quay should be subject to the right of the Dock Commission to use the quay for the purpose of loading goods and for the temporary exclusion of the public (other than foot passengers)

The Ipswich Dock Act 1971 contains a range of provisions including the extinguishment of highway rights over land subject to compulsory purchase, the making of bylaws to prevent trespass and to prevent any

Order Decision 112/V1500/2408 - 307

offence for any person to be on a moveable bridge when it is about to be moved.

User Evidence

8. A total of 84 User Evidence Forms (UEFs) were submitted in support of applications for the Order routes and other routes to be added to the Definitive Map. These UEFs are however difficult to interpret with regard to each separate Order. Some people completed more than one form as if to provide separate evidence in respect of different routes but most forms relate to a number of routes but do not specify the frequency with which each was used. Also, many people claim to have used routes in various ways, for example on foot, on bicycles or in vehicles but again do not specify the frequency of each type of use. In addition many forms are not specific with regard to details of which route(s) were used, over what period(s) and by which means. It would also appear that some of the use described related to travel to work at premises on or near the dock and might be regarded as permissive use rather than use as of right.
9. Despite the limitations of the UEFs that are available, they still represent a considerable body of evidence of public use, particularly in respect of the Order A and B routes, and to a lesser extent the Order C and D routes. There is little direct evidence of use of the Order E route.

Order A (Rubbish)

Documentary Evidence

10. Section 17 of the 1857 Act states that "...the said Dock Commissioners shall and may also build and construct, or cause to be built and constructed, a quay or wharf of the width of thirty feet (9.1m.) or thereabouts, for the trade and business of the said town and port and for giving convenient access to the said dock, which shall range along the north and east sides of the of the said dock next the town..." and later continues "...and which new quay to be so constructed as aforesaid shall be an open and public roadway for all persons, cattle and carriages: Provided always, That the frontage and front wall of the said quay, and the right of shipping and landing goods thereon or thereat shall be deemed to be the property and right exclusively of the present owners of the quays and wharfs respectively...".
11. Section 22 of the Act also authorises the Commissioners to make public wharfs and quays "...by building a quay-wall along the east and west sides of the said dock, commencing at the south-west corner of the present ballast-wharf". Section 27 then states that the Commissioners "...are hereby required to make or cause to be made a road of the width of forty feet (12.1m.) at the least, proper for the passage of cattle, carriages and foot passengers, from the end of the present ballast wharf along the east side of the said dock, and thence along the south end of the said dock to the entrance lock or outer dock gates, and from the said entrance lock or dock gates along the north side of the intended new cut or channel, and across the head or west end of the said dock to St. Peter's Dock...". Section 27 later requires the Commissioners to make another "like roadway" on the south or south west side of the intended new channel "...so that all persons, with cattle and carriages, may have free access to the dock and quays, and the sides of the said new cut and channel, and a free circulation of air may be preserved and continued...".

Order No. 185/V3500/7/302 307

12. Section 28 requires the Commissioners to make "*such other openings, roads and communications to the said dock as they may think necessary...*" It then states that the roads which abut the dock or new channel shall be maintained by and at the cost of the Commissioners but that such other public streets or roads and avenues leading to the dock or new channel "*...shall be deemed and taken to be public streets, highways, and roads respectively, and shall be repaired and kept in repair as other public streets or roads...*"
13. It was a matter of agreement between parties that the point referred to as the south west corner or the end of the present ballast wharf is the same as that marked Q on a plan submitted to the Rights of Way Committee of the OMA in March 2009. I have also marked this point as Q on the attached Plan A.
14. It would therefore appear that the Order route was created as a result of provisions of the 1837 Act, the length from Point A to Point Q as a result of the provision in Section 17 and the length from Point Q to Point B as a result of that in Section 27. The wording used in these sections is not the same and while Section 17 appears to refer unambiguously to a public roadway, it is argued by one objector that Section 27 may not refer to a public route but one only intended for those with reason to access the quays, for example, to board or disembark from vessels.
15. In particular, the proper meaning of the term "*foot passengers*" as used in Section 27 of the 1837 Act was the subject of some disagreement. The objector suggesting that it referred to passengers travelling on a boat whereas the OMA maintained that it referred to all people on foot. This term would appear to be ambiguous to some extent although I am aware that it was sometimes used in the 19th century to refer to any person on foot (for example, in the judgement in the *Grand Junction Canal Company v Pelly and others*³ on behalf of the objector⁴). It is my view that when the whole of Sections 27 and 28 of the 1837 Act are read together, it is most likely that the forty foot (12.1m.) wide road referred to was intended to be a public road.
16. It was further argued on behalf of an objector that there was not sufficient evidence available to show that the road described in Section 27 of the 1837 Act was in fact constructed by the Commissioners. The 1837 Act was a "grand scheme" act conferring powers to build a dock and associated facilities larger than the trade of the town required at that time. It must therefore have been anticipated that some works might not be carried out or take a different form to that envisaged in 1837. Section 21 of the Act provided a default power for owners of properties fronting the dock to themselves construct quays if the Commissioners had failed to do so within 7 years and provisions in the Act allowing the Commissioners to acquire land for works compulsorily were only exercisable within 3 years of the passing of the Act. With regard to the section of the Order route south of Point Q, an Auction Plan of 1842, a Dock Plan of 1843 and Minutes of a meeting held in 1846 seem to indicate that the former Gas Dock had not then been filled in and consequently at least part of the proposed road had not been constructed by then. Also, although the 1852 Act provided that works authorised by the 1837 Act had been completed "*as near as circumstances would permit*", this does not necessarily mean that everything envisaged had been done,

³ The Grand Junction Canal Company v Pelly and others [1888]

Draft Decision PER/0650077/003 307

17. On behalf of Suffolk County Council, the Order Making Authority, (OMA) it was argued that the provision of the road mentioned in Section 27 of the 1837 Act was not subject to the 7 year time limit which applied to the quays and that Commissioners would have been free to acquire land by acquisition of any OMA.
18. Section 32 of the 1852 Act is a long section which recites (and re-enacts) provisions of the 1832 Act. It includes the statement *"And whereas the said Dock or basin, and the quay or wharf, to be of the width of thirty feet (9.1m.) or thereabouts, together with the said roads, approaches, and the other of the said works have been completed and constructed as near as circumstances would permit in accordance with the provisions of the said Act, except so far as regards the dredging and deepening of certain portions of the said Dock and basin, as is enacted, That all the said works shall be maintained and kept in good order and repair..."*. As this statement includes reference to roads having been completed and the only exception specified is the dredging and deepening of part of the dock, this suggests to me that it is most likely that the Order route had been constructed by 1852 in accordance with the provisions of the 1837 Act.
19. Later plans that are available seem to show the Order route in existence as a roadway also occupied by tram or rail lines. These include Dock Plans dated 1875, 1877, 1890, 1904 and 1913. The Book of Reference associated with the 1898 plan describes part of the route (south of Point Q) as *"Dock, quay, public road, tramway, siding, overhead landing stage, gas and water mains"*. The 1913 Book of Reference describes part of the route on the north side of the dock (Albion Wharf) as *"Public road, gas and water mains, storm water sewer, and electric cables"*. Railway Plans and OS maps also show the route or parts of it. OS maps dated from 1880 to recent times show the southern part of the route named as Helena Road. It was pointed out on behalf of an objector that an 1884 OS map shows trees occupying part of the southern part of the Order route and it was suggested that this would have meant that a 40' width was not available. On behalf of the OMA it was stated that the trees were shown diagrammatically and it was not possible to tell from the map whether they would have actually obstructed any part of the route. Letters, articles and photographs from the first half of the 20th century also suggest that the public enjoyed access to the dock. This evidence indicates that the route remained in existence and no evidence had been discovered regarding public rights over it having been extinguished.
20. However, although public access appears to have been available along the Order route since the mid 19th century, this may have been subject to some restriction as there is evidence of the existence of a number of barriers along the route. A total of 7 locations have been identified along the Order route where barriers have been in place at some time plus another 2 just off it in Pall Mall Road restricting access to the route. In addition, there is evidence that Anglo-Norfolk Forest Products Ltd (A-NFP) has temporarily blocked the route at 3 points on a number of occasions. It was generally accepted that barriers had existed for many years although most had only been used to temporarily restrict vehicular access when vessels were being loaded or unloaded; pedestrian and cycle traffic having usually been allowed to continue to use the route. However, a barrier near Neptune Marina had been in place permanently since around 2005 and has prevented through traffic by most vehicles, although it is passable by pedestrians, cycles and motorcycles. Also,

Order Decision F95/V35907/2001 - 307

A-MFP has regularly closed part of the route to all traffic, particularly in recent years (since 2006).

21. It would appear self evident from the layout of the dock that it has always been intended that the loading and unloading of ships would take place over the roadway. However, there is no evidence that the roadway was created subject to specific limitations. Section 110 of the 1837 Act provided that anyone landing goods on the dock quays had to remove them within 6 hours or pay a fine. Also the Dock Commissioners reserved to themselves the right to erect structures on the quays. However, these provisions do not in my view amount to a specific limitation of public rights.
22. The Ipswich Dock Revision Order 1969 provides power for the Dock Commission to restrict public rights over part of the Order route. The section referred to runs "*...between a point at the north west corner of the said dock where it joins Foundry Lane and a point on the east side of the said dock at the junction of Orwell Quay and Gasworks Quay and includes the roadway thereover*". It is stated that during loading or discharging or the transport of goods "*the Commission may exclude the public (other than foot passengers) temporarily from the quay or part of the quay in use*". This would seem to confirm that it was not thought that public rights were otherwise subject to limitations relating to dock activities but does not relate to the part of the Order route used by A-MFP. The DMA has requested that if the Order is to be confirmed it be qualified to include a reference to the limitation on public use resulting from the Dock Revision Order. I agree that this would be appropriate.
23. User evidence, although difficult to quantify accurately, tends to confirm that the public have continued to use the route to the present day.
24. Overall, it is my view that, on the balance of probability, the available evidence indicates that this Order route was created as a public route for all traffic under the provisions of the 1837 Act, even though it was not established on the ground as a continuous route until some time after 1946. There is no evidence of public rights having subsequently been extinguished prior to 2006, although rights over part of the route are limited to some extent by the provisions of the Ipswich Dock Revision Order 1969. However, it is now necessary to consider the effect of the 2006 Act on the rights that had been established.

The 2006 Act

25. This Act extinguished unrecorded rights of way for MPVs subject to certain exceptions. In this case it has been suggested that exceptions described in Sections 67(2)(a) and (b) apply.
26. Section 67(2)(a) states that MPV rights were not extinguished if the main lawful use of the way during the period of 5 years ending with commencement (2 May 2006) was use for MPVs. As has already been stated, a barrier was erected across this Order route in 2005 which prevented its use as a through route by most MPVs (with the exception of motorcycles). The route is also effectively a cul de sac at its southern end. Nevertheless the route was otherwise open and available for vehicular use and remains so. Part of the route appears to be subject to a Traffic Regulation Order restricting such use and the Ipswich Dock Revision Order 1969 also authorises the limitation of vehicular use. This would tend to indicate that at least part of the route has been used by vehicles to some significant extent. However, the user evidence

Order Decision FRS/VI/300/7/103 - 197

that is available suggests that the main use of the route in the relevant 5 year period was by pedestrians and cyclists. On balance, it is my view that there is insufficient evidence of MPV use in the period from May 2001 to May 2006 to justify the conclusion that this was the main lawful use and therefore the exception under Section 67(2)(a) of the 2006 Act does not apply.

27. Section 67(2)(b) states that MPV rights were not extinguished if immediately before commencement the route was not shown in a definitive map and statement but was shown in a list required to be kept under Section 36(6) of the 1980 Act (the List of Streets). In this case, a list supplied by Ipswich Borough Council to Mr Turbill in January 2007, in response to his request for "a street and road list of all streets in Ipswich" includes Albion Wharf (length 242m.), Common Quay (76m.), Eagle Wharf (0m.), Gasworks Quay (0m.), Helena Road (0m.), Neptune Quay (0m.) and Orwell Quay (0m.). None of the routes is listed as having any road classification or number. Together the routes listed probably make up the whole of the Order route but the total length listed only amounts to about a quarter of the length of the Order route. Another list supplied by Ipswich Borough Council entitled "Register of Adopted Highways : List of Streets pursuant to Section 36(6) Highways Act 1980" and dated July 2010, of which I have only seen extracts, includes similar information except that Orwell Quay is stated to be 434m. long and all the routes are described as 'Private' rather than 'Adopted'.
28. Ipswich Borough Council is the authority responsible for maintaining the List of Streets for Ipswich under an agency agreement with the county council; however, there appears to be some doubt as to whether the list supplied to Mr Turbill is actually the same as the List of Streets immediately before 2 May 2006. On behalf of the OMA it was stated that it had been informed by Ipswich Borough Council that the List of Streets in 2006 did not include any of the Order routes. No direct evidence was submitted by Ipswich Borough Council.
29. It is somewhat unsatisfactory that no substantive evidence is available as to which routes were included in the List of Streets immediately prior to 2 May 2006. The list supplied to Mr Turbill in 2007 is somewhat puzzling as most sections of the Order route are described as being 0m. in length and the OMA's evidence suggests that this list is not the same as the List of Streets required to be kept under the 1980 Act. In the circumstances, it is my view that there is insufficient evidence that any part of the Order route was included in the List of Streets immediately before 2 May 2006 and therefore the exception under Section 67(2)(b) of the 2006 Act does not apply.

Conclusion

30. It is my view that, on the balance of probability, the Order route was created as a public route for all traffic under the provisions of the 1837 Act but public rights of way for mechanically propelled vehicles (MPVs) were extinguished by the 2006 Act. It is therefore appropriate that the route should now be recorded as a Restricted Byway (A Restricted Byway is a way over which the public has a right of way on foot, on horseback or leading a horse, and a right of way in or on vehicles other than MPVs, such as pedal cycles and horse-drawn vehicles). Accordingly, it would be appropriate for the Order to be approved, subject to the modification referred to in Para. 22 above.

Order Bookings 0044V3500/7/202 30/

Order 0 (RB37)

Documentary Evidence

31. Section 17 of the 1837 Act gave the Dock Commissioners power to construct the Wet Dock and "...a new cut, channel or river, with railways on each side thereof of the width of forty feet (12.1m.), or such other width as the said Commissioners shall think fit..".
32. As already stated (Para. 11), Section 27 of the Act required the Dock Commissioners to make a road "...along the south end of the said dock to the entrance lock or outer dock gates, and from the said entrance lock or dock gates along the north side of the intended new cut or channel, and across the head or west end of the said dock to St. Peter's Dock...". The section also states that "...if and in case the said Dock Commissioners shall at any time erect a bridge across the lock pit or entrance lock or channel leading from the said new cut into the dock, the same bridge shall at all reasonable times and hours be passable by foot passengers without payment of any tolls, dues, or duties whatsoever...". It would seem therefore that the proposed road would in practice have been two cut de sacs unless and until a bridge was constructed and, after that a through route only for pedestrian traffic.
33. As also already stated (Para. 18), the 1852 Act subsequently appears to record the fact that much of the works required by the 1837 Act, including the construction of roads, had been completed.
34. The 1877 Act then authorised the Commissioners to make a new entrance to the dock at its southern end (and also a bridge or weir across the River Orwell). The 1877 Act noted that a new entrance lock to the dock had been constructed (but not a bridge and weir across the river) and further authorised the Commissioners to construct an opening or swing bridge across the new entrance lock. It also authorised the construction of a swing or fixed bridge or other crossing over the old entrance lock.
35. A Dock Plan of 1843 shows a feature annotated "ROAD WAY" following part of the line of the Order route on the northern part of the "Island" (the "Island" is the name by which the area of land between St Peter's Wharf and the southern entrance to the Wet Dock is commonly known) but this feature stops short of the entrance lock to the dock. An 1875 Plan shows the proposed new dock entrance in the south and shows a similar road to the 1843 Plan annotated "EAST ROAD". The accompanying Book of Reference describes this feature as "Public roadway, quay and landing steps". Again this road appears to end to the north of the old entrance lock. A further length of road annotated "South Embankment" follows part of the Order route along the south side of the dock; this is described as "South embankment and roadway" in the Book of Reference. Between these two lengths of road, no similar feature is shown along the remainder of the Order route although a strip of land running alongside the New Cut is marked which is described simply as "East bank of New Cut". An 1877 Plan shows similar information except that the south embankment is described as "South embankment and public roadway".
36. A Dock Plan of 1898 shows the new entrance lock to the dock with a proposed swing bridge across it. At this time it would seem that the southern part of the "Island" was not accessible to vehicles of any sort as neither the old or new entrance locks had bridges across them. It is however possible that pedestrians

1999 Decision FRS/V3500/7/007 - 317

would have crossed by way of the lock gates. On this plan, a road is shown to the east of the new entrance lock and described as "*South embankment of lock and public road, gas and water mains*". The 1904 Dock Plan shows similar information except that the old lock is shown as being largely filled in. The southern part of the 'Island' would then have been capable of access by vehicles although there is no indication of a new road having been constructed. A 1933 Dock Plan is also similar but by this time it appears that a swing bridge coinciding with the line of the Order route is shown between this bridge and a point to the north of the old lock.

37. Other plans that are available, notably OS maps, show similar information to the Dock Plans. However, the 1904, 1:2500 map also shows a footbridge crossing the old entrance lock.
38. It would thus appear that although the 1917 Act required the Dock Commissioners to construct a 400' (12.1m.) road along the line of the Order route, except for a crossing over the entrance lock, only parts of such a route may have been constructed by 1913, despite the statement in the 1917 Act that works, including the construction of roads, had been largely completed. It was argued by the OMA that, although plans do not specifically indicate a roadway on the southern part of the 'Island', they do not preclude the possibility that some sort of route existed as they show the line of the Order route unobstructed.
39. A passenger ferry, Griffin Ferry, used to operate across the River Orwell from outside the Griffin Inn at the end of Bath Street to a landing stage on the south part of the 'Island'. Evidence was given to the effect that this ferry was well used and resulted in a large amount of pedestrian traffic along the Order route. It was also reported that passenger vessels used to moor alongside New Cul East. However, it is assumed that the ferry and the passenger vessels probably operated with the agreement of the Dock Commission and therefore it can be argued that pedestrian use of the Order route to gain access to the ferry and passenger vessels should be regarded as permissive use.
40. The 1918 Act (Section 42) gave the Dock Commissioners authority to carry out certain works to provide a new entrance to the dock, a swing bridge, a quay and various footways. Section 43 specifies that if the works authorised are not completed within 10 years the powers to carry them out would lapse. Section 124 gave the Commissioners power to "*erect a gate or barrier upon the East Road at a point thirteen yards (11.9m) or thereabouts from the junction thereof with Family Lane and after such erection to reserve the said East Road and also the Avenue exclusively as a means of ingress and egress for persons having business upon so much of the Commissioners' undertaking as lies southward of the said gate*". However, this power could only be exercised after the expiration of 5 years from the passing of the Act and then only after a resolution concerning to the erection of the gate had been passed at a special meeting of the borough council. It would seem from contemporary accounts that the stopping up of public access was a controversial matter and that explains the provisions of the Act regarding the delay of 5 years and the requirement for the consent of the borough council. However, the 1918 Act extended the period for works to be completed until 10 years from the end of the war and also repealed the requirement for the consent of the borough council to be obtained. It is not entirely clear to me whether the time limit

Order Decision 166/2009/7398 307

- referred to in Section 43 of the 1913 Act (and Section 14 of the 1918 Act) was intended to apply only to those works authorised in Section 42 of that Act or to other works, such as the erection of the gate or barrier described in Section 14(1).
41. It was argued on behalf of ABP that, even if public rights had been established over all or part of the Order route, they were subsequently extinguished as a result of the erection of the gate or barrier referred to in Section 14(1) of the 1913 Act. On behalf of the OMA, it was argued that there is insufficient evidence that a barrier was erected at the point specified in the Act or within the permitted timescale and that therefore public rights remain in existence.
 42. Letters published in the local newspaper in 1922 refer to members of the public having been prevented from gaining access to parts of the 'Island'. One in particular, signed by a 'M Downey' and dated 10 May 1922, appears to have been written by someone reasonably well informed with regard to the provisions of the 1913 and 1918 Acts. This states "*...under the first named Act, power was given to erect the barrier which has been referred to by your readers, thus closing the New Cut East and the Avenue to the public for all time*". Then, on 22 May 1922 an article appeared reporting that the Chairman of the Dock Commission had instructed that railings be removed so that members of the public could gain access to the area for so long as "*...the road along New Cut East is not required to be fully occupied under any prospective development scheme*". It was however made clear that the opening of the area to the public was a temporary privilege that could be withdrawn at any time.
 43. A photograph said to be taken in 1952 shows a sign reading "*Private No Throughfare*" fixed to a substantial post which could have once also supported a gate or barrier of some sort. This post appears to be located towards the northern end of New Cut East. An OS map of 1951 shows a line crossing the whole width of the 'Island' site. This line which may indicate a gate or barrier is situated approximately 28 metres from Foundry Lane according to the evidence of Mr Dowe on behalf of ABP but approximately 50 metres from Foundry Lane according to the OMA; the difference presumably being accounted for by alternative views as to the precise location of the junction of East Road and Foundry Lane.
 44. Later a new gate, known as the blue gate, was erected slightly further on to the island site (83 metres from Foundry Lane according to Mr Dowe's evidence, 115 metres according to the OMA). It is not known precisely when this gate was erected but Mr Dowe states that it was already in place by 1972. Another gate further to the south, the yellow gate, was erected in 2000 and is kept locked and opened remotely on request from people authorised to enter the dock estate.
 45. In 1961, in response to a query regarding public access rights made by the Ipswich and District Natural History Society, the secretary and Solicitor to the Dock Commission referred to the power contained in the 1913 Act to close the area and asserted that this closure was achieved by the erection of a gate at St Peter's Wharf which had been closed once a year at Easter time, when a notice was displayed stating that there was no right of way.
 46. It would thus seem that, although there is no substantive evidence that a gate or barrier was erected precisely 13 yards (11.9m.) from Foundry Lane, there is evidence to suggest that steps were taken to restrict and control public access

Order Reference: PPS/V3500/7/2003 - 407

to the island site by 1922. Further evidence suggests that, although access may have been closed on occasion, most of the time members of the public may have met with no obstruction before 2000.

47. It is my view that, on the balance of probability, it seems most likely that the Dock Commission did use its powers under the 1913 (and 1918) Acts to stop up public access to the 'Island' and subsequent public use of the Order route took place on a permissive basis.

User Evidence

48. Even if public rights over the Order route were extinguished by actions taken under the 1913 and/or 1918 Acts, it is possible that some public rights might have been established later under the 1980 Act as a result of public usage. Although, as mentioned already (Para. 45), user evidence in this case is not easy to interpret precisely, there is, nevertheless, a significant amount of evidence of public use of this Order route by the public over the period from the 1950s to 2000. This evidence might be enough to raise the presumption that the route has been dedicated as a public right of way of some sort in accordance with the provisions of the 1980 Act, unless there is sufficient evidence that there was no intention during the same period to dedicate it.
49. The 1913 Act (and the 1918 Act) gave the Dock Commission power to stop up public access to the island site and there is evidence that by 1922 some steps had been taken to do so, although it was also stated that public access would be allowed to continue on a permissive basis. The user evidence that is available suggests that public access did indeed continue relatively uninterrupted until 2000 when the yellow gate was erected. However, there is other evidence which it is argued indicated that there was no intention to dedicate a public right of way.
50. Correspondence and newspaper articles in 1922, which have already been referred to (Para. 42), indicate that access to the 'Island' was restricted but subsequently reopened on a permissive basis. The OS map of 1951 indicates a line across the route which might have been a gate or barrier of some sort. Correspondence in 1961, also referred to previously (Para. 45), suggests that access was then restricted and it was stated that it was the Dock Commission's practice to close the route once a year at Easter. Mr Dowe has provided evidence that since 1978, when he commenced his employment at Ipswich Docks, there was a gate across New Quay Quay (the blue gate) and another across Ship Launch Road. He states that the blue gate was originally manned with a control box alongside it and its purpose was to restrict access to those persons having business on the island site. It was also stated by Mr Dowe and others that the swing bridge across the entrance lock to the dock was often left in a position such that the road over it was not open to traffic. He did however accept that there may also have been some public use of the route. A newspaper article in 1994 reported another incident when public access was found to be obstructed and the commercial manager of the port was quoted as saying "...access had been denied to the public, quite often in the past but this latest closure was not necessarily permanent". After 2000, when the yellow gate was erected, it is generally accepted that public access was usually restricted although some people still claim to have used the route, possibly by following authorised users through the gate.

Order Decision H/5/V/3500/7/303 307

51. Despite the incidents reported above, users of the route generally claim not to have been restricted in their use prior to 2000. The general pattern that seems to emerge from the available evidence is that, even though the Dock Commission had used its powers to stop up public access to the Island by 1922, such access was still allowed to continue with little restriction until 2000. Nevertheless, the route does appear to have been closed periodically and I do not think it is possible to identify a continuous 78 year period in which public use of the route took place without there having been some action taken to bring such use into question or to indicate the owners' lack of intention to dedicate it as a public right of way.

Common Law

52. 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. In this case, although public use of the Order route has taken place over a substantial period, the actions of the landowners already described suggest that it was not their intention to dedicate the route as a right of way of any sort. It would not therefore be reasonable to infer such dedication at common law.

Conclusions

53. The 1837 Act required the Dock Commission to create two marlways along parts of the line of the Order route but not a continuous through route. For similar reasons to those described with regard to the Order A route (Points C to D), it is my view that what was intended were public marlways for all types of traffic. There is however no substantive evidence that a section of the proposed roadway on the southern part of the island was actually constructed before 1913, although the evidence does not preclude the possibility that it was. The 1913 Act then gave the Dock Commission the power to close the 'Island' site to the public by erecting a gate or barrier at the northern end. Again, there is no substantive evidence that a gate or barrier was erected precisely as described in the Act but the evidence does suggest that steps were taken to restrict and control public access.

54. On balance, it is my view that at least part and possibly most of the Order route was established as public roadway before 1913. However, the 1913 Act gave the Dock Commission power to extinguish public rights over the route and it seems more likely than not that this power was exercised by the erection of gates, including one somewhere near the location specified in the Act. Although public access appears to have continued relatively unimpeded until 2000, a number of actions were taken bring public use of the Order route into question and to indicate that the owners had no intention of dedicating the route as a right of way. Public access was therefore permissive rather than as of right. Accordingly, it cannot be presumed that the route has been dedicated as a public right of way of any sort either under the provisions of the 1830 Act or at common law. Therefore, it is my view that no public rights now exist along the Order route and it would not be appropriate for the Order to be confirmed.

Order C (RB38)

55. As already mentioned (Para. 31), Section 17 of the 1837 Act gave the Dock Commissioners power to construct the Wet Dock and "...a new cut, channel or

Order Decision #R3/07500/7/003 307

river, with roadways on each side thereof of the width of forty feet (12.1m.), or such other width as the said Commissioners shall think fit...".

56. Section 27 of the Act required the Commissioners to make the roadway described above (Paras.11 and 12) and "...another like roadway on the south or south-west side of the said intended cut or channel from the east or south east end of the said new cut, and thence in such direction as they shall deem most advisable into Great Whip Street, so that all persons with cattle and carriages, may thereby have free access to the dock and quays, and the sides of the said new cut and channel...". The 1852 Act then seems to state that by then the works authorised by the 1837 Act had been largely completed including the roads.
57. Dock Plans from 1836 onwards show the proposed road, known as West Road, and in books of Reference relating to the Plans of 1875 and 1877 it is described as a public road. OS maps and other plans, photographs and documents also show the road, sometimes referred to as New Cut West and seem to confirm that the road has been in existence from the 1840s to the present day.
58. There is no dispute between any parties that this Order route was created as a result of the statutory provision in the 1837 Act as a road open to all traffic. There is no evidence of any public rights having been extinguished prior to 2006, when the 2006 Act came into force.

The 2006 Act

59. It was suggested by objectors that public rights for MPVs were not extinguished over most of the route as the exception described in Section 67(2)(a) of the 2006 Act applied. This states that if the main use of a way by the public during the period of 5 years ending with commencement (7 May 2006) was use for MPVs, then public rights for such use were not extinguished. I have no detailed information regarding use of the route during the relevant 5 year period. However, on my visits I noted that the route was suitable and available for vehicular use, with the exception of the section south of Bath Street which is obstructed by a gate, and did not appear to have changed in nature significantly since 2006. I also observed it being used by both vehicular and pedestrian traffic. A few people gave evidence of their personal use of the route in vehicles in the relevant period and others referred to having seen vehicles using it. It was also pointed out that a number of premises rely on the route for vehicular access and that the only access from a car park is by way of the route. It also appears that the route has been subject to a Traffic Regulation Order (TRO) for some time, again suggesting a significant amount of vehicular use.
60. On consideration of all the available evidence, it is my view that, on the balance of probability, the main public use of this route, northwards of the gate near Bath Street, during the period from May 2001 to May 2006 may well have been by MPVs. Such use would have been lawful as the route had been established as a public roadway well before this period. I therefore conclude that the exception described in Section 67(2)(a) of the 2006 Act applies to most of the route and MPV rights have not been extinguished.
61. It is arguable that the character and use of the route is not of such a nature as to make it more suitable for use for the purposes that a footpath or bridleway is used or that it is mainly used as such. If this were accepted, it would not be

Order Decision FPR/VR500/7/2007 - 107

appropriate to record it on the Definitive Map as a BOAT but to treat it in the same way as other public vehicular roads. However, as it runs alongside the river, it is popular with walkers and cyclists and, perhaps as a result of the TRG, it does not now appear to be heavily trafficked. Taking account of these factors, I propose to modify the Order so as to indicate the status of the route, north of Bath Street to be a BOAT rather than a Restricted Byway.

Conclusion

62. This route was created as a public vehicular route by the 1837 Act and there is no evidence of public rights having been extinguished except as a result of the 2006 Act. However, it would also appear that the 2006 Act does not apply to most of the route. It would therefore be appropriate for the Order to be confirmed subject to a modification to describe the route north of Bath Street as a BOAT rather than a Restricted Byway.

Order D (FP39)

63. There is no statutory provision which establishes this route but it is clear from the OS map of 1904 that by then the route existed as a physical feature.
64. The 1918 Act gave powers to the Dock Commissioners, among other things, to construct Cliff Quay and a tram road along it (Section 5). It also gave them power to stop up two footpaths, one of which is described as "*The footpath upon the sewer embankment leading from Cliff Quay towards London's Head*". This path coincides with the Order route and its northern continuation. This Act would thus appear to recognise that the route had become a public right of way by 1918 but also gave the Commissioners the power to stop it up.
65. Newspaper articles in 1923 report that the land on which Cliff Quay was built was conveyed by the Town Council to the Dock Commission and mention the fact that this would mean the loss of a riverside walk. A report of a "regrettable incident" in 1926 seems to confirm that at that time there was a gate controlling access to Cliff Quay and a notice stating "*No admittance except on business*". The incident concerned an altercation resulting from a Dock Commission employee trying to prevent a member of the public gaining access to the quay. The court decided that the Commission employee had been impeded in carrying out his duty (to prevent trespass) although he had used excessive force in trying to execute it. Other reports and photographs seem to indicate that public access continued until at least the mid 1930s, allowing people to get to Hug Highland, a popular waterside place of public resort. On behalf of ABP it was argued that this access was allowed on a permissive basis only and reference was made to statements made in 1936 that the Commissioners had been unwilling to curtail any public privilege and that the public had enjoyed practically unrestricted access, which were claimed to be consistent with that view.
66. The DMA argues that, although there is evidence that the Dock Commissioners exercised their powers to stop up the northern continuation of the Order route, they had not by 1928 stopped up the Order route itself and their powers to do so expired in 1928. Photographs and reports from the mid 1930s indicate that the area to the south of the part of Cliff Quay that had been developed by them was still a popular area of public resort and was still accessible by way of Cliff Quay (possibly on a permissive basis) or perhaps from the south. The caption for one photograph dated 1935 describes the area as "*a familiar promenade*".

Order Decision 098/04001/2010 - 107

67. I am not certain whether all the powers given to the Commissioners under the 1918 Act necessarily expired in 1928. Section 14 of the Act states "The period limited by section 43 (period for completion of works) of the Act of 1913 for the completion of works authorised by that Act is hereby extended to the expiration of ten years from the termination of the present war". The construction of Cliff Quay and the stopping up of the footpath were not included in the works authorised by the 1913 Act and may therefore not have been subject to the same time limit.
68. Notwithstanding this uncertainty, it appears to be generally accepted that the Dock Commission had before 1928 taken some steps to control access to Cliff Quay, even though it appears that public access continued well after that date. It is my view that the erection of a gate and a notice and the physical challenge to at least one member of the public indicate that the Commissioners had exercised the power to stop up a footpath and it had accordingly ceased to be a public right of way. The OMA suggests that this action only related to the northern continuation of the claimed footpath which was affected by dock development whereas the Order route itself did not become affected until some time later and remained in use by the public until at least the mid 1930s. Although the route as proposed in the Order does not link with a recorded public highway at either end, it is suggested that it would have been accessible by way of a permissive route through Cliff Quay or possibly by way of a southern continuation.
69. It is my view that, on the balance of probability, the available evidence indicates that the Dock Commission was given the power to stop up a footpath which included the whole length of the Order route and had taken action to exercise this power before 1928, even though permissive access was still allowed. Although dock development did not directly affect the Order route until some time after 1928, I can see no basis in the evidence on which to conclude that the Commission's actions only related to part of the route they were given the power to stop up. Access to the Order route appears to have been gained mainly, if not entirely, from the north and the controlling of access from this direction would thus have affected the whole route. Also, I think that by taking the action they did the Commissioners adequately indicated their intention to extinguish public rights over the route even though access was allowed to continue on a permissive basis for some time thereafter.

User Evidence

70. Even if public rights over the Order route were extinguished by actions taken under the 1918 Act, it is possible that some public rights might have been established later under the 1900 Act as a result of public usage. As mentioned before (Para. 6), the available evidence of public use is somewhat difficult to interpret precisely and there is less evidence of use of this route than of some others. There would also appear to be some variation in the actual route claimed. Nevertheless there is some evidence of public use which should be considered. This covers periods from the 1950s until recent times.
71. Mr Rowe in his evidence states that that access to Cliff Quay has been controlled by security gates at the northern end and at Greenwich Road since before 1972. He also states that the gates were often left open to facilitate authorised access but were closed at night and at weekends. Automated gates were installed in 1998 and in recent years access has been completely closed.

Order Particular F96/W8500/2/303 307

72. Although it would appear that public use of the Order route, or one similar to it, has continued until relatively recently, the available evidence is somewhat unsatisfactory and it would seem that the owners of the land have taken actions which indicated that public access was allowed on a permissive basis and there was no intention to dedicate a public right of way. Accordingly, it is my view that it cannot be presumed that the route has been dedicated as a right of way of any sort under the provisions of the 1930 Act nor, for similar reasons, can it be inferred that it has been so dedicated at common law.

Conclusion

73. It is my view that, on the balance of probability, public rights over the Order route were extinguished under the provisions of the 1913 Act and have not subsequently been re-established as a result of public use. It would not therefore be appropriate to confirm the Order.

Order 5 (FP40)

74. Again there is no statutory provision which establishes this route. Section 32 of the 1852 Act notes that most of the works authorised by the 1837 Act had been completed and adds "...the said Dock Commissioners have not only made the same works, but have laid out and planted certain walks and avenues adjacent to the said Dock and channel, and the appendages thereto, in land belonging to or claimed by them, in order that a free circulation of air may be preserved, and the same may not only be rendered convenient for business, but contribute to the health and recreation of the inhabitants of the town". This refers to the area formerly known as 'The Avenues' which constitutes this Order route. The area is shown on a number of Dock and OS Plans annotated variously as "*Avenues Walks and Gardens*", "*Avenues and Plantations*", "*The Promenade Avenues and Plantations*", "*Avenues*" and "*The Promenade*".

75. Early photographs and accounts indicate that the area was a popular resort for the people of Ipswich in the mid and late 19th century. To the south of the area was a shelter known as 'The Umbrella' which seems to have been a popular meeting point. There was also a building known as 'The Summer House' which was described as the residence of the 'curator' of the Promenade. The area, as defined in the Order, is around 300m long and about 29m wide over most of its length.

76. It is suggested on behalf of ANP that, although the public appear to have had the right of access to this area, its nature was more that of a public park or a common or town green than a public right of way. Although it is largely linear in form it is much wider than one would expect a footpath to be and in fact appears to have contained a number of routes (Avenues). Accounts and photographs also appear to indicate that it was used by the public as a meeting/sitting area and somewhere to wander around rather than as a route to get from one place to another. Also, the presence on site of a 'curator' tends to suggest something other than a right of way. In general terms, this suggestion is plausible, however, in my view, the fact that the area functioned as something different and in some ways more than a right of way does not preclude the possibility that there might also have been public footpath rights over it.

77. As already mentioned (Para.40), Section 124 of the 1913 Act gave the Commissioners power to "...erect a gate or barrier upon the East Road at a

Order Decision FPO/0500/7/003 207

point thirteen yards (11.9m) or thereabouts from the junction thereof with Lantry Lane and after such erection to reserve the said East Road and also the Avenues exclusively as a means of ingress and egress for persons having business upon so much of the Commissioners' undertaking as lies southward of the said gate." Actions subsequent to this have already been considered with regard to Order B and I concluded that, on the balance of probability, the Dock Commission exercised their power to close the 'Island' site to public access. It therefore follows that public rights over the Avenues which are specifically referred to in the 1913 Act were extinguished.

User Evidence

78. There is no user evidence available regarding this route which is not surprising as the Avenues area was redeveloped for dock related activities in the early part of the 20th century.

Conclusion

79. It is my view that, on the balance of probability, if public footpath rights had been established over this Order route, they were extinguished under the provisions of the 1913 Act and have not subsequently been re-established. It would not therefore be appropriate for this Order to be confirmed.

Other Matters

80. In evidence presented at the inquiry it was made clear on behalf of A-NFP that it was necessary for them to close part of the Order route to all traffic when unloading timber from ships and moving it into their premises. The present working arrangements have been agreed with the Health and Safety Executive in order to meet the company's obligations under the Health and Safety at Work Act and involve obstructing the Order route with pallets of timber for a period of one and a half to two days once every 2-3 weeks. If Order A is confirmed, such obstructions will not be lawful and the company's business could be severely affected. The OMA indicated at the inquiry that this potential problem was appreciated and that it would be prepared to work with parties to resolve ensuing difficulties if the Order were confirmed. With this in mind, A-NFP contacted the OMA after the close of the inquiry to ascertain what arrangements might be possible in the event of Order A being confirmed. In response it was stated on behalf of the OMA that although it would try to resolve any difficulties, any action would have to be approved by council members and would have to take account of the interests of all parties, including legitimate highway users and the constraints imposed by legislation. Accordingly, it was made clear that the continuance of A-NFP's discharging operations over the claimed route could not be guaranteed and that action to alter this situation could be time consuming and costly.

81. Having received this advice subsequent to the inquiry, A-NFP forwarded copies of the correspondence to the Planning Inspectorate with a request that it be taken into account as they feared that I may have been misled, as they appear to have been, by statements made on behalf of the OMA at the inquiry. I agreed to accept this late submission and consider it as I accepted that, from the company's point of view, some of the information was new and could not have been addressed earlier. However, having considered the correspondence carefully, it is my view that it contains nothing to which I can attach any weight in reaching my decision. Although I understand the potential problems that

Order Decision H/S/03690/7/2008 - 007

confirmation of Order A would cause to A-NPP, my decision on the Order must be made on the basis of the evidence relating to whether or not public rights exist over the Order routes and not on the basis of what effect any such rights might have on others. I have always been clear in this regard and consequently was not misled by any statements made on behalf of the OMA or any other party either at the inquiry or in written submissions. Accordingly, although I considered the late submission, I did not think it necessary to circulate copies to other parties and I have given it no weight in reaching my decision.

82. A number of other matters which lie outside the criteria set out in the relevant legislation were raised by various parties. These included:

- the suitability of the Order routes for public access and, in particular, the possible danger to the public from dock traffic and activity;
- the historic nature of some of the routes and the attraction of boats and water for many members of the public.

I understand these matters and the concerns of those raising them but, because they lie outside the relevant criteria, I have given them no weight in reaching my decision.

Conclusions

83. Having regard to these and all other matters raised in the written representations and at the inquiry, I conclude that Order A should be confirmed and Order C confirmed subject to modifications to alter the status of most of the route but Orders B, D and E should not be confirmed.

Formal Decision

84. I make the following decisions:

Order A: I confirm the Order subject to the following modifications:

Modify the Schedule to the Order, Part II, so as to add the following:

Limitation

U.S. grid reference TM16424400 to TM16994395 subject to the provisions of the Ipswich Dock Revision Order 1960 (SI 1960/1521)

Order B: I do not confirm the Order.

Order C: I propose to confirm the Order subject to the following modifications:

- Delete the word "Restricted" from the title of the Order;
- Modify the Schedule to the Order, Part I, to read as follows:

Definition of Byway to be added

There shall be added to the Definitive Map for the Ipswich County Borough of Ipswich a byway to be a Byway Open to All Traffic from a point at Ordnance Survey grid reference TM16474392 to a point at Ordnance Survey grid reference TM16774343 and a Restricted Byway from there to a point at Ordnance Survey grid reference TM16784331 as shown on the attached map.

Order location: FPE/V3500/7/2001 307

- Modify the Schedule to the Order, Part 1, to read as follows:

Description of Byway to be added

There shall be added to the Definitive Statement for the former County Borough of Ipswich the following particulars:

Byway 10

Commencing as a Byway Open to All Traffic at the junction of Dock Street at O.S. grid reference TM 16474392 and proceeding in a south easterly direction for 349m to the junction of Felow Street at O.S. grid reference TM16714368, changing to a southerly direction for 265 m to the junction of Bath Street at O.S. grid reference TM16774343; continuing as a Restricted Byway in a southerly direction for 115m to a point at Grimps Wharf adjacent to the position of the eastern end of the former Harbour Street at O.S. grid reference TM16784311; a total distance of 729m

Width

12.1m

- Modify the Order Map accordingly.

Order D: I do not confirm the Order.

Order E: I do not confirm the Order.

55. The proposed modifications to Order C would have the effect of showing H4 a Highway of one description a way which is shown in the Order as a highway of another description. It is therefore required by virtue of Paragraph 8(2) of Schedule 15 to the 1981 Act that notice of the proposal to modify the Order be given and an opportunity for objections and representations to be made regarding the proposed modifications.

Barney Grimshaw

INSPECTOR